
(2004) 04 OHC CK 0017

In the Orissa High Court

Case No : O.J.C. No. 9355 of 2001 and Miscellaneous Case No. 9703 of 2001

Bilkesh Parveen

APPELLANT

Vs

Governing Body, Tangi Mahavidyalaya and Others

RESPONDENT

Date of Decision : 09-04-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 97 CLT 782

Hon'ble Judges : M.M. Das, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : B. Misra, D.R. Nanda, B.B. Nayak, D. Das, B.R. Dalai and R.R. Chotaray, for the Appellant; Akhil Mohapatra, R.C. Sahoo, J.M. Rout and B.P. Behera for O. Ps. 1, 2 and 4 and Additional Government Advocate for O. Ps. 5 and 6, for the Respondent

Judgement

A.K. Patnaik, J.—The petitioner has been working as a Lecturer in English in Tangi Mahavidyalaya since 1991. The Principal of the said Mahavidyalaya Sri Saroj Kumar Tripathy (hereinafter referred to as "the Principal") issued a letter dated 26.12.2000 to the petitioner alleging, inter alia, that the petitioner has not been staying in the college for the minimum period of 6 hours a day and she has failed to take classes when Professor B. Sarangi went on leave and that there have been complaints from some students that the petitioner has been misbehaving with them in the class. In the said letter dated 26.12.2000, the Principal also stated that the petitioner has not secured the requisite percentage of marks in the M. A. Examination and the petitioner has not tried to improve her marks and that the workload of the English Department does not permit a second lecturer and unless she mends her ways and functions as per the rules, necessary action as deemed fit would be initiated against her. In the said letter dated 26.12.2000, the Principal asked the petitioner to explain her stand in writing. The petitioner submitted her reply dated 3.1.2001 denying the allegations against her and stating that if the workload did not warrant a second post, she should not have been appointed nor allowed to continue in the post for

long ten years. In her reply dated 3.1.2001, the petitioner also stated that the remuneration of invigilation for the C.H.S.E., 2000 and University Examination, 2000 has not been disbursed to her even though she has signed in the Council bills on 9.2.2000 and that she has not been paid her arrear dues of Rs. 5,700/-. She also alleged that the letter dated 26.12.2000 of the Principal marks the climax of "harassment and blackmailing" continuously perpetrated on her by him. Thereafter the Sub-Collector, Cuttack Sadar and Ex-officio President of the Governing Body of Tangi Mahavidyalaya by his letter dated 23.2.2001 informed the petitioner that she has violated official decorum by levelling charges against the Principal of the college who is the Administrative Head of the Institution in her reply dated 3.1.2001 and that the language used by her in her said reply dated 3.1.2001. amounted to insubordination for which she was liable for disciplinary action. By the said letter dated 23.2.2001 the Sub-Collector, Cuttack Sadar and Ex-officio President of the Governing Body of Tangi Mahavidyalaya asked the petitioner to show cause as to why stern disciplinary action should not be initiated against her for insubordination and levelling wild allegations against the Principal of the College. In her reply to the Sub-Collector, Cuttack Sadar and Ex-officio President of the Governing Body of Tangi Mahavidyalaya dated 2.3.2001, the petitioner, inter alia, stated that the Principal of the Mahavidyalaya has passed an order attaching her to his office and has requested her to allow him to carry her to and fro from the College and her refusal to do so had made him angry, abusive and vindictive. The petitioner also addressed a letter dated 26.4.2001 to the Principal of Tangi Mahavidyalaya stating that he had not paid to her salary since January, 2001 and the remuneration for invigilation work out of grudge against her for her refusal for the sexual favour. The petitioner has filed the writ petition praying for a direction to transfer the Principal as well as the Sub-Collector, Cuttack Sadar and Ex-officio President of the Governing Body of Tangi Mahavidyalaya from their respective posts and to remove them from their respective posts and for compensation for such sexual harassment.

2. The petitioner has also filed Misc. Case No. 9703 of 2001 stating therein that the petitioner can be insulated against all harm and further harassment if the Principal of the Mahavidyalaya and the Sub-Collector, Cuttack Sadar and Ex-officio President of the Governing Body of the Mahavidyalaya are transferred. In the said misc. case petition the petitioner has also stated that she has not been paid her salary for a period of six months from January, 2001. She has made a prayer in the misc. case for transfer of the Principal of the Mahavidyalaya and the Ex-officio President of the Governing Body of the Mahavidyalaya and for a direction on the opposite parties to pay to the petitioner her unpaid salary and other dues.

3. Mr. Bibudhendra Mishra, learned counsel for the petitioner, submitted that in Vishaka and others Vs. State of Rajasthan and Others, the Supreme Court has laid down guidelines for effective enforcement of the basic human right of gender equality and the guarantee against sexual harassment and has further directed that the said guidelines have to be observed at all workplaces and other

Institutions until legislation is enacted for the purpose. He explained that in the said judgment, sexual harassment has been defined to include a demand or request for sexual favours or any other unwelcome physical, verbal or non-verbal conduct of sexual nature. He further submitted that as per the said guidelines, victims of sexual harassment also have the option to seek the transfer of the perpetrators of sexual harassment and a complaint mechanism and a complaint committee have to be set up for dealing with complaints of sexual harassment. He submitted that since the petitioner has complained of sexual harassment by the Principal, the Court should issue a direction in this case for transfer of the Principal and for an inquiry into the complaint of the petitioner of sexual harassment by the Principal. He also submitted that this is a fit case where direction should be given to the opposite parties to pay the unpaid salary of the petitioner for the period from January, 2001 to July, 2002 and for the dues of the petitioner for invigilation in the C.H.S.E., 2000 and University Examination, 2000. He also prayed for a direction to the opposite parties to pay the subsistence allowance for the period the petitioner was placed under suspension. He cited the decision of the Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, for the proposition that an employee has a right to payment of subsistence allowance during the period of suspension as part of his right to life under Article 21 of the Constitution.

4. In reply, Mr. Akhil Mohapatra, learned counsel appearing for the opposite parties 1, 2 and 4, submitted that in the counter-affidavit filed on behalf of the opposite parties 1, 2 and 4, the allegations of sexual harassment of the petitioner by the Principal have been denied. He submitted that the Principal after joining Tangi Mahavidyalaya on 12.7.1999 found the petitioner to be negligent in duty and arrogant and since various allegations were made against the petitioner by the President of the Governing Body, the guardians, the gentlemen of the locality as well as the students, the Principal was compelled to call for an explanation from the petitioner by his letter dated 26.12.2000, but instead of giving a proper explanation, the petitioner made various allegations against the Principal. He submitted that the Principal is a Senior Reader who has served in the Higher Education Department for 27 years and has an excellent academic career and has been active in extra-curricular activities such as N.C.C. and has received an award from the President of India in the year 1993-for his achievements and the allegations made by the petitioner against him are all false. Mr. Mohapatra further submitted that after the Principal joined at the Tangi Mahavidyalaya, the results of the Institution have improved tremendously and although the Principal wants to go on transfer, the authorities are not allowing him to go on such transfer. He further submitted that the petitioner has secured only 52 per cent of marks in aggregate whereas the required percentage of marks for appointment as a Lecturer as per the U.G.C. guidelines is 54 per cent and in spite of notice to the petitioner to improve her percentage of marks, she has not improved her marks. Mr. Mohapatra further submitted that the petitioner was appointed as a Lecturer on 11.1.1991 by the then Governing Body against the second post of

Lecturer in English but her appointment was not within the prescribed yardstick of the Government and it has been mentioned in the order dated 2.5.2001 issued by the Higher Education Department that the second post of Lecturer in English is not admissible as per the workload of the Institution. Mr. Mohapatra explained that because of these facts, the petitioner has become frustrated and is levelling baseless allegations against the Principal. He finally argued that the allegations of sexual harassment are all false and have been made by the petitioner to escape disciplinary proceedings initiated against her and the decision of the Supreme Court in Visakha's case (supra) did not apply to the facts of the present case.

5. In Visakha's case (supra), the Supreme Court has held that sexual harassment to women workers results in violation of fundamental rights of such women workers under Articles 14, 19 and 21 of the Constitution and in the absence of enacted law to provide for effective enforcement of such rights, the Supreme Court has laid down some guidelines and norms for due observance at workplaces and other institutions until a legislation is enacted for the purpose in exercise of its powers under Articles 32 and 141 of the Constitution. Paragraphs 2, 4, 5, 6 and 7 of the said guidelines and norms laid down by the Supreme Court are quoted herein below :

"2 Definition :

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as :

- (a) physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually-coloured remarks;
- (d) showing pornography;
- (e) any other unwelcome physical, verbal or nonverbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. *** *** *** 4. Criminal proceedings :

Where such conduct amounts to a specific offence under the Indian Penal Code

or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer or the perpetrator or their own transfer.

5. Disciplinary action :

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint mechanism :

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaints Committee :

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counselor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department."

It will be clear from para 2 of the guidelines and norms laid down by the Supreme Court in Visakha's case quoted above that sexual harassment includes a demand or request for sexual favour as well as any unwelcome verbal or non-verbal conduct of sexual nature: Para 4 of the guidelines and norms, inter alia, states that the victim of sexual harassment will have the option to seek the transfer of the perpetrator. Para 6 of the guidelines and norms laid down by the Supreme Court in the aforesaid case states that an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim and para 7 of the said guidelines states that the complaint mechanism should be adequate to provide, where necessary, a

Complaints Committee and the Complaints Committee should be headed by a woman and not less than half of its members should be women.

6. In the instant case, the petitioner has made allegations of sexual harassment against the Principal but the Principal has denied the same. The High Court therefore cannot come to any definite finding on the basis of the pleadings of the parties as to whether or not the petitioner has been subjected to sexual harassment by the Principal. In view of the guidelines laid down by the Supreme Court in *Visakha's case* (supra), however, the Court can direct an inquiry into the allegations of sexual harassment and to ensure that such inquiry is fair and proper also direct transfer of the Principal from Tangi Mahavidyalaya to some other college. We accordingly direct that Shri Saroj Kumar Tripathy, Principal of Tangi Mahavidyalaya will be forthwith transferred to some other college by the Director of Higher Education, Orissa soon after the ensuing elections are over and in any case by the 31st of May, 2004. We further direct that the Governing Body, Tangi Mahavidyalaya will constitute a Complaints Committee headed by a woman with not less than half of its members as women with intimation to the petitioner. The petitioner will file her complaint before the said Complaints Committee indicating therein her specific allegations of sexual harassment by the Principal Shri Saroj Kumar Tripathy and Shri Tripathy will be given reasonable opportunity to defend himself against those allegations. The Complaints Committee will be constituted by the 15th of May, 2004 and the complaint will be filed before the Complaints Committee by the petitioner by the 31st of May, 2004 and the report will be submitted by the Complaints Committee to the President of the Governing Body of Tangi Mahavidyalaya by the 31st of July, 2004 who will forward the same to the Director of Higher Education, Orissa. The Director of Higher Education, Orissa will take action on the said report in accordance with the guidelines laid down by the Supreme Court in *Visakha's case* (supra) within one month from the date of receipt of the report if the Complaints Committee comes to a finding that the complaint of the petitioner of sexual harassment by the Principal is established.

7. Regarding the claim of subsistence allowance for the period of suspension, the petitioner was placed under suspension with effect from 17.7.2001. Against the said order of suspension, the petitioner moved the Director of Higher Education, Orissa and by order dated 18.2.2003, the Director of Higher Education, Orissa has held that the Governing Body of the College has not passed any resolution for placing the petitioner under suspension before the date of suspension and hence the procedural formality had not been observed before placing the petitioner under suspension and the suspension was not proper in the eyes of law and the order placing the petitioner under suspension with effect from 17.7.2001 was not maintainable in law. On 9.4.2003, this Court has already passed orders in Misc. Case No. 624 of 2003 in the present writ petition that so long as the said order dated 18.2.2003 passed by the Director of Higher Education, Orissa is not quashed or set aside and has become final, the order of suspension dated 17.7.2001 would be treated as non-existent in law and the

petitioner will have to be treated as reinstated with effect from 17.7.2001 with all service benefits including pay and allowances which she was entitled to at the time when she was placed under suspension. By the said order dated 9.4.2003, this Court also directed the Governing Body of Tangi Mahavidyalaya to pay the arrear pay and allowances of the petitioner for the period of suspension. Pursuant to the said order, the petitioner has been paid a sum of Rs. 36, 315/- towards her arrear pay and allowances for the period from 17.7.2001 to 31.8.2003 by a bank draft on 22.9.2003. If any further amount is due and payable to the petitioner for the said suspension period towards her pay and allowances, the same will have to be paid by the opposite parties to the petitioner in view of our directions in the order dated 9.4.2003.

8. Regarding the claim of salary of the petitioner for the period from January, 2001 to July, 2001, the opposite parties 1, 2 and 4 have stated in paragraph 37 of the counter-affidavit that no Management employee of the college was paid by the Management due to financial stringency from January, 2001 onwards and the petitioner being paid from the Management was not paid accordingly. As and when the Management employees of the college are paid salary by the Management for the period from January, 2001 to July, 2001, the petitioner will have to be paid her salary for the said period by the opposite parties 1, 2 and 4.

9. So far as the claim of the petitioner towards the remuneration for invigilation duty is concerned, the petitioner has stated in the writ petition that there has been sanction of invigilation fees in the year 2000 and yet the petitioner has not received the same. She has further alleged that the amount has been misappropriated as the petitioner had furnished a receipt for the same on 9.8.2001 but she has not actually been paid the amount. But the opposite parties 1, 2 and 4 have stated in paragraphs 38 and 39 of the counter-affidavit that the petitioner has received her dues for invigilation and has signed the appropriate bills and that the petitioner has sworn a false affidavit that she has not received her dues. Thus, while the case of the petitioner is that she has not received the amount, the case of the opposite parties 1, 2 and 4 is that she has received "the amount. This is a factual dispute which cannot be decided in a writ petition. It is open for the petitioner to file a suit and establish that she has not actually received her dues towards the invigilation fees.

10. The writ petition and the misc. case are disposed of with the aforesaid directions and observations, but considering the peculiar facts and circumstances of the case, parties shall bear their own costs.

M. M. DAS, J.

I agree.