

(2021) 09 GAU CK 0001

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4122 Of 2020, 1511 Of 2021

Nilotpal Nath

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 01-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226
Sexual Harassment Of Women at Workplace (Prevention, Prohibition And Redressal) Rules, 2013 &mdash Rule 7(1)
Indian Penal Code, 1860 — Section 294(b), 354, 354A, 509
Specific Relief Act, 1963 — Section 12(d)
Code Of Civil Procedure, 1908 — Section 11

Citation : (2021) 09 GAU CK 0001

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : R.M. Deka, D.J. Das, M. Nath, A. Roy

Final Decision : Dismissed

Judgement

1) Heard Mr. R.M. Deka, learned counsel for the petitioner. Also heard Mr. M. Nath, learned standing counsel for the P&RD Department appearing for all the respondents.

2) The case of the petitioner, in brief, is that in course of his service, allegations of sexual harassment at workplace was made against him and accordingly, the Presiding Officer, Internal Complaints Committee (respondent no.3), by serving a show- cause notice dated 07.03.2020 along with copies of complaints filed against the petitioner alleging sexual harassment, thereby directing the petitioner to file his show-cause reply within 10 (ten) days and to attend the enquiry proceeding on 19.03.2020. The said proceeding was as per Rule 7(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013. However, on 17.03.2020, the petitioner was arrested in connection with Mikirbheta PS Case No. 89/2020 under Sections 354/ 354A, 509 /294(b), wherein the allegation was to the effect that the petitioner had tried

to outrage the modesty of the victim. As the petitioner was under arrest, he could not participate in the enquiry. The petitioner was released on bail on 26.03.2020. However, in the meanwhile, by the impugned order dated 20.03.2020, the contract agreement dated 23.04.2019 with the petitioner was terminated. The aggrieved petitioner had filed W.P.(C) No. 4122/2020 to assail the impugned order dated 20.03.2020 passed by the respondent no. 2, thereby terminating the contract agreement of the petitioner; for directing the respondent to recall/ rescind/ cancel and/or forbear from giving effect to the said impugned order dated 20.03.2020; as well as for a direction to the respondents to allow the petitioner to work as Block Project Manager, Assam State Rural Livelihoods Mission.

3) During the pendency of the said W.P.(C) 4122/2020, the petitioner had also filed WP(C) 1511/2021, with prayer for setting aside the recommendation of the Internal Complaints Committee dated 20.03.2020; to terminate the service of the petitioner; for a direction to the respondent to recall/ rescind / cancel and / or forbear from giving effect to the said recommendation of the Internal Complaints Committee dated 20.03.2020; for setting aside the impugned order dated 20.03.2020 issued by the respondent no.2, thereby terminating the contract agreement for the post of Block Project Manager, Assam State Rural Livelihoods Mission; for directing the respondents to recall/ rescind / cancel and / or forbear from giving effect to the said impugned order dated 20.03.2020; and to allow the petitioner to continue as Block Project Manager of the said Society.

4) The learned counsel for the petitioner has submitted that the petitioner was not provided any opportunity of defending himself in respect of charges framed against him. It is also submitted that the respondent authority had taken a decision of terminating the service of the petitioner. It is also submitted that the petitioner was prevented from participating in the proceeding before the Internal Complaints Committee on 19.03.2020 as he was arrested on 17.03.2020. Accordingly, it is submitted that the principles of natural justice was violated. It is also submitted that the petitioner was victimized twice for the said offence as the petitioner is not only required to defend himself in the criminal proceeding, but on the same set of allegation, the Internal Complaints Committee had enquired into the matter. It is submitted that in view of the recommendations made by the Internal Complaints Committee in its report dated 20.03.2020, the service of the petitioner was hastily terminated on the same day without giving any opportunity to the petitioner of being heard. It is also submitted that the impugned actions of the petitioner were illegal, arbitrary, mala fide, unfair, unreasonable, irrational, discriminatory and capricious and in violation of Articles 14 and 16 of the Constitution of India. In support of his submissions, the learned counsel for the petitioner has placed reliance on the case of Radhey Shyam Gupta Vs. U.P. State Agro Industries Corp., (1999) 2 SCC 21. By referring to the said case, it is further submitted by the learned counsel for the petitioner that the enquiry report of the Internal Complaints Committee was the foundation of terminating the service of the petitioner and therefore, non-adherence to the principles of the

natural justice had vitiated his termination from service.

5) Per-contra, the learned standing counsel for the respondents has submitted that except for some prayers, the petitioner is seeking same set of reliefs in both the writ petitions, which are based on same set of facts and same set of cause of action. Hence, it is submitted that the subsequent writ petition was hit by the principle of constructive res judicata and the same was not maintainable on facts and in law. It is also submitted that the petitioner was a contractual employee whose contract period had expired on 31.03.2020 and, as such, the Court may not like to extend the contractual service in the absence of any renewal of the lapsed contract. In this regard the learned standing counsel has placed reliance on the cases of Ajoy Kumar Haloi Vs. State of Assam & Ors., 2014 (3) GLT 420 and Rabindra Kr. Roy Vs. State of Assam & Ors., 2015 (4) GLT 673. The learned standing counsel has also produced the records relating to the inquiry conducted by the Internal Complaints Committee on complaints received against the petitioner.

6) Perused the two writ petitions and the affidavit-in-opposition filed by the respondents in W.P.(C) 4122/2020. Also perused the records relating to the inquiry conducted by the Internal Complaints Committee on complaints received against the petitioner.

7) The issue as to whether the subsequently filed W.P.(C) 1511/2021 is hit by the principles of res judicata has been taken up first. It is seen that in WP(C) 4122/2020, the prayers therein are related to the order of termination dated 20.03.2020. The contention of the petitioner in WP(C) 1511/2021 is that he was not aware of the report dated 20.03.2020 by the Internal Complaints Committee and therefore, by way of the said second writ petition, the petitioner had sought for reliefs not only in respect of the recommendation/ report dated 20.03.2020 of the Internal Complaints Committee, but also in respect of the order of termination dated 20.03.2020. The nature of prayers made in both the writ petition has briefly been indicated herein before. Having examined the set of prayers made in these two writ petition, it is seen that prayer nos. (c), (d) and (e) in W.P.(C) 1511/2021 are in verbatim same prayers nos. (a), (b) and (c) of WP(C) 4122/2020.

8) The petitioner had not taken any steps to amend the earlier writ petition, i.e. WP(C) 4122/2020. The petitioner has also not taken any leave of the Court to withdraw WP(C) 4122/2020 with liberty to either file a fresh writ petition or to assail the report/ recommendation dated 20.03.2020 by the Internal Complaints Committee in a subsequent writ petition. It is seen that the subsequent writ petition, being WP(C) 1511/2021, contains prayer nos. (c), (d) and (e), which are same as prayers nos. (a), (b) and (c) of W.P.(C) 4122/2020. Thus, the subsequent writ petition is found to be hit by the principles of constructive res judicata, which is engrained in Explanation-IV of Section 11 of the Civil Procedure Code, which squarely applies in a writ petition filed under 226 of the Constitution of India. Hence, the Court had no hesitation to dismiss the

subsequent writ petition, i.e. WP(C) 1511/2021 on the ground that the said subsequent writ petition is hit by the principles of constructive res judicata. Two writ petitions with three common prayers would not maintainable in facts and in law notwithstanding that additional prayers are also made therein.

9) The next point taken up is whether the action taken by the respondents is vitiated by alleged denial of natural justice to the petitioner. Annexure nos. C, D and E of the affidavit-in-opposition are three separate notices issued to the petitioner on 07.03.2020, which is also available in the file relating to inquiry against the petitioner. The notice dated 07.03.2020 was also served on the petitioner through e-mail dated 07.03.2020 which contains five attachments, being (i) office orders for enquiry, (ii) documents dated 06.03.2020, (iii) complaint (BPM Kapili), (iv) document dated 06.03.2020 and (v) document dated 06.03.2020. The petitioner has not specifically denied the receipt of the show cause notice. Be it mentioned that as show-cause notice was sent to the petitioner on 07.03.2020, ten days' time to reply expired on 17.03.2020. It is not in dispute that the petitioner was arrested on 17.03.2020. The record of inquiry, as produced, also discloses existence of several complaints against the petitioner of alleged sexual harassment at workplace and the file also contains photographs, audio-video clipping, as well as print out of WhatsApp messages alleged to have been sent by the petitioner to the alleged victim. The record of inquiry as produced by the learned standing counsel for the respondents also reveals that the Internal Complaints Committee was aware that the petitioner was arrested from outside the office premises on 17.03.2020. However, there is nothing on record to show that the petitioner had made any prayer for extension of time to submit his show-cause reply. However, the record reveals that on 21.03.2020 the father of the petitioner had sent an e-mail to an officer of the office of the respondent no.2 to the effect that the petitioner could not attend the enquiry committee on 19.03.2020 due to some unavoidable reasons and that he was arrested and it was further stated that the petitioner had filed Mikirbhetta PS Case No. 106/2020 dated 18.03.2020 and that as soon as judgment is given by the Chief Judicial Magistrate, the petitioner would appear before the Committee and a request was made to sanction fifteen days leave. Thus, the stand taken is that only after the cases are decided by the learned Chief Judicial Magistrate, the petitioner would appear before the Committee. Under such circumstances, the Court is constrained to hold that the petitioner had failed to file his show-cause reply within 10 (ten) days' time as allowed. Accordingly, there appears to be no good reason to interfere with the enquiry proceeding and the report of the Internal Complaints Committee dated 20.03.2020, which is the subject matter of the subsequently filed W.P.(C) 1511/2021 and/or in respect of the order of termination dated 20.03.2020.

10) It is also seen that it is the admitted case of the petitioner that he was appointed on contractual on 23.04.2019 which was valid up to 31.03.2020. As per clause- 5 of the said agreement, the service of the petitioner was liable to be terminated by the Society by giving to the petitioner seven days' notice in writing

or payment of seven days' remuneration in view thereof. Therefore, without rendering any opinion in this regard, at best as per clause-5 of the said agreement the petitioner may have a right to claim salary in lieu of 7 days' notice. However, the term of the agreement having been expired on 31.03.2020, the petitioner would not be entitled to his reinstatement in service beyond 31.03.2020, which would amount to extension of the contractual engagement of the petitioner without any agreement in that regard. The relief of such nature cannot be granted in light of the provisions of Section 12(d) of the Specific Relief Act, 1963. Therefore, the petitioner is not entitled to any relief in W.P.(C) 4122/2020.

11) In view of the discussion above, as the WP(C) 1511/2021 is being dismissed on ground that the said writ petition is barred by the principles of res judicata, the Court finds no reason to burden this order with discussion on the case of Radhey Shyam Gupta (supra).

12) The Court has not entered upon the merit or otherwise of the allegations made against the petitioner and therefore, this order would not prejudice the petitioner in course of his criminal trial.

13) Accordingly, both the writ petitions stands dismissed. There shall be no order as to cost.

14) The learned standing counsel for the respondents shall collect the record produced by him from the Court Master.

15) The learned standing counsel for the respondents is at liberty to collect the departmental records from the Court Master.