
(2005) 02 GAU CK 0084
In the Gauhati High Court
Case No : Civil Rule No. 4254 of 1994

Pratima Baruah

APPELLANT

Vs

Assam State Co-op. Agri. and Rural Development Bank Ltd.
and Others

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

Constitution of India, 1950 — Article 15, 226, 32

Citation : (2005) 3 GLR 289

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : N. Dutta and B. Bhuyan, for the Appellant; D.R. Gogoi V.L. Singh, for the Respondent

Judgement

I.A. Ansari, J.—Heard Mr. N. Dutta, learned senior counsel for the petitioner, and Mr. D.R. Gogoi, learned counsel, appearing on behalf of the respondent Nos. 1, 2, 3 and 4. Also heard Mr. K.N. Choudhury, learned senior counsel, as amicus curiae, and Mrs. V.L. Singh, learned Government Advocate, appearing on behalf of the respondent No. 5.

2. By making this application under Article 226 of the Constitution of India, the petitioner, while working as Branch Manager(i/c) of the Assam State Co-operative Agricultural and Rural Development Bank Ltd. (hereinafter referred to as "the said Co-operative Bank"), Pragjyotishpur Branch, Khetri, approached this Court seeking issuance of appropriate writ or writs commanding the respondents not to give effect to the order, dated 10.10.1994, issued by respondent No. 2, namely, the Chief Executive Director of the said Co-operative Bank, whereby the petitioner was transferred to Guwahati Branch of the said Cooperative Bank as Supervising Officer.

3. The case of the petitioner, as presented before this Court, may, in brief, be set out as follows:

(i) After the petitioner already stood qualified for being appointed as a Branch Manager of the said Co-operative, the petitioner was, vide order, dated 9.10.1990, issued by the respondent No. 2 of the said Co-operative Bank, posted as Secretary to the Chief Executive Director of the said Co-operative and, on being so appointed, the petitioner joined her new assignment on 12.10.1990. Thereafter, the petitioner was transferred, on 13.10.1990, Kaliabor Branch of the said Co-operative Bank as Assistant Manager. The petitioner, accordingly, took the charge of her new assignment at her new place of posting. The petitioner was, once again, transferred, vide order, dated 9.5.1991, and posted as Supervising Officer at Nagaon office of the said Co-operative Bank. While the petitioner was officiating as Supervising officer at Nagaon office, an order was passed by the respondent No. 2, on 6.8.1991, reverting the petitioner to the post of Senior Assistant. Aggrieved by this order, dated 6.8.1991, the petitioner came before this Court in Civil Rule No. 4311 of 1991 and, while issuing Rule on 6.8.1991, the Court stayed the operation of the impugned order, dated 6.8.1991 aforementioned. On the basis of the assurance given by the said Co-operative Bank, the petitioner withdrew the said writ petition and the same was accordingly disposed of by order, dated 20.7.1992, whereupon the petitioner was transferred, vide order, dated 28.8.1993, to Dimoria Branch of the said Cooperative Bank.

(ii) While serving as Branch Manager (i/c) of the said Co-operative Bank at Dimoria, the petitioner came before this Court in yet another writ petition being Civil Rule No. 887 of 1994, for, she was sexually harassed by her superior authority and that her transfer was at the behest of the respondent No. 3, who had made sexual advances towards the petitioner and the petitioner had filed, in this regard, a complaint before the competent authority. As a punitive measure, the petitioner was, thus, transferred more than once and, eventually, she was posted vide order, dated 18.5.1994, to a place as far as 700 kilometres away from the place, where she was working.

The order, dated 18.5.1994 aforementioned, was stayed by an order passed, on 1.6.1994, in Civil Rule No. 887/1994. The Civil Rule No. 887/1997 was disposed of with the consent of the parties on the following terms:

(i) The order of transfer, dated 18.5.1994, pertaining to the petitioner shall be withdrawn.

(ii) The petitioner shall submit a representation to the Chairman of the Agriculture and Rural Development Bank Ltd. within choice of posting on transfer from Pragjyotishpur.

(iii) On such representation the Chairman shall pass favourable orders within one month from the date of receipt of the representation. Till then, the petitioner's service shall not be disturbed."

(iii) After disposal of the Civil Rule No. 887 of 1994 aforementioned, the petitioner was, once again, posted vide order, dated 10.10.1994, as Supervising

Officer at the Head Office of the said Co-operative Bank at Gawahati. It is this order, which stands impugned in the present writ petition. The petitioner alleged that the order, posting her as Supervising Officer, was mala fide and illegal and it would, if allowed to stand good on record, cause reduction in her rank and status, the petitioner's principal grievance being that she was being victimised for standing against the attempts for sexual exploitation made by the respondent No. 3 aforementioned.

4. The respondents have denied the allegations of sexual harassment made by the petitioner and they claim that the impugned order of transfer was made in good faith and for administrative reasons.

5. While this writ petition was pending before this Court, a direction was issued, on 22.9.2003, by this Court to the Chief Secretary to the Government of Assam, (i.e., the respondent No. 5), directing him to inform this Court about the steps, which had been taken by the State Government to implement and carry out the directions given by the Apex Court in Vishaka and others Vs. State of Rajasthan and Others,

6. In terms of the above directions, the Chief Secretary to the Government of Assam has submitted his report. This report indicates as to what instructions have been issued by the State Government to its various departments to follow the guidelines issued in the said case. This report, however, gives no indication that the State Government has evolved any policy and/or issued any guidelines to find out or ascertain as to how far the directions given by the Apex Court in the case of Vishaka (supra) for taking steps to prevent sexual exploitation of women at work places are being followed.

7. In the above backdrop, when this writ petition is taken up for hearing today, it has been pointed out by the learned counsel for the petitioner that the petitioner already left the job and that she is no longer in the employment of the said Cooperative Bank and in this view of the matter, this writ petition has become infructuous.

8. While considering the above aspect of the matter, it is necessary to bear in mind that gender equality within the meaning of article 15 of the Constitution of India includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The Apex Court in Vishaka (supra), taking note of the fact that the present civil and penal laws in India, do not adequately provide for protection of women from sexual harassment at work places and also taking note of the fact that the enactment of such a legislation will take considerable time, issued certain guidelines in exercise of the powers of the Supreme Court conferred under article 32 of the Constitution of India. It is, however, of immense importance to note that at the time of hearing of this writ petition, it could not be submitted, on behalf of the respondent-authorities, particularly, of the said Cooperative-Bank, that the guidelines issued by the Apex Court in the case of Vishaka (supra) and the instructions issued, in this regard,

by the State Government are being followed by the said Co-operative Bank.

9. Coupled with the above, I find considerable force in the submissions of the learned amicus curiae that the desired result cannot be achieved unless the female employees concerned are made aware of their rights flowing from the decision in Vishaka (supra) as well as the instructions and guidelines issued, in this regard, by the State Government.

10. Situated thus, and in the interest of justice, the respondent Nos. 1 and 2 are hereby directed to ensure that the guidelines contained in the case of Vishaka (supra) and also the instructions issued by the State Government in order to ensure prevention of sexual harassment of women at work places are followed and complied with by the said Co-operative Bank. The respondent No. 5, namely, the Chief Secretary to the Government of Assam is hereby directed to take necessary steps, to ensure that the guidelines and directions contained in Vishaka (supra) are followed and complied with. The respondent No. 5 is also directed to evolve, within 2(two) months from today, necessary policy and guidelines in order to enable the State Government to make, at regular intervals, evaluation as to how far the guidelines and directions aforementioned are being followed and complied with by the authorities concerned and the respondent No. 5 shall issue accordingly necessary directions/guidelines in this regard. The respondent No. 5 shall also give due publicity to the guidelines/instructions, which may be issued by the Government in this regard, so that requisite awareness is created in the female employees concerned as regard their right to have, at the work places, a situation in which no sexual exploitation of women taken place. The respondent No. 5, namely, the Chief Secretary to the Government of Assam shall accordingly lay before this Court the guidelines, which may be issued by him in order to ensure compliance with the directions given hereinbefore.

11. With the above observations and directions, this writ petition shall stand disposed of.

12. No costs.

13. Send forthwith a copy of this order to the Chief Secretary to the Government of Assam for doing the needful.