

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 4th May, 2011.

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W.P.(C) 2967/2011

DR. VASDEV NARANG

..... Petitioner

Through: Mr. Anis Ahmed, Advocate.

versus

**THE LT. GOVERNOR
GNCT OF DELHI AND ORS**

..... Respondents

Through: Ms. Anjana Gosain, Advocate
for R-1.

Mr. Yashish Chandra for Ms.
Maninder Acharya, Advocate for R-
2.

Mr. Rajinder Dhawan & Mr.
Tauseef Akhtar, Advocate for R-
3&4.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner employed as an Associate Professor with the

respondent no.4 Sri Aurobindo College (M), Malviya Nagar, New Delhi affiliated to the respondent no.2 University of Delhi, was charged with sexual harassment and the College Complaints Committee (CCC) constituted in accordance with Ordinance XV-D (dealing with Sexual Harassment) of the Calendar of the Delhi University, in its report dated 27th March, 2010 found the petitioner guilty and recommended his dismissal from service.

2. The petitioner preferred an appeal to the Apex Complaints Committee (ACC) also in accordance with Ordinance XV-D (supra), which has vide order dated 20th December, 2010 confirmed the findings of the CCC and also found the petitioner guilty of sexual harassment but not agreed with the punishment recommended by the CCC; it was observed that considering the nature of the acts of sexual harassment committed by the petitioner, dismissal from service would be an excessive punishment; accordingly the ACC has recommended disciplinary action against the petitioner of stopping of increments for the rest of the service period, debarring from supervisory duties for the rest of the service period, debarring from administrative duties for the rest of the service period and

denial of membership of statutory bodies of the college and University for the rest of the service period.

3. This writ petition has been filed for setting aside of the report of the CCC and the order of the ACC including the recommendations made therein.

4. The petitioner has also sought setting aside of the order dated 10th April, 2010 of the college whereby the entry of the petitioner in the college complex was banned.

5. As far as the relief with respect to the order dated 10th April, 2010 barring the entry of the petitioner to the college complex is concerned, the counsel for the petitioner has handed over copy of the order dated 23rd July, 2010 in W.P.(C) No.3887/2010 earlier preferred by the petitioner. A perusal of the said order shows that the petitioner had also filed W.P.(C) No.4819/2010 challenging the findings of the CCC. The counsel for the petitioner informs that W.P.(C) No.4819/2010 was dismissed as withdrawn with liberty to approach the ACC.

6. W.P.(C) No.3887/2010 was preferred against the order debarring the entry and was disposed of on 23rd July, 2010 as aforesaid holding that the

petitioner could not be permitted to enter the college at that stage and giving liberty to the petitioner to renew the prayer after the decision of the ACC.

7. The ACC having also found the petitioner guilty of sexual harassment, unless the said findings are set aside, no case is made out for allowing the petitioner at this stage to enter the college campus.

8. The counsel for the petitioner has argued that there is no provision entitling the college to so bar the entry of the petitioner. I presume the same argument must have been taken in the earlier W.P.(C) No.3887/2010 also. The same having not found favour then and there being no change in findings as to the guilt of the petitioner, the petitioner cannot be permitted to re-agitate the same.

9. As far as the challenge to the report of the CCC and the order of the ACC is concerned, since they have recommended disciplinary action against the petitioner, it has been enquired from the counsel for the petitioner whether disciplinary action has been taken as yet. The counsel for the petitioner states that no such action has been taken till now.

10. It has next been enquired from the counsel for the petitioner as to how the writ petition would be maintainable at this stage in as much as it is felt that challenge to successive stages of a proceeding, which is to ultimately culminate in the disciplinary action against the petitioner, is not permissible.

11. The counsel for the respondent no.3 college appearing on advance notice has also invited attention to Ordinance XV-D (supra) which provides for the Head of the Institution to upon the receipt of the inquiry report of the committee refer the same to the Governing Body/Executive Council and institute disciplinary action on the basis of recommendations of the Complaint Committee under relevant service rules. He has further invited attention to *Managing Director, Madras Metropolitan Water Supply & Sewerage Board v. R. Rajan* (1996) 1 SCC 338 & *Durgesh Chandra Saha v. Bimal Chandra Saha* (1996) 1 SCC 341 to contend that the petition is pre-mature and the remedy of the petitioner would be against the order of the Disciplinary Authority only.

12. The counsel for the petitioner has sought to urge that the Governing Body of the college cannot take any disciplinary action and the matter has

to be referred to the Executive Council of the University. Reliance in this regard is placed on the order dated 23rd July, 2010 (supra) in W.P.(C) No.3887/2010 where also it has been observed that depending upon outcome of the proceedings before the ACC the matter will have to be sent to the Executive Council.

13. The counsels for the College and the University have, per contra contended that the report is required to be sent to the Executive Council in the case of the employee of the University and to the Governing Body in the case of an employee of the college.

14. The counsel for the petitioner is unable to show any rule for reference of the report of the Complaint Committee qua an employee of the college to the Executive Council of the University. A perusal of the Ordinance also shows that in the case of an employee of the college as the petitioner is, it is only the Governing Body of the college and not the Executive Council of the University which is to take disciplinary action.

15. The counsel for the petitioner has sought to urge that the writ petition against the reports of the CCC and ACC would be maintainable at this stage only. It has been enquired whether against the order of the

Disciplinary Authority/disciplinary action, a departmental appeal would not be maintainable.

16. The counsels for the college and the University have invited attention to the enclosure to Ordinance XII of the University Calendar, Clause 9 whereof provides for reference of a dispute in connection with termination of services of the teacher to arbitration of an Appeal Committee. It is thus felt that if the writ petition is entertained at this stage, it would also interfere with the redressal mechanism provided in the University Calendar itself.

17. The counsel for the petitioner has contended that since the ACC has not recommended termination, the question of arbitration would not arise. The counsels for the college and the University also confirm that against any punishment lesser than that of termination, no arbitration or departmental appeal is provided. They however contend that it is open to the Disciplinary Authority to inpite of the recommendation, mete out the higher punishment of termination to the petitioner.

18. The counsel for the petitioner also does not controvert the same as a legal proposition though contends that generally punishment higher than

that recommended is not meted out.

19. However since the possibility cannot be ruled out, it is felt that entertaining the petition at this stage would interfere with the redressal mechanism provided in the University Calendar.

20. The petition is therefore held to be not maintainable and pre-mature at this stage and is dismissed with liberty to the petitioner to urge all grounds as taken herein in any other remedy if any sought by the petitioner. No order as to costs.

21. The counsel for the petitioner seeks a direction for the Disciplinary Authority to take a time bound action. However having perused the reports of the two Committees, the petitioner is not found entitled to be deserving of any indulgence. The said request of the petitioner thus cannot be acceded to.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 4th, 2011
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