
(2010) 03 MP CK 0051
In the Madhya Pradesh High Court

Vijay Jalali (Smt.)

APPELLANT

Vs

HMT Limited and Others

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 127 FLR 651 : (2010) ILR (MP) 1405 : (2010) 4 MPHT 182 : (2010) 3 MPLJ 466

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Gupta, J.

In this writ petition preferred under Article 226 of the Constitution of India the petitioner has challenged the order of penalty dated 31-3-1998, Annexure P-27 and the order contained in Annexure P-29 which has been passed by the Appellate Authority on 11-5-1998 whereby the appeal of the petitioner against the order of penalty has been dismissed and the order of penalty of removal from service has been affirmed.

The facts leading to the present petition are that the petitioner was employed with the respondents in their watch marketing division. The respondent No. 1 is a Public Limited Company and is amenable to the writ jurisdiction of this Court. A charge-sheet was issued against the petitioner which is contained in Annexure P-3 wherein allegations were levelled that the petitioner being a lady employee abused and gave a slipper (chappal) blow to one of the security guard. The incident was reported against the petitioner by making a complaint against her. The Inquiry Officer was appointed to inquire into the allegations and on basis of the findings of the enquiry report a penalty of removal from services has been imposed upon the petitioner.

Learned Counsel appearing for the petitioner submitted that the inquiry which

was conducted against the petitioner is bad for the following reasons:

(I) The manner in which the enquiry has been conducted is unknown to law. No documents as demanded by the petitioner were supplied to the petitioner and list of the witnesses was also not supplied to the petitioner.

(II) The complainant who was the victim of beating by the petitioner was also not examined.

(III) In the present case, there were complaints made by the petitioner against the security guard alleging sexual harassment and these complaints were also filed and proved in the enquiry but no action is taken against the security guard and action is taken against the petitioner which is bad in law.

(IV) Lastly, it is submitted that the Inquiry Officer while giving the findings against the petitioner has also considered the aspect of sexual harassment of the petitioner by the security guard who was the victim of the incident and keeping in view the findings recorded by the Inquiry Officer and also in view of the conduct of the security guard it is a case where the punishment is disproportionate.

Upon consideration of the question with regard to non-supply of the documents and list of witnesses, I find that the petitioner has not been able to show that any request was made by her to the respondents or to the Inquiry Officer for supply of the documents and list of the witnesses. Annexure P-4 is the letter written by the petitioner where nothing is stated about the supply of the documents and the list of the witnesses so that it could be held that in spite of the fact that the petitioner demanded the documents, the same were not supplied. Thus, in the absence of any demand by the petitioner and particularly also keeping in view the fact that no prejudice is pleaded and argued because of non-supply of the documents and the list of the witnesses it is difficult to hold that the documents were not supplied to the petitioner.

As regards the question of non-examination of the complainant who was the victim, namely, Gulab Singh Yadav, is concerned. It is seen that the proceedings of the inquiry have been filed and the narration contained in Page 163 of the paper book reveals that a request was made on behalf of the petitioner that Shri Gulab Singh Yadav should be called to ascertain the reality of the charge mentioned in letter dated 7-5-1994 that he was slapped with chappal. Whereupon, the Presenting Officer replied that the Management is unable to produce Shri Gulab Singh Chand who was a contract labour and they do not know his whereabouts but a written complaint of Gulab Singh Yadav was marked as document (ME 16) which was taken into account. Counsel appearing for the petitioner vehemently relied upon the judgment passed by the Apex Court in *Hardwari Lal Vs. State of U.P. and Others*, In the said case, a similar question, i.e., non-examination of complainant had come up for consideration and in Para 3, Their Lordships laid down, thus:

Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virendra Singh, and witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.

On the basis of the aforesaid it is clear that a request was made to call the victim Shri Gulab Singh Yadav but the Management did not produce him as the complainant as such was not available for the cross-examination by the petitioner. Thus, keeping in view the ratio laid down by the Apex Court in *Hardwari Lal* (supra), I am inclined to hold that there had been violation of the principles of nature justice.

Apart from the aforesaid, it is also observed that before the Inquiry Officer the petitioner has proved two letters at Page 187 and 188/189 of the paper book to show that the petitioner did submit a complaint against Shri Gulab Singh prior to the incident for which the petitioner was charge-sheeted. A bare perusal of the said complaint makes it clear that Shri Yadav was making an attempt of sexual harassment of the petitioner. The complaint was made but no action was taken on the said complaint. Before the Inquiry Officer it was also slated by the petitioner while giving her statement that since the complaint was made against the attitude and behaviour of Shri Gulab Singh Yadav and the Management did not take any action, therefore, she was forced to take action against the same. Thereupon, the Inquiry Officer while submitting the report has made certain observations in the inquiry report which are contained at Pages 209 and 211 of the paper book. Relevant extract of those observations are reproduced as under:

Page 209:

....CSE" narration that the showroom staff was against her and she had become the subject of general harassment appears to be correct.

The evidence of CSE letter dated 25-4-94 in absence of any reaction from PO is admitted, wherein she complained of guard usually misbehaving and abusing her. Showroom officials seems to have ignored her complaint in practice. Had suitable action taken in response to his letter dated 25-4-94 the incidence of slapping the guard by chappal on 7-5-94 could have been averted. The showroom staff was in no way co-operative on the subject of harassment, the lady worker subjected to and the guard was instigated and encourage to misbehave by some staff. Her

letter dated 14-11-94 (ME-6) further brings to the notice the fact that showroom official were not co-operative in receiving the communication and the lady worker had to send the same to Head office at Bangalore...

Page 211:

....It is, therefore, proved that she has slapped with chappal the guard following him up to the office of Accounts Officer, where he had gone to complained about the abuse ment attured on him by CSE Mrs. Vijay Jalali and the incidence destribed in ME-3 is true.

Letter ME-3, however, does not throw light on what made CSE to abuse the guard. In her statement she has charged that, as usual the guard came to retail counter, sat on the sofa and talked to her as "you look very beautiful in saree, your breasts are big etc..."which irritated CSE leading to abuse ment by her.

If the showroom staff is unable to control guard in spite of written and oral complaints made by her (CSE) the CSE should not be treated as wrong in slapping the guard who was a casual worker misbehaving with the lady company employee...

[The extract has been reproduced as it is, therefore, spelling mistakes have been left untouched]

On the basis of the aforesaid, the Inquiry Officer has also taken into account the fact in relation to excessive harassment and Inquiry Officer while considering the same has opined that if the showroom staff is unable to control the guard in spite of making complaint by the petitioner then the petitioner should not be treated as wrong in slapping the guard who was a casual worker for misbehaving with the company employee but simultaneously the Inquiry Officer held the petitioner guilty of the charge. However, it is not stated as to on what basis the finding of guilt has been arrived at by the Inquiry Officer when he has specifically observed that the petitioner being a lady employee herself had made complaint which are proved in the enquiry but no action was taken by the management. There are two complaints prior to the incident as referred in the charge-sheet but it is not the case of the management that any action was taken against complaint, Shri Gulab Singh Yadav on her complaint. On the date of incident also as per the story, Shri Gulab Singh, commented upon the petitioner which could not be tolerated by the petitioner.

The question with reference to punishment would also be relevant in the light of the findings arrived at by the Inquiry Officer. It is not a case that the petitioner after receiving the charge-sheet has made any complaint against the attitude and misbehaviour of Shri Gulab Singh Yadav, but it is a case where prior to the incident there were two complaints against the complainant but the management did not take any action against him. On the date of incident also the petitioner was sexually harassed by way of comment on her by the complainant, therefore, it could be understandable that the petitioner being a lady was left with no option

but to take some action in her defence. The reliance can profitably had to the decision of the Apex Court rendered in Vishaka and others Vs. State of Rajasthan and Others, . Their Lordships of the Apex Court have held that sexual harassment of working woman amounts to violation of rights of gender equality and right to life and liberty. Applying the ratio laid down by the Apex Court, the present is not a case where the behaviour and attitude of the petitioner of slapping by chappal and abusing complaint Shri Gulab Singh was irritating in any manner. Since the petitioner was sexually harassed in the past and complaints were made by her but no action was taken thereupon and on the date of incident also the sexual harassment was practised on the petitioner, therefore, it cannot be said that the petitioner was unjustified in defending herself against the sexual harassment. These aspects have not been taken into account by the Disciplinary Authority as well as the Appellate Authority, therefore, the impugned orders are unsustainable in the eyes of law.

For the reasons stated hereinabove, the impugned order of punishment passed by the Disciplinary Authority on 31-3-1998, Annexure P-27 and the order 11-5-1998 passed by the Appellate Authority as contained in Annexure P-29 are hereby set aside. The respondents are directed to reinstate the petitioner in service with 75% back wages. In the result, the writ petition stands allowed.