

(2017) 09 GUJ CK 0071
In the Gujarat High Court
Case No : 11804 of 2017

GIRISHKUMAR RAMESHCHANDRA SONI

APPELLANT

Vs

STATE OF GUJARAT & 2

RESPONDENT

Date of Decision : 15-09-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Gujarat Civil Services (Discipline and Appeal) Rules, 1971, Rule 9(2), Rule 3B

Citation : (2017) 09 GUJ CK 0071

Hon'ble Judges : R.Subhash Reddy, Vipul M. Pancholi

Bench : Division Bench

Advocate : MR ANSHIN DESAI, C B UPADHYAYA, GM JOSHI

Final Decision : Allowed

Judgement

1. This Special Civil Application is filed under Articles 226 and 227 of the Constitution of India by the petitioner, who is presently serving as a Judge, Labour Court (Senior Division) at Surendranagar District, seeking the prayers, which read as under: "a. To allow and admit the present petition.

b. To quash and set aside the departmental inquiry no.9/2016 sought to be initiated against the petitioner and annul the same as well as the charge sheet issued to the petitioner in the interest of justice along with the order dated 17/06/2017 passed by the Gujarat State Committee, GS&IC Rajkot as the same being untenable in the eyes of law in view of the aforesaid grounds.

c. To hold and declare that the departmental inquiry sought to be initiated against the present petitioner is bad in law, illegal, erroneous and in violation of the constitutional rights of the petitioner since the same is proceeded against the petitioner without any basis or foundation and further be pleased to drop the inquiry against the present petitioner.

d. PENDING THE HEARING AND FINAL DISPOSAL OF THIS PETITION, BE PLEASED to stay the further proceedings of Departmental Inquiry No.9/2016 initiated against the petitioner and also stay further proceedings in pursuance of the charge sheet issued to the petitioner.

e. To grant any other appropriate and just relief/s;"

2. Shorn off unnecessary details, facts in brief necessary for disposal of this petition, are as under: 2.1 The petitioner has joined in the judicial service in the State of Gujarat initially as a Civil Judge (Junior Division) and J.M.F.C. in the year 2005. Thereafter, in November, 2011, he was promoted to the cadre of Senior Civil Judge and took charge as Senior Civil Judge on 05.01.2012 and worked as such at Rajkot upto 21.06.2012. Thereafter, he was transferred to Dahod in the month of June, 2012 and on 09.12.2014, he was transferred from Dahod to Nadiad. Presently, he is posted as Judge, Labour Court(S.D.) at Surendranagar.

2.2 The 3rd respondent has initiated disciplinary proceedings, against the petitioner under Rule 9 of Gujarat Civil Services (Discipline and Appeal) Rules, 1971 in Departmental Inquiry No.9 of 2016 and by notice dated 21.01.2017, explanation was called for from him, on Article of Charge shown in Annexure I, to the Memorandum. The Articles of Charge framed read as under:

"Mr.G.R.Soni was working as 13th Additional Senior Civil Judge and Additional Chief Judicial Magistrate, Rajkot during the period from 5/01/2012 to 21/06/2012, it has been found that:

I When advocate Ms.Mital Solanki used to attend your Court, you did not adjourn her case intentionally and made her sit in your Court for long hours. Further whenever Ms.Mital Solanki attended your Court you used to give adjournments to male advocates hurriedly and instruct them to leave the Court room and ask Ms.Mital Solanki to sit in the Court and ask her personal questions which would embarrass her. Thereafter, your harassment towards her increased and you started looking towards her amorously. Thereby, you have sexually harassed Ms.Mital Solanki. Through these acts, Mr. G.R.Soni is guilty committing sexual harassment of a lady advocate at the workplace under Rule 3B

(1) of the Gujarat Civil Services (Conduct) Rules, 1971 and thereby, you have committed grave misconduct of violation of Rule 3(1)(iii) of the Gujarat Civil Services (Conduct) Rules, 1971, and guideline no.1 of Code of Conduct for the guidance of Judges (as approved by the First District Judges' Conference held in Ahmedabad in October 1964) which renders you unbecoming of a Judicial Officer. The Statement of Imputations, the List of Witnesses and the List of Documents shall be deemed to be part of the Articles of Charge."

2.3 On receipt of Articles of Charge and Statement of Imputation, he has filed written statement of defense in detail. Along with the Articles of Charge, certain documents were supplied to the petitioner. The said documents with remarks dated 30.11.2013 of the Principal District Judge, Rajkot were sent to High Court

and statements of the lady advocates were recorded on 03.07.2012 and 22.07.2016. When this matter has come up for admission, affidavit in reply was filed on behalf of the High Court for which, rejoinder was also filed. As such, with the consent of the learned advocates appearing for the parties, matter was taken up for final disposal, at the stage of admission.

3. Heard Mr. Anshin Desai, learned Senior Counsel with Mr. C.B. Upadhyaya, learned advocate for the petitioner and Mr. Gautam Joshi, learned counsel appearing for the High Court.

4. In this petition, Mr. Anshin Desai, learned Senior Counsel, appearing for the petitioner mainly contended that the departmental inquiry initiated against the petitioner is wholly illegal, arbitrary and contrary to the Circular No. A.1219/2015 issued by this Court. He further contended that there is no complaint within the meaning of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the Gender Sensitisation & Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Regulations, 2013. He submitted that no written complaint was lodged by anybody supported by affidavit. In spite of the same, inquiry was initiated which runs contrary to the Circular instructions issued by this Court. He further submitted that at no point of time, any written complaint was lodged by any lady advocate member of the Rajkot Bar Association, but departmental proceedings were initiated only based on the oral representation made to the then Hon'ble Chief Justice, when he visited the Rajkot District on 28.05.2012. He submitted that in absence of written complaint, initiation of departmental proceedings itself is illegal and arbitrary. He further contended that allegation itself is vague and not supported by any acceptable material on record. Mr. Desai, learned Senior Counsel contended that though alleged oral complaint was made in the month of May, 2012, no inquiry was initiated immediately and belatedly, departmental inquiry was initiated by issuing the memorandum on 21.01.2017. He contended that on the ground of abnormal delay and laches in initiating inquiry, the proceedings are liable to be quashed. He contended that in absence of any written complaint and cogent evidence produced in support of the charge, no inquiry could have been initiated against the petitioner. By placing reliance on the judgment of the Hon'ble Supreme Court in the case of Ishwar Chand Jain Vs. High Court of Punjab and Haryana and another reported in AIR 1988 Supreme Court page 1395, he submitted that an honest strict judicial officer is likely to have adversaries in the mofussil courts and if inquiries are allowed to be initiated on trifling matters, subordinate judiciary will not be able to administer justice in an independent and honest manner. He submitted that though proceedings can be initiated for misconduct in cases where there is material to proceed with the inquiry, but in absence of any written complaint, pursuant to oral complaint made during the visit of the Hon'ble Chief Justice, if proceedings are allowed to continue, that will affect the morale of the judicial officers. In support of his plea, learned Senior Counsel also placed reliance on the judgment of the Hon'ble Supreme Court in the case of R.C. Sood Vs. High Court of Judicature at Rajasthan

and others reported in AIR 1999 Supreme Court page 707.

5. On the other hand, Mr. Gautam Joshi, learned counsel appearing for the High Court took us through the affidavit in reply filed by the In Charge Registrar General on behalf of the High Court and contended that the complaint made against the petitioner constituted breach of Rule 3B of the Gujarat Civil Services (Conduct) Rules, 1971 and the allegations against the petitioner are prima facie found to be worth investigating by way of regular departmental inquiry and, therefore, the present petition, which is filed at this stage is not maintainable. He submitted that for imposing penalties as contemplated under Rule 9(2) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971, Regulations i.e. Gender Sensitisation & Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Regulations, 2013 are framed and committees are constituted in all the units. Therefore, the committee appointed for the purpose has to conduct the departmental inquiry by following the principles of natural justice and after giving opportunities to the petitioner. He submitted that after issuing the chargesheet, inquiry was entrusted to the Gender Sensitisation and Internal Complaint Committee, constituted by the District Court at Rajkot under the Regulations of 2013 and the said Committee is competent to inquire into the allegations as per Rule 9(2) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971.

6. With reference to the Circular instructions issued by this Court dated 19.01.2015, learned counsel contended that the incident had taken place in the year 2012 and the preliminary inquiry was ordered to be initiated on 13.06.2012 and as per the decision taken by the Standing Committee on 10.2.2014, departmental inquiry was initiated. He stated that initiation of proceedings is prior to the guidelines issued by the High Court in Circular dated 19.1.2015 and, as such, the contention in this regard made by the petitioner lacks merit and deserves to be rejected. He stated that in any event, the Circular instructions issued on 19.01.2015 were by way of guidelines, which will not confer any right on the petitioner for grant of relief as prayed for at this stage.

7. With reference to the allegation of delay in initiating departmental inquiry, Mr. Gautam Joshi, learned counsel stated that the Principal District Judge, Rajkot has submitted his remarks on 30.11.2013 and same were placed before the Standing Committee meeting on 10.2.2014, wherein it was decided to initiate preliminary inquiry by Registrar, Vigilance and during the period from 2012 to 2016, efforts were made to collect material from various sources and further, vigilance office was processing and dealing with several complaints and as such, inquiry could not be initiated immediately. Finally, it was pleaded that there is no case made out to interfere at this stage in this petition filed under Article 226 of the Constitution of India. Learned counsel stated that only in rare and exceptional cases, High Court can quash the charge sheet and show cause notice. In this connection, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of Union of India and another Vs. Kunisetty Satyanarayana reported in

(2006)12 Supreme Court Cases page 28.

8. Having heard the learned counsels appearing for the parties, we have carefully perused the entire material on record, as the disciplinary proceedings are initiated on the allegation of sexual harassment, against a judicial officer. In this case, it is not in dispute that the petitioner was initially appointed as Civil Judge (Junior Division) and J.M.F.C. in the year 2005 and thereafter, he was promoted to the cadre of Senior Civil Judge on 05.01.2012 and worked as such at Rajkot upto 21.06.2012. The alleged incident is of 22.03.2012, but undisputedly, there was no complaint from any lady member of the Bar. However, only when the then Hon"ble Chief Justice visited Rajkot District on 28.5.2012, it appears that there was an oral representation from a lady advocate about the alleged sexual harassment by the petitioner. Thereafter, remarks were called for from the Principal District Judge, Rajkot, by confidential letter dated 05.09.2012 addressed by this Court. Only after reminder was sent by this Court on 21.11.2013, remarks were sent by the Principal District Judge, Rajkot, on 30.11.2013 by recording the statements of three lady advocates. Thereafter, matter was placed before the Standing Committee and decision was taken in the Standing Committee meeting held on 10.2.2014 to initiate regular inquiry. Immediately thereafter, no steps have been taken, but by further recording the statements on 22.07.2016, charge sheet was issued in departmental inquiry proceedings only on 21.01.2017. Prior to the enactment of Act 14 of 2013 i.e. the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Regulations namely, the Gender Sensitisation & Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Regulations, 2013 were framed in view of the judgments of the Hon"ble Supreme Court in the case of Vishaka Vs. State of Rajasthan reported in (1997)6 Supreme Court Cases page 241 and in the case of Binu Tamta and Another Vs. High Court of Delhi and Others reported in (2014)13 Supreme Court Cases 257. The said Regulations provide mechanism for lodging of complaint and inquiry into the complaint. As per the Regulations, the complaint can be made by any aggrieved woman in writing, of sexual harassment to the Competent Authority in accordance with law in the form which was notified. Regulations also provide that in cases where an aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or for any other reason, her legal heir or such other person directly concerned with her interest can also make a complaint. So, it is clear from the aforesaid Regulations that if any complaint is to be lodged of sexual harassment, it is to be made in writing. Even under the provisions of the Act 14 of 2013, procedure for lodging the complaint is provided under section 9 in Chapter IV. Section 9 of the Act reads as under: "9. Complaint of sexual harassment.-(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing: Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section."

9. From a perusal of the procedure contemplated under Regulations, as well as under section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, it is clear that if any complaint is to be made with regard to sexual harassment at workplace, it is to be made in writing. In the case on hand, it is not in dispute that there was no complaint in writing by any member of the Bar against the petitioner. Though alleged incident, as per the statements recorded of the witnesses, is on 22.03.2012, no complaint was made in writing. The only basis for initiation of proceedings, appears to be that of oral representation made to the then Hon'ble Chief Justice during his visit to the Rajkot District on 28.05.2012. Thereafter, remarks were called for by addressing confidential letter to the Principal District Judge of Rajkot District. However, the Principal District Judge has sent the report belatedly to this Court on 30.11.2013. Even thereafter, no departmental inquiry was initiated against the petitioner and departmental inquiry came to be initiated by issuing a charge memo in the departmental proceedings only on 21.01.2017. Though the said delay is sought to be explained by stating that during the relevant time, there were number of complaints in the Vigilance Department, but after perusing the explanation offered in the affidavit in reply filed on behalf of the respondent No.3, we are not convinced with the explanation for such abnormal and inordinate delay, in initiating proceedings. It is fairly well settled that in departmental inquiry, proceedings are to be initiated within a reasonable time and initiation of inquiry belatedly after several years, itself is a ground to quash the inquiry proceedings. Having regard to the alleged incident of 2012, departmental inquiry is initiated by issuing charge sheet only on 21.01.2017. Same is the ground for quashing the proceedings, in absence of proper and reasonable explanation to explain such delay. Apart from the fact that there is no complaint within the meaning of the Regulations and the Act, so as to proceed with the inquiry on the allegation of sexual harassment, there is also abnormal and inordinate delay in initiation of proceedings. It is to be noticed that except the statements of three advocates recorded on 13.07.2012 and thereafter further statements of the very same advocates on 22.07.2016, no other material is placed to substantiate the charge levelled against the petitioner.

10. Learned Senior Counsel also placed strong reliance on the Circular instructions issued by this Court on 25.04.2017, which read as under: "In partial modification of the earlier High Court Circular No.A.1219/2015, dated 19/01/2015, the Honourable Chief Justice has been pleased to issue the guidelines which are required to be followed while dealing with complaints against members of Subordinate Judiciary, as below:

A. The complaint making allegations against members of the Subordinate Judiciary in the States should not be entertained and no action should be taken thereon, unless it is accompanied by a duly sworn Affidavit and/or verifiable material to substantiate the allegations made therein.

B. If action on such complaint meeting the above requirement is deemed necessary, authenticity of the complaint should be duly ascertained and further steps thereon should be taken only after satisfaction of the competent authority designated by the Chief Justice of the high Court.

C. If the above requirements are not complied with, the complaint should be filed/ lodged without taking any steps thereon."

11. In the above Circular instructions, this Court, in partial modification of the earlier Circular dated 19.1.2015, issued guidelines to be followed while dealing with the complaints against the members of the Subordinate Judiciary. In the Circular instructions dated 25.04.2017, in clear terms, this Court has stated that the complaint making allegations against members of the Subordinate Judiciary in the State should not be entertained and no action should be taken thereon, unless it is accompanied by a duly sworn affidavit/ verifiable material to substantiate the allegations made therein. In this regard, learned Senior Counsel for the petitioner placed reliance on the judgment in the case of R.C.Sood Vs. High Court of Judicature at Rajasthan and others reported in AIR 1999 Supreme Court page 707. The view expressed by the Hon"ble Supreme Court in the aforesaid judgment fully supports the case of the petitioner. In the said reported judgment, when inquiry proceedings were initiated, in absence of any affidavit contrary to the administrative instructions issued, the Hon"ble Supreme Court has held that such a step to proceed with the inquiry is not proper. Para 16 of the said judgment reads as under: "16. Another error which was committed was that the Court in its resolution of 30th November, 1994 took into consideration the complaint of Vijay Singh even though the same was not supported by an affidavit. The Chief Justice had by his order dated 12th May, 1994, decided that no complaint against a judicial officer should be entertained unless it is supported by an affidavit. Though this was an administrative order it was passed by the Chief Justice in exercise of the powers conferred on him by Rule 32 (2) of the said Rules. There was no reason as to why this order should have been ignored and the complaint of Vijay Singh entertained even though it was not supported by an affidavit. The resolution of 30th November, 1994 also states that some of the Judges have received fresh complaints against the petitioner making serious charges of corruption. No particulars are indicated as to which complaints

were received by which Judge. It is evident from the wording of these minutes that what those complaints were, were not even known to all the members of the Full Court when they passed the resolution on 30th November, 1994. We have, therefore, no doubt that when a valid decision had been taken by the then Chief Justice on 31st January, 1994 exonerating the petitioner there was no valid reason in law for the Full Court to revoke that decision."

12. In the other judgment in the case of Ishwar Chand Jain Vs. High Court of Punjab and Haryana and another reported in AIR 1988 Supreme Court page 1395, the Hon''ble Supreme Court has observed that, an honest strict judicial officer is likely to have adversaries in the mofussil Courts. If complaints are entertained on trifling matters relating to the judicial orders, which may have been upheld by the High Court on the judicial side, no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. It is further held that if judicial officers are under constant threat of complaint and enquiry on trifling matters and if High Court encourages anonymous complaints to hold the field, the subordinate judiciary will not be able to administer justice in an independent and honest manner.

13. In the case on hand, in absence of any written complaint, initiating disciplinary proceedings pursuant to oral representation made, will run contrary to the ratio laid down in the above judgments.

14. Further, it is also contrary to Circular instructions issued by this Court on 25.04.2017. In absence of any supporting affidavit to the complaint, the statements of advocates recorded cannot be held to be any verifiable material to substantiate the allegations. In view of the same, allowing the respondents to proceed with the inquiry will result in injustice to the petitioner and he will be put to great embarrassment and hardship. With regard to specific allegation of the petitioner that inquiry initiated runs contrary to Circular Instructions, the plea of the respondents in the affidavit in reply is that the Standing Committee has taken a decision to proceed with departmental inquiry, before Circular instructions are issued on 25.04.2017. As the Circular instructions relate to procedural aspect, as such, the instructions are to be applied even though decision was taken by the Standing Committee earlier to issuance of such instructions. In the Circular instructions, this Court has categorically instructed that complaints, in absence of any supporting affidavit or verifiable material, should not be taken note of for initiating inquiry. The learned counsel, Mr. Gautam Joshi appearing for the High Court placed reliance on the judgment in the case of Union of India and another Vs. Kunisetty Satyanarayana reported in (2006)12 Supreme Court Cases page 28, wherein the Hon''ble Supreme Court has held that, ordinarily, writ petition should not be entertained at the stage of showcause notice or charge sheet, however, in the very same case, the Hon''ble Supreme Court has held that, in rare and exceptional cases, High Court can quash the charge sheet or showcause notice if it is found to be wholly without jurisdiction or illegal. In our view, this is one such case, which falls in the exceptions recorded by the Hon''ble Supreme

Court, as much as proceeding with the inquiry, in absence of any complaint supported by affidavit and verifiable material, results in illegality.

15. For the aforesaid reasons, we are of the view that, it is a fit case to allow this petition by quashing the proceedings, as such, the Special Civil Application is accordingly allowed and the departmental inquiry initiated against the petitioner in Departmental Inquiry No.9 of 2016 and consequential order dated 17.06.2017 passed by the Gender Sensitisation and Internal Complaints Committee, Rajkot District Court, are quashed and set aside. There shall be no order as to costs.