

(2016) 07 BOM CK 0110

In the Bombay High Court

Case No : Civil Appellate Jurisdiction Writ Petition No.191 of 2016

Shri Hrishikesh Vasant Rao Kumbhar

APPELLANT

Vs

The Zilla Parishad

RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 CLR 354 : (2017) 1 MhLJ 103 : (2016) 5 MhLJ 554

Hon'ble Judges : Anoop V. Mohta and G.S. Kulkarni, JJ.

Bench : Division Bench

Advocate : Mr. Prashant Bhavake, Advocate, for the Petitioner; Mr. R.D. Rane, Advocate, for the Respondent Nos.1 to 3

Final Decision : Allowed

Judgement

G.S. Kulkarni, J.(Oral)—Rule. Rule made returnable forthwith. Heard finally, by consent of the parties.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner challenges the order dated 14 December 2015, by which the Respondents have suspended the Petitioner from its services. The ground as set out in the suspension order is that the Petitioner had agreed to marry the complainant, one Ms. Yasmin Hazarat Makandar and that the Petitioner did not marry her and got married with some other girl. The other reasons as they appeared in the complaint are also set out in the suspension order.

3. When we heard the matter on the last occasion, we had expressed to the learned counsel for the Respondents that the reasons which are set out in the suspension order, prima facie appeared to be not sustainable, inasmuch as the nature of the complaint was nothing to do with the discharge of the duties by the Petitioner in the employment. The grievance of the complainant appeared to be wholly a private issue, interse between the complainant and the Petitioner. Further, as also the nature of the complaint was of some charges, the nature of

which was sexual harassment at work place, we had inquired with Mr. Rane, the learned counsel appearing for the Respondents, as to whether any procedure as per the law laid down by the Supreme Court in the case of Vishaka & Ors. v. State of Rajasthan & Ors., (1997) 6 SCC 241 : AIR 1997 SC 3011 has been followed by the Respondents? The matter was accordingly adjourned for today.

4. Mr. Rane, the learned counsel appearing for the Respondents, on instructions, fairly submits that the constitution of the Women's Grievance Redressal Committee, (Enquiry Committee) which had enquired into the allegations of the Complainant, was not as per the directions of the Hon'ble the Supreme Court in Vishaka & Ors. (Supra). He further submits that at the time the suspension order was issued, the report of the Enquiry Committee was also not available. It is thus fairly conceded on behalf of the Respondents that the impugned suspension order was passed purely on the complaint as made by Ms. Yasmin Hazarat Makandar.

5. If what has been pointed out by Mr. Rane, the learned counsel for the Respondents is the correct position, then surely the impugned order cannot be sustained. We are thus, inclined to set aside the impugned order for two reasons. Firstly, in our opinion, considering the reasons as set out in the impugned order, it is clear that the Respondents have taken into consideration a private dispute, thus the suspension order, would have no foundation regarding any misconduct in discharge of the official duties by the Petitioner. Secondly, even assuming that the Petitioner is sought to be suspended on the basis of any sexual harassment at work place, there was no material available at the time when the impugned suspension order was issued except the bald assertions of the complainant. The Respondents have conceded that the report of the Enquiry Committee was not available when the impugned suspension order was passed. In our opinion, these reasons are sufficient to interfere in this Petition. We thus, do not go into the issue as regards the constitution of the Enquiry Committee or the proceedings before it suffice it to observe that for the reasons which we have recorded the impugned suspension order cannot be sustained.

6. Resultantly, impugned order dated 14 December 2015, suspending the Petitioner, is required to be declared as illegal. Accordingly, it is quashed and set aside. Accordingly, the Writ Petition is allowed in terms of prayer clause (b), which reads thus:

(b) By suitable writ, order or direction, this Hon'ble Court be pleased to quash and set aside impugned order dated 14.12.2015 issued by Respondent No.2 Chief Executive Officer, thereby suspending the Petitioner from the post of "Agricultural Extension Officer" and accordingly permit the Petitioner to join his duties and also grant all consequential benefits."

7. There shall be no order as to costs.