
(2023) 12 BOM CK 0011

In the Bombay High Court

Case No : Writ Petition No. 8624 Of 2018, Civil Application No. 2603 Of 2019

Principal And Others

APPELLANT

Vs

Dr. Pradnya And Others

RESPONDENT

Date of Decision : 01-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 227
Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979 — Rule 8(12), 8(13), 8(14)
Indian Penal Code, 1860 — Section 34, 354A, 504
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 — Section 3, 4

Citation : (2023) 12 BOM CK 0011

Hon'ble Judges : Kishore C. Sant, J

Bench : Single Bench

Advocate : V.J. Dixit, Sushant V. Dixit, R.N.Dhorde, Pravin S.Dighe, S.S.Thombre, K.B.Jadhavar

Final Decision : Disposed Of

Judgement

Kishore C. Sant, J

1. Rule. Rule made returnable forthwith by consent of the parties.
2. The Management, running a College has filed this petition challenging judgment and order dated 18.04.2018, passed by the learned Presiding Officer, University and College Tribunal, Aurangabad, allowing Appeal filed by respondent No. 1. Order of termination dated 04.11.2016 is set aside and petitioners are directed to reinstate respondent No. 1 to the post of Assistant Professor with continuity in service and back wages from the date of termination till her reinstatement.
3. The facts in short are that respondent No. 1 was appointed with the petitioner after due selection to the post of Lecturer in Psychology by order dated 27.04.2009. On 28.04.2011, respondent No. 1 was confirmed in service after

successfully completing her probation period. By order dated 18.2.2012, the University also granted an approval with effect from her appointment. In June, 2014, she came to be appointed as Head of the Department in Psychology Department. The University also granted benefits to her under the Career Advancement Scheme.

4. It is the case of respondent No. 1 that the Secretary of the petitioner started harassment and therefore, she was required to make representation to the Principal of College. It was for that reason and because of grudge that she has made representations, she was not allowed to sign muster and shown her as absent from duty. Thereafter, she was required to report to the Board of College and University Development (for short "B.C.U.D."), in respect of arbitrary action and harassment at the hands of Management. On receipt of said complaint, the University forwarded a representation to the Principal for taking necessary action. It is because of this, the Management got annoyed and started harassing more. The Principal instead of taking action on the complaint of respondent No. 1, sent a letter to the Joint Director, Higher Education, by giving incorrect information under the pressure of Secretary and the Management.

5. It is further case that because of these facts the Management appointed an Inquiry Committee and started inquiry against respondent No.1 under the name of "Satyashodhan Samiti". Respondent No. 1 even raised an objection to the formation of the aforesaid Committee, alleging bias on the part of the Chairman of the Committee, however, the said is not considered. After formation of the Committee, the Committee handed over her a copy of the charge-sheet, prepared by the Committee. After conducting an inquiry, the Committee found respondent No. 1 guilty of the charges and recommended her termination. The Management, on the basis of report, terminated the services of respondent No. 1. It is with this, challenging the said termination, respondent No. 1 approached the University and College Tribunal, by filing an appeal. The learned Presiding Officer allowed the appeal and issued direction to reinstate respondent No. 1 and to give benefits of continuity of service and back wages. The petitioners have thus approached this Court.

6. Learned Senior Counsel Mr. Dixit, submitted that the petitioner Management is a minority educational institution. Respondent No. 1 was appointed by following due procedure of law. However, thereafter she started remaining absent without permission and it is for this reason an action was taken against her. The Committee was appointed as per communication received from University/ authority on the receipt of a complaint dated 27.04.2016 from respondent No. 1 to the B.C.U.D. The Principal, therefore issued a notice on 14.07.2016 and appointed "Satyashodhan Samiti" to inquire into charges. An action thus was taken after affording an opportunity to respondent No. 1. Total 11 charges were framed against her by the said Inquiry Committee.

7. Mr. Dixit, further submits that in appeal there was no prayer for reinstatement and for back wages and it is only after the amendment, the said prayer is

inserted. There are no averments in an appeal to the effect that she was not gainfully employed and still the relief of back wages is granted. During the process, there was an offer given to the respondent No.1 to compromise, however, the said was not accepted by respondent No. 1. The finding of the the University and College Tribunal, about bias in the mind of the Members of the Committee is without any material. During an inquiry, respondent No. 1 could not show that she was not absent. Even her medical certificate was not in proper form. He submits that the finding of the learned Presiding Officer recorded are perverse about the statements recorded before the Inquiry Committee. Further the finding of the learned Member about the statements of the persons recorded is also perverse. He ultimately submits that if the University and College Tribunal, was not satisfied with the manner of inquiry the University and College Tribunal, ought to have directed 'De-Novo' inquiry afresh, instead of setting aside the termination order. He relied upon the following judgments :

- 1) AIR 2018 SC 4534 - Rajasthan State Road Transport Corporation, Jaipur Vs. Phool Chand (Dead) Through Lrs.
- 2) 2014 (3) Mh.L.J. 524 – Chairman, LIC of India and Ors. vs. A. Masilamani.
- 3) 1994 AIR (SC) 1074 – Managing Director, Ecil, Hyderabad Vs. B. Karunakar.
- 4) 2014 (4) Mh.L.J. 556 - Manohar Pandit Marathe Vs. President Sharda Vidya Prasarak Mandal.

8. In reply, learned Senior Counsel Mr. R.N.Dhorde for respondent No. 1 submits that respondent No. 1 was constrained to lodge FIR on 12.10.2016 against the Secretary of the Management for the offences punishable under Section 354-A, 504 read with 34 of the Indian Penal Code. He submits that an Inquiry Committee's report shows that no proper procedure is followed. The Management did not even issue a show cause notice before holding an inquiry.

9. The learned Senior Advocate Mr. Dhorde, submits that an inquiry process followed by the management was against law. The Committee itself was formed on the basis of complaint made by respondent No. 1 to the University. The said Committee could not have held inquiry against the respondent. The committee appointed on the complaint of respondent No. 1 turned into an Inquiry Committee. He further submits that a copy of compilation along with proceeding book had also been produced on record. This Court has seen and gone through the said compilation.

10. Respondent No. 1 complained to the University first in respect of alleged harassment meted to her at the hands of the Secretary and the Management. As no cognizance was taken by the Management into those complaints she was required to file a complaint to the University Authorities. It is thus the University, which was required to request the Management to hold an inquiry. He invited attention to the communication dated 25.4.2016 issued by respondent No. 1 to the Principal, in which she has clearly stated that the Principal has even refused

to accept an application and she was required to send the communication through E-Mail and because of that she made representation to the University authority vide communication dated 06.05.2016.

11. Respondent No. 1 even had to approach to police by filing complaint against the Secretary and President of the Management about sexual harassment. It was the specific objection against the Chairman of the Inquiry Committee Mr. Ambhore. The Secretary of the Management has done Ph.D. under the guidance of Mr. Ambhore and for this reason she expressed her concern about bias in the mind of Chairman of the Committee, however, said was not considered. From the proceedings, he submits that she has produced material about another member Mr. Mhaske, who completed his Ph.D. under the guidance of Chairman, Mr. Ambhore. The charge-sheet is not issued by the Management but it is issued by the Committee, which is unknown to law. When the Committee was formed at the instance of the University on a complaint of Respondent, there was no question of the Committee holding inquiry against respondent No.1. An inquiry is thus without jurisdiction. The entire proceedings before the Committee shows that it was conducted with malafide intention. On realizing that there was no prayer for back wages amendment was carried out by inserting a specific prayer. At no point of time, the Secretary of the Management denied any charges before the Tribunal, who happens to be the Secretary of the Management i.e. present petitioner No.2. Thus, the allegations against him are not denied. He relied upon NAAC Committee report, showing that it was observed in the report that there was no formation of 'Vishakha Committee' under Section 3 and 4 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013.

12. The University and College Tribunal has rightly observed that Mazahar Khan, the Secretary of Management has not denied allegations against him. He supported the finding that even a memo was not issued by the Management before holding an inquiry. It was necessary to give a copy of statement of allegations and call for an explanation before holding an inquiry. An Inquiry Committee was appointed without following procedure established by law. He submits that the statements considered by the Inquiry Committee of one of the in-charge member, who allegedly submitted statement in person and had not even signed the said statement. The documents were also not made available to the respondent No. 1. The dates on the statements even show that those were recorded after the submission of report. None of the statements bear signatures of the Committee Members. Nothing is on record to show that respondent No. 1 was given an opportunity to cross-examine those witnesses. There is no resolution about the appointment of the Committee. No show cause notice was given. Thus, he submits that no procedure is followed and thus the learned University and College Tribunal has rightly passed the judgment and no interference is called for. He submits that there was an affidavit filed before the Tribunal stating that respondent No. 1 was not gainfully employed. He relied mainly upon the following judgments :

- 1) (1997) 6 SCC 241 – Vishaka and others Vs. State of Rajasthan and Others.
- 2) (2013) 6 SCC 515 – Anant R. Kulkarni Vs. Y.P. Education Society and Others.
- 3) 1970 (3) SCC 548 – Surath Chandra Chakarabarty Vs. State of West Bengal.
- 4) (2013) 10 SCC 324 – Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) and Others.
- 5) 2022 SCC Online 283 – Puri Investments Vs. Young Friends and Co. and Others.

13. In rebuttal Mr. Dixit, learned Senior Counsel submitted that there was no complaint made to the College about sexual harassment and the complaints shown were not in respect of sexual harassment. The alleged incidents of sexual harassment were shown eight months prior to the lodging of the complaint before police. He submits that there is no substance in the submission that because of the complaints of sexual harassment the management had initiated an inquiry. The complaint to police was also made after conclusion of inquiry. The report was submitted on 05.10.2016, where as, complaint to police was made on 12.10.2016. The judgment in Vishakha (supra) is not applicable. An inquiry was only in respect of absenteeism of respondent No. 1 and deduction of her salary. He submits that as per judgment reported in 2007 (3) Mh.L.J. 801 the management be directed to constitute Committee and to look into the matter afresh. This Court finds that there is no substance in the submissions.

14. On considering all the facts, what is clearly seen is that respondent No.1 had earlier made complaint to the Principal, however, the same was not accepted and she was required to sent the said complaint by E-Mail. In spite of said complaint, no cognizance was taken by the Principal and the Management and for that reason she was required to approach the authorities of the University. It is the University authority which directed the Management/Principal to look into the matter. It is upon that the Committee headed by Mr. Ambhore was formed. The charge-sheet was also issued by the Committee and not by the Management. No any procedure was followed prior to appointment of Committee. So far as the allegations against the Secretary of the Management are concerned, though he was party before the Tribunal, he has not denied the allegations against him. Even the statements shown to have been recorded before the Committee does not bear the signatures of those persons and also of the Members of the Committee. The petitioner could not point out as to how the observations of the Tribunal are perverse or incorrect. Nothing is on record and it is not even the statement of the petitioner that prior to appointment of the Committee any procedure was followed such as issuance of show cause notice or otherwise. The charges were framed by the Committee itself and not by the Management. The charge-sheet issued was also issued by the Committee itself. It is not disputed that the Secretary of the Management has done Ph.D. under the guidance of the Chairman/Mr.Ambhore. There is also one another fact that another Member Mr. Mhaske also completed his Ph.D. under the guidance of Mr Ambhore. It is further

seen that no documents were supplied to respondent No. 1, inspite of her demands. Thus, there is also violation of Section 8 (12) (13) (14) of the Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979. It is now well settled that non supply of documents to the employee causes serious prejudice to the rights of such employee as he cannot take his defence properly. Thus, there is clear violation of principles of natural justice. There is nothing on record to show that respondent No. 1 was offered an opportunity to cross-examine the witnesses and it is the employee who has not availed such an opportunity. The learned Tribunal has rightly considered the ratio in the case Surath Chandra (supra), in respect of vague charges. The entire approach of the Committee and Management is clearly perverse.

15. In the case of Chairman LIC India (supra) an inquiry was conducted by the employer. In an inquiry proceedings the witnesses were not examined in presence of the delinquent. The delinquent could not therefore cross-examine such witnesses. The documents relied upon by the inquiry officer were also not properly proved. The High Court therefore, held that the finding of the inquiry officer stood vitiated for non compliance with the mandatory requirements of the regulations applicable and also for the reason that it was violation of principle of natural justice, the Hon'ble Apex Court held that in such cases when the Court set aside an order of appointment holding that an inquiry was not properly conducted, the Court cannot reinstate the employee. The Court must remand the concerned case to the Disciplinary Authority for conducting inquiry from the point that it stood vitiated and conclude the same. This Court finds that in the present case the learned Presiding Officer of the College Tribunal formed an opinion that an inquiry was totally illegal. In the present case, from the record it is clear that the entire exercise of the Management was actuated with malafide. There was total lack of jurisdiction with the Inquiry Committee. It is not the case that there were technical faults in conducting an inquiry. This Court therefore, finds that in the present case the learned Tribunal has rightly exercised the jurisdiction and has rightly passed the order.

16. This Court finds that in view of finding, there is substance in the submission of learned Senior Counsel Mr. Dhorde that the management instead of holding inquiry in view of complaints of harassment of respondent No. 1, has with malafide intention made false inquiry. The Committee has also arrived at finding without sufficient material. The Committee was formed without following any procedure. The Committee has no jurisdiction to hold the inquiry. The malafides are further clear from the fact that even copy of the charge-sheet was not issued by the Committee.

17. Mr. Dhorde, learned Senior Counsel relied upon the judgment reported in Anant R. Kulkarni (supra). that it is not necessary in every case to hold a fresh inquiry. He further relied upon Vishaka and others (supra) So far as back wages are concerned, he rightly relied upon the judgment in the case Dipali Gundu Surwase (supra). He also further relied upon the judgment Puri Investments

(supra) in respect of powers of the Court under Section 227 of the Constitution of Indian.

18. Mr.Dixit, learned Senior Counsel relied upon the Rajasthan State (supra). In that case the Hon'ble Apex Court observed that the back wages cannot be granted as a matter of right.

19. So far as the submissions in respect of back wages are concerned, this Court finds that there was affidavit before the College Tribunal stating that she was not gainfully employed during the period . This Court, finds that the learned Tribunal has rightly considered all these aspects and has passed an order. No interference is called for. The Writ Petition is dismissed. Rule is discharged.

20. In view of disposal of Writ Petition, pending Civil Applications if any stand disposed off.

(KISHORE C. SANT) JUDGE

21. At this stage, learned Advocate for the petitioner makes a prayer to continue the stay granted by this Court. The learned Advocate for the respondent vehemently opposes the prayer. He pointed out that by subsequent order dated 05.12.2022, this Court had directed the petitioner to deposit the amount of Rs.10 lacs in this Court. However, same was not done. By order dated 25.01.2023 the petitioner sought time to comply with order dated 05.12.2022. Time of six weeks was granted. However, even thereafter no amount was deposited. By order dated 14.03.2023 this Court has recorded that the petitioners have consistently refused to comply the interim order passed by this Court and affidavit was directed to be filed. In spite of that, no affidavit is filed. This Court finds that in such a case the petitioner cannot claim any equitable relief. This Court has seen orders dated 05.12.2022, 25.01.2023 and 14.03.2023. In view of the conduct of the petitioners that they have not even obeyed interim order passed by this Court, this Court finds that no prayer need be entertained. The request is, therefore, refused.