

(2014) 08 RAJ CK 0005
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5003 of 2012

Shashi Indulia

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 18-08-2014

Acts Referred:

Citation : (2015) 2 CDR 607

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Hemant Pareek, Advocates for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by the petitioner-Dr. Shashi Indulia challenging the order dated 7.12.2010 by which her complaint against respondent No. 4-Shri Ghanshyam Lal for sexual harassment has been rejected and the order dated 11.1.2012 by which her representation against the adverse remarks in the APARs of the year 2008-09 entered by respondent No. 4 has been rejected. Prayer has been made to expunge the aforesaid remarks as also the red entry in the service record and to consider her case for promotion on the post of Vice Principal ignoring such remarks. Petitioner who possesses the qualification of M.A. in Public Administration and Ph.D. was appointed on the post of Lecturer (Public Administration) on 30.11.1981. Petitioner is a divorcee lady and having two children. According to the petitioner, she has been working with the respondents for last more than three decades with utmost sincerity and devotion. She belongs to Scheduled Caste category to which category, respondent No. 4-Shri Ghanshyam Lal too belongs. He was working as the Principal at Shri Kalyan Govt. College, Sikar since 2008. At one occasion on 23.7.2009, he came to the house of the petitioner late in the night with bad intention. When the petitioner did not open the door, he had to return back. Ever since, he started threatening her with dire consequences and also that he would ruin his career. He served a notice on 10.9.2009 on the petitioner alleging that petitioner by interpolation in the attendance register marked her presence on

15.6.2009 and 29.6.2009. According to petitioner, the respondent No. 4 had put red cross on the signatures already made by the petitioner. Petitioner submitted application on 10.9.2009 for obtaining the copy of the attendance register, which was refused. In order to further harass her, respondent No. 4 served notice on her on 30.9.2009. He called for a report with regard to allegation of the petitioner from Vice Principal, whereas no such report was called about any other Lecturer. The respondent No. 4 put an adverse remark in the APAR of the petitioner of the year 2008-09 wherein under almost all heads her services were shown to be unsatisfactory, and alleging that petitioner made changes in the attendance register and that her integrity was doubtful. The reviewing authority, however, did not accept the remark in totality by observing that there is no solid reason for adverse remarks so written. Her grading was thus upgraded. The reviewing" authority thus upgraded the unsatisfactory grading of the petitioner to average..

2. It is contended that the petitioner made persistent request to the respondent authorities to take action against respondent No. 4 as he was continuously harassing her. When no action was taken, she approached this Court by filing the writ petition No. 1721/2010, which was disposed of by order dated 7.4.2010 requiring the Director/Commissioner, College Education, Government of Rajasthan, Shiksha Sankul, Jaipur to get the complaint of the petitioner examined in terms of the directions of the Supreme Court in Vishaka and others Vs. State of Rajasthan and Others, and D.S. Grewal Vs. Vimmi Joshi and Others, and pass appropriate order within a period of three months from the date of submission of representation by petitioner. On direction of the Commissioner, a Committee was constituted for that purpose, which called the petitioner for personal hearing on 19.5.2010, who appeared there but thereafter no information was received by the petitioner. Petitioner then filed an application under Right to Information Act on 6.8.2010 demanding copy of the enquiry report, in response to which she received communication dated 31.8.2010 whereby it was informed that the enquiry report has been sent to the Principal Secretary, Higher Education. She thereupon made request to Principal Secretary, Higher Education, Government of Rajasthan, who in turn required the petitioner to obtain copy of enquiry report from the Commissioner, College Education. Petitioner had to then file a contempt petition, but the act of harassment of the petitioner by respondent No. 4 continued unabated.

3. In fact, he vide communication dated 17.7.2010 proposed a disciplinary proceeding against the Petitioner under Rule 16 of the Rajasthan Civil Service (Classification Control and Appeal) Rules alleging that on two dates, she put her signatures on cross marks while she was absent on those days. He also made adverse entries in the service book thereupon Petitioner submitted representation on 13.8.2010 to the Commissioner, College Education for deletion of such entries and for dropping the proposed disciplinary proceedings. The Commissioner, College Education by order dated 5.1.2011 did not find the case worthy enough to proceed against and dropped the disciplinary proceedings, but

did not order for deletion of adverse remarks/adverse entries. Petitioner further submitted that even when the contempt petition is pending before this Court, she received a communication dated 14.3.2011 with which a copy of the enquiry report was supplied to her. Perusal of the enquiry report indicates that the allegation with regard to sexual harassment of the petitioner by the respondent No. 4 was not considered by the said Committee. On the basis of other facts, the Committee finally opined that it was a case of female harassment and proper action must be taken. On that basis, however, the Government by order dated 7.12.2010 held that the allegation of sexual harassment was not found proved by the Committee. Petitioner has submitted that this Committee was headed by the Smt. Pratibha Saxena, Joint Director, College Education with Ms. Dipali Bhargava, Lecturer, Commissionerate and Dr. Subhash Yadav, Lecturer, Commissionerate as Members, whereas this Committee has completely overlooked the report of the earlier Committee headed by Dr. Anita Kothari with four members including those who were member in the subsequent Committee. The earlier Committee in their report dated 21.6.2010 noted that it was a clear case of harassment of woman and the proper action must be taken and it was on that basis that a warning was given to respondent No. 4 vide letter dated 5.1.2011.

4. The respondents have contested the writ petition by filing reply and counter affidavit wherein the statement of the petitioner that she is member of SC and divorcee and have two children is not disputed. It is contended that adverse remarks entry was made in the service book of the petitioner by respondent No. 4 on 15.7.2010 because she marked her attendance on the cross put by the Principal in the attendance register for those two dates. In this connection when notice was given to the petitioner on 30.9.2009, he submitted an explanation on 5.10.2009. The Principal called for the report from the Dr. C.L. Sharma, the then Vice Principal about the working of the petitioner. It is admitted that the Principal has recommended the disciplinary proceedings against the petitioner under Rule 16 of the CCA Rules. It is also admitted that the enquiry report was supplied to the petitioner on her demand. However, it is submitted that the letter of warning served upon the respondent by the petitioner on 5.1.2011 not being connected with the allegation of sexual harassment, was eventually withdrawn by the Commissioner, College Education vide order dated 2.2.2011. Simultaneously, it is also submitted that the proposed disciplinary proceedings against the petitioner under Rule 16 was also dropped. The Government on receipt of the report did not find the allegation of sexual harassment against the respondent No. 4 proved and in this connection, the appropriate order was passed on 7.12.2010 addressed to the Commissioner, College Education. The Government by keeping two adverse entries of the petitioner with regard to her doubtful integrity, has rightly rejected the representation of the petitioner vide order dated 11.1.2012.

5. On examination of rival submissions and perusal of the record, I find that in so far as the allegation of the petitioner that she put her signatures on the cross marks in the attendance register on 15.6.2009 and 29.6.2009 has not been accepted by the respondents despite proposal of the Principal to hold the regular

disciplinary proceedings; against the petitioner under Rule 16 of the CCA Rules. Petitioner has made serious allegations against the working of respondent No. 4, which although may not have been fully proved in the report of the Committee headed by Smt. Pratibha Saxena, but the complete copy of that report has neither been supplied to the petitioner, nor has been placed on record. The copy of the report of earlier Committee dated 21.6.2010 is on record, which was headed by Dr. Anita Kothari with four members, two of whom were common members in the subsequent Committee. The said Committee in their report concluded that the working atmosphere in the College was presently not cordial and that it was evident from the statement of the Principal himself that his behaviour in the past also has been very indiscriminatory and unrespectful towards the other Teachers and that the behaviour of the Principal with the petitioner was indiscreet and discriminatory and that language used by the Principal against the petitioner reflected his intention of harassing her, which lead her to feel sense of inconvenience and insecurity and that the Principal repeated demanded number of explanations from the petitioner and that in turn when the petitioner demanded certain information, he did not provide such information and that the petitioner did not make compliant before the Committee of the College as no such Committee was constituted there and therefore she has directly submitted the compliant in the Commissionerate and that most of the allegations have been found to be substantiated and that petitioner was not provided with respectful and safe environment of working. The Committee, therefore, recommended that immediate decision be taken to take appropriate action as it was a case of exploitation of woman.

6. The respondent No. 4 has filed his separate reply to the writ petition denying all these allegations. In fact, he has submitted that the Superintendent of Police, Sikar has also made an enquiry and did not find the allegations against him proved. The representation of the petitioner for expunging the adverse remarks of the APAR and deletion of the adverse entries has rightly been rejected by the Government. The letter of warning dated 5.1.2011 issued to him has already been withdrawn by the Government vide order dated 2.2.2011.

7. Despite the rebuttal of allegations by the respondent No. 4, the petitioner in rejoinder has persisted with quite serious allegations about the way Of working of respondent No. 4 not only qua the petitioner herself but also qua other lecturers wherever he has remained posted, which is evident from the averment in para 15, which is reproduced hereunder:

"15. That the contents of the para 18 of the reply to the writ petition are not admitted in the manner stated that it is submitted that the issue in relation to sexual harassment towards the petitioner was not at all considered by the Committee so constituted under the Hon"ble High Court's direction and only on the basis of other issues examined by the Committee opinion was given that there is case of female harassment and speedy action was required to be taken. In absence of consideration of the issue of sexual harassment by the Committee

so the order dated 7.12.2010 passed by respondent No. 1 it was held that there is no case made out of sexual harassment.

It is pertinent to mention that despite the opinion of the Committee that it is a case of female harassment at the work place and action is required to be taken. In response to the respondents only issued one letter of warning to the respondent No. 4. Whereas each and every document is signing towards the harassment so done towards the petitioner and the ill motive of the respondent No. 4. This is also well proved by one of the letter written by Dr. Khamosh Meena, working as Lecturer at Sikar, to respondent No. 2 requesting to not to allow respondent No. 4 to fill her APAR for the year 2009-10, as respondent No. 4 asked her to write against the petitioner to the Additional Superintendent of Police in relation to the complaint made by the petitioner against respondent No. 4. On denial she was also harassed by respondent No. 4. At the later stage respondent No. 4 was transferred to R.R. Government P.G. College, Alwar, there also he continued his unwarranted activities against the female teachers and one Dr. Kalpana made one complaint dated 7.7.2012 against the respondent No. 4 to Chief Convenor, Female Advise and Security Centre, Alwar, which further wrote one letter dated 19.9.2012 to respondent No. 3 giving the details of the matter. This shows the character of the respondent No. 4. Copy of the letter written by Dr. Dhamosh Meena and letter dated 19.9.2012 are enclosed herewith and marked as Annexure-36 & 37 respectively."

8. The aforesaid averments would show that some complaint was there against the respondent No. 4 by Dr. Khamosh Meena working as Lecturer at Sikar as also Dr. Kalpana another lady Lecturer when he was transferred to R.R. Government P.G. College, Alwar. The rejoinder filed by the petitioner way back on 13.12.2012 has remained un rebutted. In aforequoted para, petitioner has also asserted that while examining the grievance of the petitioner, the government has not taken any note of the report of the earlier committee.

9. It is in this background that this Court has to examine the validity of the adverse remarks entered in the APAR of the petitioner. In clause 2(a) it is mentioned that petitioner has the mentality of living a free life and therefore resisted the control of the disciplinary authority and used undesirable and unfounded allegations against him so as to control and harass him. She did not improve her attitude despite several oral advisories. In column No. 4 again the allegation is with regard to interpolation in the attendance register and further allegation that the petitioner has attested the false documents with a view to confer undue favour on private persons and created pressure on the Principal and on that basis, it is mentioned that integrity of the petitioner was doubtful. When this APAR was presented before the reviewing authority, he has recorded that "there is no solid reason for adverse APAR so written record so upgraded." While the reporting authority has reported the grading of the petitioner to be unsatisfactory, the reviewing officer has upgraded the same to be satisfactory.

10. In either of the entries, the reporting officer has not been able to point out in

his separately filed counter affidavit as to whether any written warning or advisory was given to the petitioner inasmuch as there is absolutely no material on record to substantiate the plea with regard to her doubtful integrity. It was quite possible that the relation of petitioner and Principal did not go along well, but the conduct of respondent No. 4 also does not appear to be wholly satisfactory, which fact is to great extent borne out from the report of the earlier Committee dated 21.6.2010 and the un rebutted averments made by the petitioner in rejoinder. Besides, the allegation with regard to interpolation in the attendance register of respondents by petitioner has not been accepted by the disciplinary authority as the proposal of the principal to initiate regular disciplinary authority under Rule 16 has been dropped.

11. This Court in *Roop Singh Jodha*, 2007 (1) WLC (Raj.) 70, in para 8 of the report held as under,

"8. It is trite law that an officer entrusted with duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, on statement of facts, an overall assessment of the performance of the Reporting Officer. However, at the same time, the Reporting Officer before forming an opinion adverse to the Subordinate Officer should confront the officer with such information and then only the same may be made part of the report. Reference in this connection may be made to the following observation of the Hon"ble Apex Court in *State of U.P. Vs. Yamuna Shanker Misra and another*, :--

"....The Officer entrusted with the duty to writ confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an over all assessment of the performance of the Subordinate officer. It should be founded upon facts or circumstances.

Before forming an opinion to be adverse, the Reporting Officers writing confidential should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite being given such opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him."

12. The Apex Court in *Union of India and others Vs. E.G. Nambudiri*, held as under:--

"....Therefore, in the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent

authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, it must act in a fair and just manner. It is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. However, it does not mean that the administrative authority is at a liberty to pass orders without there being any reasons for the same. In Governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion, if such an order is challenged in a Court of law, it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the Court to justify its action."

13. The Supreme Court in *M.A. Rajasekhar Vs. State of Karnataka and Another*, were considering somewhat similar remarks recorded in the confidential report of the appellant that he "does not act dispassionately when faced with dilemma" it was in this context their Lordships in para No. 4 of the judgment observed as under:--

"It is now settled law that object of making adverse remarks is to assess the competence of an officer on merits and performance of an officer concerned so as to grade him in various categories as outstanding, very good, good, satisfactory and average, etc. The competent authority and the reviewing authority have to act fairly or objectively in assessing the character, integrity and performance of the incumbent."

14. Having recapitulated the law on the subject, their Lordships in para No. 5 further observed as under:--

"It was found that his integrity has not doubted and his work also in all those respects was found to be satisfactory. Under those circumstances, the remarks that he "does not act dispassionately when faced with dilemma" must be pointed out with reference to specific instances in which he did not perform that duty satisfactorily so that he would have an opportunity to correct himself of the mistake. He should be given an opportunity in the cases where he did not work objectively or satisfactorily. Admittedly, no such opportunity was given. Even when he acted in a dilemma and lacked objectivity, in such circumstances, he must be guided by the authority as to the manner in which he acted upon. Since this exercise has not been done by the respondents, it would be obvious that the above adverse remarks were not consistent with law."

15. The Supreme Court in *Sukhdeo Vs. Commissioner Amravati Division*,

Amravati and Another, while following the earlier judgment in State Bank of India etc., Vs. Kashinath Kher and others, etc.,, observed as under:--

"the controlling officer while writing confidential and character role report, he should be a superior officer higher above the cadres of the officer whose confidential reports are written. Such officer should show objectivity, impartiality and fair assessment without any prejudice whatsoever with highest sense of responsibility to inculcate in the officer's devotion to duty, honesty and integrity so as to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. In that case it was pointed out that confidential reports written and submitted by the officer of the same cadre and adopted without any independent scrutiny and assessment by the committee was held to be illegal. In this case, the power exercised is illegal and it is not expected of from that high responsible officer who made the remarks. When an officer makes the remarks he must eschew of making vague remarks causing jeopardy to the service of the subordinate officer. He must bestow careful attention to collect all correct and truthful information and give necessary particulars when he seeks to make adverse remarks against the subordinate officer whose career prospect and service were in jeopardy. In this case, the controlling officer has not used due diligence in making remarks. It would be salutary that the controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact that would form material basis in support of the adverse remarks. It should also be mentioned that he had given prior opportunity in waiting for improvement and yet was not availed of so that it would form part of the record."

In view of above discussion, the writ petition deserves to be succeed and is accordingly allowed. The adverse remarks in the APAR of the petitioner of the year 2008-09 are ordered to be expunged. The adverse remarks/red ink entry in the service book to the above effect is also expunged. The order of the Government dated 11.1.2012 (Annexure-31) rejecting the representation of the petitioner is quashed and set aside. Consequently, grading the petitioner is ordered to be enhanced from "satisfactory" to "good". The respondents are directed to consider the case of the petitioner for promotion on the post of Vice Principal as per her merit and seniority if any candidate junior to her has been promoted now within three months. Petitioner is held entitled to consequential benefits.