
(2011) 09 DEL CK 0310
In the Delhi High Court
Case No : Writ Petition (C) 6400 of 2011

Meenakshi	Vs	APPELLANT
University of Delhi and Others		RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 09 DEL CK 0310

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Jayshree Satpute, for the Appellant; Maninder Acharya, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner impugns the order dated 01.07.2011 of the Executive Council of the University of Delhi accepting the report dated 31.08.2010 of the Apex Complaints Committee constituted under Ordinance XXV-D of the Calendar of University of Delhi, finding the Respondent No. 2 Professor Ajay Tiwari guilty of meeting out sexual harassment to the Petitioner and imposing punishment of compulsory retirement from University service on him.

2. It is the case of the Petitioner that the punishment of compulsory retirement imposed by the Executive Council of the University is grossly lenient and inadequate considering the gravity of the issue and the need for such punishment to be deterrent. Reliance is placed on Apparel Export Promotion Council Vs. A.K. Chopra, where it was observed that cases of sexual harassment are to be dealt with great sensitivity and sympathy or mercy towards the offender is misplaced. The counsel for the Petitioner has further urged that the punishment of compulsory retirement would not deprive the Respondent No. 2 of his retiral benefits and thus the University has been soft on the Respondent No. 2 when the conduct of the Respondent No. 2 deserved the harshest punishment of dismissal from service.

3. At the outset, the age of the Respondent No. 2 has been enquired. It is informed that he is about 55 years of age. It has further been enquired as to till what age, the Respondent No. 2 would have continued in the employment of the University but for being compulsorily retired. Though the counsel for the Petitioner states that the Respondent No. 2 would have continued in employment till the age of 65 years i.e. for another 10 years but the counsel for the University appearing on advance notice informs that the retirement age is 62 years only, though there is a provision of extension till the age of 65 years.

4. The Respondent No. 2, by punishment meted out to him, having been thus deprived of further seven years if not ten years of his employment, besides social stigma, it is felt that the punishment of compulsory retirement cannot be said to be a very lenient punishment, though of course the punishment of dismissal from service which also could have been imposed by the Executive Council of the University on the Respondent No. 2 would have been harsher.

5. The findings of the Apex Complaints Committee were as under:

Findings:

After a careful perusal of the statements of the complainant and the accused, statements of witnesses, confidential records of Hindi department and other documents, the SC (Sub Committee) would like to observe the following:

The SC finds Prof. Tiwari, the accused, guilty of sexually harassing Ms. Meenakshi, the complainant. By his verbal and physical conduct of explicitly sexual nature, he created a hostile environment for the complainant. However, it finds no evidence to support Ms. Meenakshi's claim that victimized her or committed act that have an adverse effect on the academic prospects of the complainant.

The SC would like to express its deep concern over the fact that a senior teacher of the University entered into an explicitly sexual relationship with a student of the department.

The conduct of a teacher in an academic institution, especially a prestigious institution like Delhi University, should be exemplary. If senior teachers find it fit to develop sexual relationships with their students, the atmosphere of the University would get vitiated and the University would fail to provide a safe and secure environment for girl students to pursue their academic goals. The conduct of Prof. Tiwari is definitely not acceptable. The SC is also anguished to find that Prof. Tiwari deems it fit to record his conversations with a research scholar at his residence without the consent of the concerned scholar. The relationship of a teacher and students should be based on trust and it is extremely regrettable that students be dragged into sordid affairs of the teachers. Prof. Tiwari's conduct has been extremely objectionable and undesirable.

At the same time, the SC must also place on record its disapproval of the conduct of the complainant in not only making patently false allegations against

two other teachers of the University. Prof. Gautam and Prof. Pachauri. While the SC fully understands that complainants in sexual harassment cases usually feel completely (and many times, rightly) beleaguered by the support that the accused seems to get in the workplace, the SC did not find any reason why Ms. Meenakshi should feel this with respect to Prof. Gautam and Prof. Pachauri, who were fully cooperative with the SC.

The SC would also like to place on record its disapproval of the fact that confidentiality in this matter was not maintained and the complainant and her supporters contributed to its publicity actively. The complainant has submitted the full details of this case not only to the SC but also to various other authorities. Surprisingly, the complainant submitted copies of her diaries along with a detailed statement first to the Vice Chancellor's office during the course of the enquiry. It may also be noted that during the enquiry, pamphlets were distributed and agitations were organized in support of the complainant. The Committee feels that this kind of public trial of issues of sexual harassment vitiates the atmosphere and makes it difficult to conduct a fair enquiry. The SC also notes with regret that the complainant has made blatantly false statements about her interaction with the Committee members.

The SC would like to express deep concern over the alleged recordings of telephone conversations between Prof. Tiwari and Ms. Meenakshi by a former student of Hindi on Delhi University and its subsequent use to pressurize Prof. Tiwari into securing a job for himself and some other favours. If true, this is a very serious matter and it would be extremely undesirable that any person involved in this affair occupies a teaching position in DU. It may be noted that Prof. Tiwari's allegations on this issue are corroborated by Prof. Abhai Maurya, a former Professor of DU. The SC strongly feels that the University should institute an enquiry into these allegations and take appropriate action expeditiously.

6. The Apex Complaints Committee had recommended the following punishment for the Respondent No. 2:

- (a) He should be demoted with reduction in salary.
- (b) He should be debarred from holding any administrative position or position of authority in Delhi University, for the remaining period of his service in DU.
- (c) He should be debarred from membership of selection committees in Delhi University for the remaining period of his service in DU.
- (d) He should be debarred from appointment as research supervisor in the department in future.

7. However, as aforesaid, the Executive Council of the University inflicted the punishment of compulsory retirement which is more harsh than the punishment recommended by Apex Complaints Committee.

8. I have enquired from the counsel for the Petitioner as to what is the scope of

interference in exercise of power of judicial review in such matters. Though the counsel for the Petitioner has not been able to respond, I find answer thereto in the judgment aforesaid cited by the counsel herself. In the aforesaid case, the authority empowered to impose punishment for sexual harassment had imposed the punishment of removal from service. However, upon challenge thereto being made, the High Court directed the reinstatement in service though without back wages. The Supreme Court held that there was no justification for the High Court to interfere with the punishment imposed by the departmental authorities. It was further held that the High Court cannot function as Appellate Authority and substitute its own conclusion as to the guilt of the delinquent and should not normally interfere with the penalty/punishment imposed, unless punishment imposed is impermissible or shocks the conscience of the Court. Reference in this regard may also be made to *Ranjit Thakur Vs. Union of India (UOI) and Others*, laying down that judicial review though generally speaking, is not directed against a decision, but is directed against the decision making process and the question of the choice and quantum of punishment is within the jurisdiction and discretion of the authority empowered to so impose the punishment nevertheless held that the punishment has to suit the offence and the offender; it should not be vindictive or unduly harsh; it should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. It was further held that the doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the authority, if is in outrageous defiance of logic, then the sentence would not be immune from correction.

9. Supreme Court in *Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain*, further observed that where punishments in disciplinary cases are challenged as "arbitrary" under Article 14, the question will be whether the administrative order is "rational" or "reasonable" and the test then is the *Wednesbury* test; the courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. It was yet further held that the court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a case. It was yet further held that the courts while reviewing punishment and if it is satisfied that *Wednesbury* principles are violated, has normally to remit the matter for a fresh decision as to the quantum of punishment and only in rare cases where there has been long delay can the court substitute its own view as to the quantum of punishment."

10. It is not the case of the Petitioner that it was impermissible for the Executive Council to impose the penalty of compulsory retirement on the Respondent No. 2. There is also nothing before this Court, to shock the conscience of this Court as to the quantum of punishment. of course, it was open to the University to also

impose the punishment of dismissal from service as the Petitioner would want. However, it is not as if the Executive Council of the University has not applied its mind to the matter. It has not simply put its imprimatur on the punishment recommended by the Apex Complaints Committee. The Apex Complaints Committee had in the findings returned by it, expressed its displeasure over the conduct of the Petitioner also. The said findings have been accepted by the Executive Council. In the circumstances, the decision reached by the Executive Council of imposing punishment of compulsory retirement cannot be said to be such a decision which in the facts of the case could not at all have been reached and the facts are not such from which it can be said that only the harshest punishment of dismissal from service should have been imposed. No elements of irrationality or perversity are found, to invite interference. No case of violation of Wednesbury principles is made out.

11. I therefore do not find any case for interference to have been made out. The writ petition is dismissed. No order as to costs. I have however enquired whether the punishment imposed has been impugned by the Respondent No. 2. The counsel for the Respondent University informs that no notice of any challenge has been received. In the circumstances, while dismissing the petition, it is clarified that in the event of the Respondent No. 2 challenging the order of the Executive Council, it shall be open to the Petitioner to in opposition thereto take the pleas as have been taken in this writ petition.