

(2020) 08 SIK CK 0003

In the Sikkim High Court

Case No : Writ Petition (C) No. 30 Of 2019, I.A. No. 2 Of 2020

Silajit Guha

APPELLANT

Vs

Sikkim University And Others

RESPONDENT

Date of Decision : 20-08-2020

Acts Referred:

Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013 — Section 2(g), 2(o), 2(o)(vi), 2(o)(v)

Citation : (2020) 08 SIK CK 0003

Hon'ble Judges : Bhaskar Raj Pradhan, J

Bench : Single Bench

Advocate : Kalol Basu, Ranjit Prasad, Karma Thinlay Namgyal, K.T. Gyatso

Final Decision : Disposed Of

Judgement

Bhaskar Raj Pradhan, J

1. The writ petition was filed on 12.08.2019 by the applicant seeking cancellation of the show-cause notice dated 10.06.2019 and the report of the Internal Complaints Committee (respondent no.4) of the Sikkim University (respondent no.1) pursuant to the enquiry held in the matter relating to a complaint by the respondent no.5 against the applicant. The applicant has also sought a direction for cancellation of the termination order passed by the respondent no.3 in its 33rd Meeting dated 28.06.2019, as communicated vide its office order dated 28.06.2019. The applicant has sought for further direction upon the respondents not to take any step on the basis of the show-cause notice dated 10.06.2019 and the order of termination pursuant to the report of the respondent no.4. The petitioner has sought a prayer to allow him to join the post of a professor of the Department of Mass Communication, appoint him as the Head of the Department and pay his regular salary including his arrears. On 04.11.2019, notices were issued upon the respondents returnable within three weeks. Services upon all the respondents including respondent no.5 were served. The present application for injunction and stay filed by the applicant on 07.02.2020 is taken up for

consideration after the pleadings with regard to the application having been complete. The respondents no.1 to 3 have filed a reply on 27.02.2020 and the petitioner filed his rejoinder thereto on 17.03.2020. The respondent no. 5 has also filed a response to the application for injunction on 12.06.2020.

2. The applicant seeks a direction upon the respondents no.1 to 3 not to give any further effect to the termination order dated 28.06.2019, as communicated vide office order dated 28.06.2019 and to allow the petitioner to join his duties as Professor of the Department of Mass Communication and pay him his salaries until final disposal of the case. The respondents no.1 to 3 opposes the said prayer of the applicant. They submit that the matter dealt by the respondent no.3 was done by following due process of law and adequate opportunity was given to the applicant. The respondents no.1 to 3 also submit that as the respondent no.5 still remains a student of the same Department, reinstating him would make the victim vulnerable and create a hostile atmosphere. The averments made by respondents No.1 to 3 have also been disputed in the rejoinder filed by the applicant. The respondent no.5 in her reply states that the show-cause notice dated 10.06.2019 was issued on the same day; the impugned order terminating him was issued on 28.06.2019 and the applicant preferred the writ petition only on 12.08.2019, after nearly two months. Even then, the applicant did not prefer any stay application along with the writ petition and it was only on 07.02.2020 that the present application was filed after five months. It is averred that, therefore, the purpose of filing the application is solely to delay the matter and, in fact, no urgency exists.

3. Heard Mr. Kalolapplicant and Mr. Karma Advocate assisted by Mr. respondents. Basu, learned Counsel for the Thinlay Namgyal, learned Senior K.T. Gyatso, on behalf of the respondents.

4. The primary ground urged by Mr. Basu was that the entire enquiry conducted by the respondent no.4 was without jurisdiction, as admittedly, the alleged incident of sexual harassment purportedly had taken place at a hotel during a marriage function and the same does not fall within the definition of "workplace" as per the existing law. Mr. Basu has taken this court to the definition of "workplace" in section 2(o)(vi) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter ?the said Act?) as well as definition of "employer" in section 2(g) emphasising on sub-section (iv) thereof. Mr. Basu also relied upon Regulation 2(o) and 2(c) of the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015, which would, according to him, also make it clear that the hotel in which the alleged incident took place is not a "workplace", as the applicant and the respondent no.5 had gone there not arising out of or during the course of employment or studies. He submits that, therefore, the respondent no.4 had no jurisdiction to entertain the complaint of the respondent no. 5 since it had no authority to decide the issue. Mr. Karma Thinlay Namgyal, learned

Senior Advocate, to the contrary submits that the definition of "workplace" must be given a wide interpretation. According to him, in section 2(o)(v) of the said Act, "any place" visited by an employee "arising out of" or "during the course of employment" including transportation by the employer for undertaking such journey, has to be included in the definition of "workplace". The learned Senior Counsel submits that the place where sexual harassment takes place need not necessarily be an actual "workplace" in relation to an aggrieved woman. It is submitted that the petitioner had during the course of his employment with the respondent no.1 visited the hotel for a wedding reception where the incident is said to have taken place. The learned Senior Counsel relies upon the judgment of the Supreme Court in *General Manager B.E.S.T Undertaking, Bombay vs. Mrs. Agnes1*, to urge that the court must apply the concept of notional extension to broaden the concept of the words "during the course of employment".

5. This court has considered the rival submissions of the learned counsel representing the applicant as well as the respondents. Although, the present application was filed on 7.02.2020, it is seen that even in the writ petition filed by the petitioner, injunction, as prayed for herein, was also sought for as prayers (vii) and (viii) thereof. Thus, the argument of the respondents that the present application was filed after several months of delay would not hold good. Admittedly, the alleged incident took place at a marriage function in a private hotel. Section 2(o) of the said Act, defines workplace to include:-

"2. Definitions.
.....

(o) "workplace" includes-

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;

(vi) a dwelling place or a house;"

6. Having examined the definition of the word "workplace" in the said Act, it seems that the petitioner does have a strong arguable point on jurisdiction or the lack of it. Whether the broad interpretation of "workplace" would bring within its ambit attending a private marriage function in a private hotel, is a question which may have to be examined. If the court was to ultimately hold that the respondent no.4 had, in fact, no jurisdiction to proceed with the enquiry as was done in the present case under the said Act, the consequence may be that the impugned termination may have to be rendered bad in law as well. The writ petition has been admitted for hearing, pleadings are to be completed.

7. In the circumstances, this court is of the considered view that during the pendency of the writ petition before this court, the respondents no.1 to 3 should not give any further effect to the termination order dated 28.06.2019. This, however, and quite obviously, would be subject to the final decision in the writ petition. It may not be possible to grant the applicant's prayer to join his duties and pay his salaries, as that would be granting one of the main prayer in his writ petition at an interim stage itself.

8. The observations made in this order are made solely for the purpose of determining the present application and shall not affect the final hearing of the writ petition.

9. The application is disposed accordingly.