

(2018) 03 RAJ CK 0147
In the Rajasthan High Court
Case No : Civil Writ Petition No. 17006 of 2017

Dr. Anjana Paliwal @APPELLANT@Hash Mohan Lal Sukhadia University

Date of Decision : 07-03-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 107, 116

Citation : (2018) 03 RAJ CK 0147

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Yashpal Khileree, Deepesh Singh Beniwal, Sandeep Shah, Pankaj Sharma

Final Decision : Partly Allowed

Judgement

This writ petition has been filed by the petitioner aggrieved against order dated 06.12.2017 (Annexure-26) placing the petitioner under suspension,

seeking a direction that an independent body be constituted to conduct necessary inquiry against the erring officials of the respondent University,

University administration be called upon to submit the entire record with regard to various complaints, communications sent by the petitioner alleging

sexual assault, molestation, torture by her and due action as prescribed under law be taken against the persons concerned, all communications/notices

calling upon the petitioner to submit uncalled for explanation be declared illegal and set aside. A further relief has been sought that the order handing

over the charge of the Head of Sanskrit Department to the Dean be declared illegal and set aside and the petitioner may be ordered to be restored

back to her position as Head of the Sanskrit Department in the respondent University.

It is, inter alia, claimed in the writ petition that petitioner was working as College Lecturer with the State Government, came to be selected on the post

of Associate Professor in Sanskrit by order dated 13.03.2012 and joined on the said post on 23.03.2012. The petitioner was granted personal

promotion as Professor by order dated 30.09.2014 on which post she joined on the same date. Whereafter the petitioner was appointed as Head of

Department of Sanskrit subject by order dated 02.03.2015, which charge was assumed by her on 09.03.2015.

It is alleged that the respondent No.4, who was Head of Department during the period March, 2012 to February, 2015 wanted to continue on the said

post beyond his term, petitioner's appointment resulted into personal grudge to respondent No.4 against the petitioner and respondent No.5 also

became part of the design in this regard with a view to harass and humiliate the petitioner. A show cause notice dated 09.09.2016 was also issued to

the petitioner, she made several representations to the higher authorities including President of India, Vice President of India and also approached

Police authorities by filing proceedings under Section 107/116 Cr.P.C.

Another notice dated 04.12.2017 was issued to the petitioner to submit her explanation to the inquiry committee constituted to inquire into the

complaint filed by Dr. Gattu Lal Patidar. Whereafter an FIR was lodged against one Chirayu Joshi for damaging the name plate of Dr. Gattu Lal

Patidar. Ultimately by order dated 06.12.2017 (Annexure-26) the petitioner was put under suspension with immediate effect till the report of the

Committee constituted to conduct an inquiry submits its report.

Initially when the writ petition came up before the Court, the petitioner sought deletion of names of respondent Nos. 6 and 7 i.e. National Commission

for Women and State Commission for Women as party respondents, which prayer was granted. Notices were only issued to respondent Nos.1 to 3

limited qua the challenge laid in the writ petition regarding the suspension of the petitioner vide order dated 06.12.2017 (Annexure-26) and the

operation of the order dated 06.12.2017 (Annexure-26) placing petitioner under suspension was stayed.

Whereafter, after matter was got adjourned on few dates, on 05.02.2018, though there is a dispute between the parties, while the counsel for the

petitioner submitted that after going through the allegations in the petition, a Co-ordinate Bench of this Court issued notices to respondent Nos. 4 and 5,

counsel for the respondents submitted that during course of submissions the

petitioner despite initial order passed by the Court insisted on issuance of notice to respondent Nos.4 and 5, which resulted in the issuance of notice of respondent Nos.4 and 5, be that as it may. An exhaustive reply has been filed by the respondent university, inter alia, indicating that the order of suspension has been passed after following the due process of law and the competence of the authority in this regard is nowhere under challenge and, therefore, the order does not suffer from any illegality so as to require interference by this Court.

Submissions were made that complaints from more than 34 persons time and again were received against the petitioner on account of petitioner's conduct/misconduct/non-corporation, which resulted in suspension of the petitioner. Further submissions have been made that the petitioner has already filed a civil suit and as she failed to obtain any relief from the Civil Court, the present writ petition has been filed claiming the same relief as already claimed in the suit. It was also pointed out that the charge of Head of Department has already been taken from the petitioner by order dated 06.03.2017.

A large numbers of documents, indicating complaints against the petitioner, the various notices issued to her, the responses given by the petitioner etc., have been placed on record. A rejoinder, much bigger than the writ petition itself has been filed by the petitioner seeking to counter the averments made in the reply and material has been sought to be placed on record seeking to substantiate the allegations made in various complaints etc.

Learned counsel for the petitioner submitted that the material available on record clearly indicates that on account of the fact that petitioner took over the charge as Head of Department, the respondent No.4 was having grudge against the petitioner and respondent No.5 supported him, resulting in polluting the atmosphere of the faculty and all along attempts were made to obstruct the smooth functioning of the petitioner as Head of Department.

Several complaints were made by the petitioner, which were not taken up appropriately by the University authorities, the petitioner filed suit, approached policy authorities and even sent representations to the highest constitutional authorities like President of India in this regard. Eventually, the charge of the Head of Department was taken from the petitioner and ultimately on account of a complaint made regarding name plate of one Dr.

Gattu Lal Patidar having been damaged by a student, who was doing research under the petitioner, allegations have been made against the petitioner

and though the police gave negative final report in this regard, the petitioner has been placed under suspension, which action of the respondents is

wholly high handed. It was submitted that there was no reason whatsoever to place the petitioner under suspension with regard to the complaint,

which was made regarding the name plate. With regard to the series of events, it was sought to be emphasized that the University administration was

unnecessarily targeting the petitioner and has passed the order impugned without there being any basis or justification thereto.

Submissions were also made regarding the allegations/conduct of respondent No.4 and the fact that as the petitioner in her position as Head of

Department unearthed the wrongs committed by the respondent No.4, he was the kingpin in managing all the activities and, therefore, an appropriate

action in this regard be initiated.

Learned counsel appearing for the respondent University vehemently opposed the submissions. Grievance was raised that though the petitioner was

served with the caveat in the matter, the interim order was obtained without informing the Court about filing of the caveat by the University. Further

submissions were made that the material placed on record clearly indicates that the petitioner, instead of discharging her duties as Head of

Department, has been indulging in kind of activities, which was wholly unbecoming of a Professor/Head of Department. Submissions were made that

each and every person connected with the working of the University be it employees, researchers, students, colleagues etc., were aggrieved of the

conduct of the petitioner, resulting in huge number of complaints regularly being received by the University authorities and time to time show cause

notices were issued to the petitioner wherein also neither she responded to the show cause notices nor cooperated with the inquiries instituted in this

regard. Submissions were also made that the petitioner had already filed a civil suit and in the civil suit not a single complaint as sought to be raised in

the present writ petition against the respondent Nos. 4 and 5 were raised, which clearly indicates that the grievance raised in this regard is merely an

afterthought and has been done only to sensationalize the case. It was emphasized that the suspension of the petitioner was necessary in order to

ensure that she does not interfere with the fair investigation into the matter and, therefore, the order dated 06.12.2017 (Annexure-26) does not call for

any interference, the writ petition deserves to be dismissed with heavy costs.

Reliance was placed on Union of India & Anr. V. Ashok Kumar Aggarwal : (2013) 16 SCC 147. Learned counsel appearing for respondent No.4

denied each and every allegation made against the said respondent and submitted that the entire petition, allegations made therein and the action of the petitioner is by way of personal vendetta against the said respondent and only with a view to hide her incompetence and on account of her

cantankerous nature, she has indulged in various activities, resulting in polluting the entire atmosphere of the University and instead of discharging her

duties as Head of Department, she has only indulged in seeking to take revenge against the respondent. It was submitted that in the suit filed by the

petitioner, there was no reference whatsoever to the respondent which clearly reflects that they have falsely been implicated and, therefore, the writ

petition filed by her deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record. At the outset it may be

noticed that when the writ petition came up before the Court for admission on 20.12.2017, after going through the record and after hearing learned

counsel for the petitioner, on finding that other than the issue raised regarding the suspension of the petitioner, the allegations made in the petition were

already subject matter of inquiries and proceedings initiated by the petitioner by way of approaching the respective forums under law and, therefore,

confining the dispute to the suspension of the petitioner, notices were issued to the University authorities only. However, subsequently the allegations

against respondent Nos.4 and 5 and relief qua them appears to have been pressed and, therefore, notices have been issued to them.

A bare look at the entire petition filed by the petitioner and the documents annexed therewith only reflects that the allegations against respondent

Nos.4 and 5 essentially are outcome of petitioner's sense of insecurity and an assumption regarding the said respondents being after her position

as Head of Department. It also appears that the root cause for petitioner, entertaining such assumptions apparently is action initiated by the petitioner

against respondent No.4 on account of her purportedly finding out that the

respondent No.4 became guide of his wife, which was not permissible.

The allegations made in the petition indicate the so called issues cropping up on her assuming the position of Head of Department and further

avermments/allegations have been made against the University authorities in not taking action against the respondent Nos.4 and 5. It is surprising that

once the petitioner assumed the position as Head of Department, the respondent Nos.4 and 5 had no position so as to influence working of the

petitioner and/or obstruct the same. Though the allegations have been made that the University authorities did not act on the complaints made by the

petitioner, no allegations of mala fides against any specific officer and/or authority have been made in the petition and, therefore, the entire

assumption/basis of the petitioner seeking relief qua the complaints made/action initiated by the respondent Nos.1 to 3 against the petitioner cannot be

countenanced.

As already noticed hereinbefore, the petitioner has initiated certain actions before the Civil Court and Criminal Court as well and the University has

also initiated certain proceedings against the petitioner, which actions of respective parties would take their own course in accordance with law and

qua the said actions, even otherwise as highly disputed questions of fact are involved, no action/interference is called for in the present writ petition.

Coming to the issue of petitioner's suspension, a bare look at the material produced by the respondent University indicates that Annexure-R/1/1 is

a complaint dated 10.03.2015, a recommendation of the Committee Annexure-R/1/2 is dated 08.04.2015 various show cause notices issued to the

petitioner Annexure-R/1/3 are dated 23.12.2015, 16.04.2016, 21.09.2016, 04.10.2016, 01.03.2017, 09.03.2017, 11.03.2017 and complaints Annexure-

R/1/7 are dated 08.09.2015, 23.10.2015, 29.10.2015, 06.06.2015, 20.06.2015, 03.02.2016, 20.04.2016, 18.03.2017, 06.01.2016, 10.12.2015 and only two

documents have been filed i.e. a report dated 05.12.2017, which is as part of Annexure-R/1/4, which pertains to incident of damaging the name plate

and another memorandum as part of Annexure-R/1/7 which also pertains to the same incident.

An overall look of the material, which has been placed by the University, very clearly indicates that all the complaints/show cause notices pertain to

the working of the petitioner as Head of Department of Sanskrit Department.

This is also an admitted fact that vide order dated 06.03.2017, the charge of Head of Department of Sanskrit has been taken over from the petitioner by the Dean, University College of Social Sciences & Humanities of the University and, therefore, the petitioner presently is not discharging her duties as Head of Department of Sanskrit.

Honâ??ble Supreme Court in the case of Ashok Kumar Aggarwal (supra) a judgment cited by learned counsel appearing for the University himself, laid down the considerations for imposing suspension. It was, inter alia, laid down as under:-

â??27. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as to which version is true when there are claims and counterclaims on factual issues. The court cannot act as if it is an appellate forum de hors the powers of judicial review.â??

From the above law laid down by Honâ??ble Supreme Court it is apparent that the purpose of suspension is to complete the proceedings unhindered

so that the delinquent may not gain custody or control of papers or take any advantage of his position. In the present case, admittedly the allegations as

already noticed hereinbefore, pertain to the actions of the petitioner as Head of Department, which position the petitioner has already lost way back on

06.03.2017 i.e. almost 9 months back and is no more in a position to in any manner gain custody or control of papers or take advantage of her position.

The petitioner only stands in the position of a Professor now and the suspension of the petitioner apparently cannot be said to be in aid of unhindered

disposal of the contemplated inquiry against the petitioner.

In view thereof, the action of the respondents in placing the petitioner under suspension, based on the material which has been produced on record,

which allegations it is reiterated only pertain to her actions as Head of Department, which position, the petitioner had lost way back on 06.03.2017

does not appear necessary. So far as the subsequent allegation pertaining to the so called damage of the name plate and petitionerâ??s role therein is

concerned, the said aspect has already been investigated by the Police and the

said matter also it is submitted by learned counsel for the respondent

University is pending consideration before the concerned criminal court as the Police has given F.R. in the matter. Though irrespective of the criminal

proceedings, the respondent

University is free to initiate independent departmental proceedings, but for an incident regarding which already criminal proceedings have been taken,

there does not appear to be any justification for suspending the petitioner, who only holds the position as Professor and does not hold any position in

administrative capacity so as to be in a position to influence the inquiry and/or tinker with the documents. In view of above discussion, the suspension

of the petitioner vide order dated 06.12.2017 (Annexure-26) is apparently not justified.

Consequently, the writ petition is partly allowed, though the petitioner is not entitled to relief qua the issues pending before the appropriate forums, the

order of suspension of the petitioner dated 06.12.2017 (Annexure-26) cannot be sustained and the same is, therefore, quashed and set aside. The

petitioner would be entitled to all consequential benefits on account of setting aside of order dated 06.12.2017. However, it is made clear that it would

be required of the petitioner to cooperate with the inquiry, if the same is initiated against her.