
(2012) 07 OHC CK 0026

In the Orissa High Court

Case No : Writ Petition (C) No. 13120 of 2009

Miss Shantilata Pattanaik

APPELLANT

Vs

M/s Swaminathan Research Foundation and Another

RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Constitution of India, 1950 — Article 141, 21, 226

Citation : (2012) 135 FLR 808 : (2012) 4 LLJ 759

Hon'ble Judges : V. Gopala Gowda, J; B.N. Mahapatra, J

Bench : Division Bench

Advocate : Sujata Jena, for the Appellant; L. Samantray, for the Respondent

Judgement

B.N. Mahapatra, J.—In this writ petition the petitioner has prayed for quashing of the order of termination dated 12.08.2008 (Annexure-8) issued by opposite party No. 2-Executive Director, M/s. Swaminathan Research Institute, Chennai and for a direction to the opposite parties to pay all her service benefits. Petitioner's case in a nut shell is that she joined the office of opposite party No. 1-M/s Swaminathan Research Foundation, represented by its Chairman, AT: 3rd Cross Street, Paramani Institutional Area, Chennai (for short, "the Foundation") on 01.12.2005 as a Genetic Literacy Programme Facilitator in its Jeypore Office, Odisha. Opposite party No. 1 being a Research Foundation is an autonomous non-profit trust registered in the year 1988 at Delhi. Its aim and objective is to organize research and training to promote a job-led economic growth strategy in rural area. The Foundation is recognized as a Post Graduate Research Centre by the University of Madras, Anna University, Chennai and the Osmania University, Hyderabad since 1990. It is getting grant from Government of India and State of Tamil Nadu including many other international funding agencies. Being satisfied with the performance of the petitioner, she was reappointed as a Research Fellow and posted as a Scientist in the project, namely, Quantitative Assessment and Mapping of Plant Resources of Eastern Ghats. While working as such on 12.12.2007, when she went to the library for returning the books issued to her,

one Mr. Nihar Ranjan Parida, Technical Assistant of Project Medicinal Plants closed the door and sexually molested her. She was not expecting such behaviour from him and was unable to decide what to do. However, she was able to escape from his clutches and ran outside the room. Thereafter, with a heavy heart she returned to her house and decided to complain the matter to opposite Party No. 2-Executive Director of opposite party No. 1-Foundation and accordingly sent the complaint through email dated 13.012.2007.

2. On 14.12.2007, through email she got the reply from the opposite party regarding receipt of her complaint and in the said letter she was requested to go to Chennai for about 10 days so as to enable him to know about the matter in detail and to finalize the procedure for further action. Petitioner had also received a letter from the Executive Director asking her to come over to Chennai immediately on duty; she was also assured in the said letter that her complaint will be dealt with promptly and seriously. As directed by opposite party No. 2, the petitioner went to Chennai on 16.12.2007. She was not allowed to come to Jeypore and directed to stay there. A complaint committee was constituted and the proceeding was conducted on 07.02.2008 at Chennai. In course of hearing of the proceeding, she was informed by the Committee that the person against whom she had complained had also made a complaint against her. But the petitioner had neither been provided with a copy of the complaint nor she was allowed to see the same. The petitioner also requested the Complaint Committee for permission to take assistance of a lawyer to conduct the proceeding which was refused. In course of the proceeding she was harassed by the Committee members by putting her humiliating questions. Therefore, she wrote a letter dated 09.02.2008 addressing to the Executive Director of opposite party No. 1 Institution stating therein about the manner in which the proceeding was conducted and the way she was humiliated. Finally, the Committee disposed of the complaint on 14.05.2008 by giving a finding that the conduct of Mr. Nihar Ranjan Parida was unbecoming but the complaint made against Saujundra Swain was not found to be proved.

3. Before passing of the final order on 14.05.2008, the petitioner was transferred on 05.04.2008 from Biju Pattanaik Medical Plant Garden, Jeypore to Community Agro-Bio-Diversity Centre, Kalpata, Kerala which was communicated to the petitioner vide letter dated 07.04.2008. On receipt of the said letter dated 07.04.2008, the petitioner requested the opposite parties to grant leave from 05.04.2008 to 09.04.2008 stating therein about her personal problem for which she was not in a position to join in Kerala immediately. Further case of the petitioner is that accused persons, namely, Sri Swain and Sri Parida, who were suspended soon after lodging of the complaint, were reinstated in service with all financial benefits at Jeypore and the petitioner was transferred from Jeypore to Kerala. In order to overcome the trauma and frustration, she requested to extend her leave so as to enable her to join at Kerala. But vide letter dated 14.05.2008 she was intimated about rejection of her request for further extension of leave period and was also warned that unless she joined within

seven days, disciplinary action for termination of her from service will be initiated. Thereafter, vide letter dated 12.08.2008 her service was terminated. After this incident, her father had developed heart problem and her brothers and sisters have also been harassed in the locality being instigated by the two accused persons who are involved in the case. She had complained this matter in the local Police Station, Jeypore on 02.06.2008 requesting the Police for protection of their life and property.

4. On receipt of the order of termination, she sent several letters to the opposite party to pay her legitimate dues but there was no response. On 09.01.2009, she sent a notice through her Advocate to the opposite party stating therein to pay her service benefits amounting to Rs. 1,87,600/-and since the same did not yield any result, she has filed this writ petition.

5. Mrs. Sujata Jena submitted that after filing of the complaint, she was not only harassed but also humiliated in the office as well as in the locality where she is staying at the instance of accused persons who also belonged to the same locality. Despite the specific guidelines formulated in the case of Vishaka and others Vs. State of Rajasthan and Others, and subsequent decision in Apparel Export Promotion Council Vs. A.K. Chopra, , opposite parties had not constituted proper committee to deal with the complaint of sexual harassment to women at work place till 2008. After filing of the complaint her case was conducted at Chennai in stead of Jeypore where the occurrence took place. The petitioner also has been physically and mentally harassed by the opposite parties in transferring her from Koraput to Kerala. The opposite parties instead of solving her problem further harassed the petitioner, who is an unmarried girl belonging to low economic class of the society. Thus, the petitioner had been deprived of her right to work and earn her livelihood with dignity guaranteed under Article 21 of the Constitution of India. The action of opposite parties not allowing the petitioner to take help of the lawyer and terminating her service is not legal and valid.

6. Placing reliance on the judgment of the Hon''ble Supreme Court in the case of U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, Mrs. Jena submitted that the opposite parties are amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India.

7. Mr. L. Samantray, learned counsel appearing for the opposite party Nos.1 and 2, submitted that the opposite party Foundation Trust was founded on 17.05.1988 and the Trust Deed was executed at New Delhi. As per clause-11(v) of the aims and objectives of the Trust, the power vests with it to appoint and at its direction remove or suspend officers, clerks, servants and then employees for the purpose of carrying out the objects of the Trust and from time to time determine their powers and duties and to fix their salary and other emoluments. As per the appointment letter dated 12.06.2007, the petitioner and one Kartik Charan Lenka were appointed as Scientist as per the selection made by the Selection Committee meeting held on 31.05.2007. In the said appointment letter it was stipulated that the appointment shall be for a period of one year and will

be countermanded with the project. They shall be paid a consolidated amount of Rs. 8,000/-per month and will not be eligible for any other monetary benefits. As per the terms of appointment, both the petitioner and Kartik Charan Lenka, who belonged to the same cadre were paid Rs. 8,000/-per month as would be clear from copies of pay slip for the months of September, 2007 and October, 2007. As per the Notification No. 2010/IFD/Dir(F)/Misc./12 dated 09.07.2010, the Government of India in the Ministry of Science and Technology issued revised guidelines for emoluments and other service conditions for research personnel employed in R and D programmes of the Central Government Department/agencies. As per the said Notification one has to possess NET or GATE qualification to claim the revised emoluments. In the present case, the petitioner has only M.Sc. qualification. It was further submitted that as per the advertisements made by different Government Organizations and Universities for research fellows the qualification of NET or GATE is mandatory for getting the revised emoluments. Therefore, the petitioner is not entitled to get the revised scale of pay as claimed by her. Mr. Samantray also submitted for dismissal of the writ petition.

8. On the rival contentions raised by the parties, the following questions fall for consideration by this Court.

(i) Whether the order dated 18.08.2008 terminating service of the petitioner is legal and valid?

(ii) Whether the petitioner is entitled to get the revised scale of pay, as claimed by her?

9. Question No. 1 is with regard to the legality of the termination order 18.08.2008. Undisputedly, the petitioner while working in the organization of the opposite parties complained before opposite party No. 2 through e-mail on 13.12.2007 stating therein that on 12.12.2007 when she went to the library to return the books issued to her, one Mr. Nihar Ranjan Parida, Technical Assistant of Project Medicinal Plants closed the door and sexually molested her. She was not expecting such behaviour from him. However, she was able to escape from his clutches and ran outside the room. In the said letter she requested to take necessary action in the matter. On receiving such complaint vide letter dated 24.12.2007 the petitioner was asked to go to Chennai for ten days for a personal hearing and finalization of the procedure for further action. Another e-mail letter of even date was sent to the petitioner asking her to come over to Chennai immediately on duty. She was also intimated to come prepared to stay at the headquarters in Chennai to give assistance in a library related project which was to be completed immediately.

10. Now the question arises as to whether this action of opposite party is desirable and permissible when an unmarried girl in an establishment is sexually harassed by a male colleague in Jeypore, Odisha. The petitioner, who belongs to the State of Odisha, on complaint of sexual harassment immediately was asked

to come to Channei on duty and work there. The action of the opposite party amounts to arbitrary and unreasonable. It is also not disputed that a Complaint Committee had been constituted and the proceeding was conducted on 07.02.2008 at Chennai and while the proceeding was pending, the petitioner was transferred on 05.04.2008 from Biju Pattanaik Medical Plant Garden, Jeypore to Community Agro-Bio-Diversity Centre, Kalpata, Kerala which was communicated to the petitioner vide letter dated 07.04.2008 issued by opposite party No. 2. The sequence of events shows that immediately after the petitioner sent the complaint of sexual harassment opposite party No. 2 asked her to go to Chennai and thereafter during pendency of proceeding transferred her to Kerala. This action of opposite party No. 2 itself shows his mala fide intention and such action is totally detrimental to the interest of the petitioner, the victim lady.

11. The Hon"ble Supreme Court in Vishaka"s case (supra) suggested some guidelines which are reproduced below:

16. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Art. 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Art. 141 of the Constitution.

The guidelines and norms pre-scribed herein are as under:

Having regard to the definition of "human rights" in S. 2(d) of the Protection of Human Rights Act, 1993, Taking note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time. It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the Employer or other responsible persons in work places and other institutions:

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

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 non-verbal 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. Preventive Steps :

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
- (b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- (c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

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 of 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 counsellor 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 member 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.

8. Workers' Initiative :

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness :

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. Third Party Harassment :

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary

and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of, accordingly.

Order accordingly.

12. It is also not in dispute that the Complaint Committee gave a finding that the conduct of Mr. Nihar Ranjan Parida was unbecoming but the complaint made against Saujundra Swain was not found to be proved. Despite such finding, the suspension order passed against Mr. Parida was revoked and he was allowed to work in Biju Pattanaik Medical Plant Garden, Jeypore whereas the victim-girl was transferred to Kerala. It is important to mention here that the petitioner victim girl has never requested the opposite parties to transfer her from Jeypore, Odisha either to Chennai or Kerala. Thus, action of the opposite party clearly reveals that the guidelines of the Hon''ble Supreme Court in Vishaka's case (supra) have not been followed. Further, the request of the petitioner to extend the leave was rejected arbitrarily by the opposite parties and she was removed from her service vide order dated 18.08.2008. The guidelines and the norms prescribed in Vishaka's case (supra) have not been implemented by the organization of opposite parties. This is certainly unfortunate. The entire episode shows how opposite party No. 2 has acted illegally and contrary to the guidelines/suggestions laid down in Vishaka's case supra.

In view of the above, we have no hesitation to hold that the service of the petitioner has been illegally terminated by the opposite parties vide their order of termination dated 18.08.2008, which is liable to be quashed.

13. The second question is with regard to payment of the petitioner's salary as per the revised scale of pay. Petitioner's specific case is that the employees similarly situated in similar posts doing similar nature of work were paid higher salary than the petitioner. To illustrate, the petitioner has brought to the notice of this Court the cases of two employees, namely Kartik Charan Lenka and Manjulaxmi A.S. Opposite party No. 2 has filed counter affidavit annexing therein the salary particulars of Sri Lenka and Ms. Manjulaxmi A.S.. As per Annexure F/2 series annexed to the affidavit of opposite party No. 2, Sri Lenka during the period 01.04.2010 to 31.03.2011 was paid basic salary of Rs. 13,000/-. From

October, 2010 to December, 2010 and from January, 2011 to March, 2011 he was paid basic salary of Rs. 18,000/-. Ms. Manjulaxmi was paid basic salary of Rs. 13,000/-from April 2010 to 31st March, 2011. Mr. Lenka was paid basic salary for the period from 01.04.2009 to 31.03.2010 (@ Rs. 12,000/-from April-June, 2009 and @Rs.13,000/-from July, 2009 to March, 2011). Ms. Manjulaxmi was paid Rs. 12,000/-for the period from April, 2009 to June, 2009 and from July, 2009 to March, 2010 she was paid basic salary of Rs. 13,000/-. Mr. Kartik Charan Lenka for the period 01.04.2008 to 31st March, 2009 was paid with the basic salary of Rs. 8,000/-per month from April, 2008 to July, 2008 and Rs. 12,000/-per month from August, 2008 to March, 2008. Ms Manjulaxmi was getting Rs. 8,000/-as basic salary for the period April, 2008 to July, 2008 and Rs. 12,000/-for the period August, 2008 to March, 2009. Mr. Lenka was paid basic salary of Rs. 6,500/-for the period April, 2007 to July, 2007 and Rs. 8,000/-from August 2008 to March, 2009. Similarly Ms. Manjulaxmi was paid Rs. 6,500/-in August, 2007 and from September, 2007 to March, 2008 she was paid Rs. 8,000/-per month.

14. The transfer order as well as the termination order is not bona fide. This is not at all expected from an employer and this will break down the moral courage of other women employees in the institution, which will ultimately culminate in unsatisfactory performance.

15. The petitioner has never expressed her unwillingness to work in the organization. In the peculiar circumstance of sexual harassment, she only sought for leave but her service was terminated for no fault of her. Therefore, she is entitled to get all her arrears of salary and other emoluments including increments and other pecuniary benefits as the opposite party No. 2 has arbitrarily terminated her service on account of which she has been forced to remain unemployed.

Our above view gets support from the decision of the Hon'ble Supreme Court in Srikantha S.M. Vs. Bharath Earth Movers Ltd., , wherein it is held as under:-

The next question is, as to what benefits the appellant is entitled to. As he withdrew the resignation and yet he was not allowed to work, he is entitled to all consequential benefits. The learned counsel for the respondent Company no doubt contended that after 15.01.1993, the appellant had not actually worked and therefore, even if this Court holds that the action of the respondent Company was not in consonance with law, at the most, the appellant might be entitled to other benefits except the salary which should have been paid to him. According to the counsel, the principle of "no work, no pay" would apply and when the appellant has admittedly not worked, he cannot claim salary for the said period.

29. We must frankly admit that we are unable to uphold the contention of the respondent Company. A similar situation had arisen in J.N. Srivastava and a similar argument was advanced by the employer. The Court, however, negated the argument observing that when the workman was willing to work but the

employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefits were granted to him. In *Shambhu Murari Sinha II* also, this Court held that since the relationship of employer and employee continued till the employee attained the age of superannuation he would be entitled to "full salary and allowances" of the entire period he was kept out of service. In *Balram Gupta* in spite of specific provision precluding the government servant from withdrawing notice of retirement, this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits.

It is not the case of opposite parties that the petitioner engaged herself in any gainful employment after termination of her service.

16. Since the opposite parties in their affidavit admitted that the petitioner and one Kartika Charan Lenka were appointed as Scientists as per the selection made by Selection Committee held on 31.05.2007 the petitioner is entitled to get salary at par with Mr. Lenka. In the result, we allow the writ petition, quash the impugned order dated 12.08.2008 (Annexure-8) terminating the service of the petitioner and direct the opposite parties to reinstate the petitioner with full salary and other service benefits within six weeks from the date of receipt of a copy of this order. We further direct that she must be paid arrears of salary at par with Mr. Kartik Charan Lenka from the date of termination to date within a period of eight weeks from today.