

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

+ **WP(C) No.2541/2011**

%

March 13, 2013

S. RAJU AIYER

..... Petitioner

Through: Mr. Rakesh Kumar Singh, Advocate with
Mr. W.A. Nomani, Advocate.

versus

JAWAHAR LAL NEHRU UNIVERSITY AND ORS. Respondents

Through: Mr. Mohinder J.S. Rupal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by one Sh. S. Raju Aiyer challenging the findings of the enquiry committee dated 19.2.2010, order of the disciplinary authority dated 29.7.2010 and of the appeals committee dated 29.11.2010, all of which have found the petitioner guilty of sexual harassment of the respondent No.5 and have consequently imposed and approved the penalty against the petitioner of compulsory retirement without any reduction in financial benefits.

2. Before I proceed to the facts of the case, it is necessary to

state that this Court while hearing the writ petition under Article 226 of the Constitution of India, and which challenges the orders passed in the departmental proceedings, does not sit as an appellate Court to re-appraise the findings of facts and conclusions arrived at by the departmental authority. This Court is entitled to interfere with the orders passed in the departmental proceedings only if the said orders are wholly perverse or violative of the law/rules of the organization or in violation of the principles of natural justice.

3. I also state at the outset that, though, in certain places, I will refer to the facts with respect to the issue of sexual harassment, however, certain explicit details which are contained in the e-mails etc are not being reproduced by me in this judgment and for the said purpose the report of the enquiry committee dated 19.2.2010 can be referred to.

4. The petitioner was enquired into by the GSCASH committee of the respondent No.1 (short for Gender Sensitization Committee Against Sexual Harassment). Specific rules and procedures have been framed by the respondent No.1-University with respect to proceedings which are to be held by GSCASH. The charges against the petitioner were on the basis of the complaint filed by the respondent No.5 and the substance of which complaint is as under:-

“1. Made frequent calls at her residence on 10.4.2008,

12.4.2008 and 15.4.2008 and had consequently harassed her unnecessarily;

2. He had sent her two emails on 11.4.2008 and 12.4.2008, which carried vulgar and filthy contents and were graphic in nature and were explicitly sexual asking for oral sexual favours etc., though she had deleted those emails supposing them simple spam;

3. The Defendant had started following and stalking the Complainant at her evening walks and thereby had created an overbearing and intimidating situation for her. She also alleged that while crossing her at her evening walk on 28.9.2008, Defendant was touching himself in an obscene manner. All his actions of passive intimidation had seriously hampered her routine and thus she approached the GSCASH for appropriate redressal.”

5. On the basis of aforesaid, the following charges were served upon the petitioner:-

“Whereas you have been charged with:

1. sending obscene emails to the complainant through fictitious identity in April 2008 and simultaneously making unnecessary phone calls at untimely hours to harass her even using derogatory language,

And

2. that you have been passively intimidating the complainant by stalking her in August-September 2008 and have also used vulgar gestures by touching yourself in obscene manner on September 28, 2008”.

6. In the enquiry proceedings, the evidence was led on behalf of the complainant/respondent No.5 of as many as eight witnesses. Admittedly, these witnesses were not cross-examined by the petitioner in spite of repeated opportunities granted. Once there is no cross-examination, there cannot be any reason why the depositions are not to be

accepted. Petitioner also led no evidence before the enquiry committee alleging that since the two e-mails dated 11.4.2008 and 12.4.2008 were not supplied to the petitioner/charged official therefore he will not participate in proceedings. It may be noted that, and as contained in the detailed report of the enquiry committee, there was no question of supplying of these two e-mails inasmuch as the admitted position on record was that two e-mails were destroyed by the respondent No.5 considering them to be spam. Efforts were made by the enquiry committee, as also by the complainant, to get the factual contents of the e-mails dated 11.4.2008 and 12.4.2008 by requesting the cyber cell of the police department, however, these e-mails could not be provided by the police department. It is further to be noted that the contents of the e-mails were however got proved by depositions of witnesses, as also some documentary evidence which has been filed before the enquiry committee.

7. The following important conclusion emerge from the findings and conclusions of the enquiry committee and which order of the enquiry committee has been upheld by the appeals committee.

(i) The petitioner though initially denied that he had an e-mail ID enchellam2008@yahoo.com, subsequently however the petitioner on being confronted with this e-mail ID being his as it was traced to the

telephone number belonging to the petitioner situated at the residential address of the petitioner, the petitioner admitted to this e-mail ID.

(ii) Petitioner also on facts was found to have two other e-mail IDs being enchellam@movemail.com and enchellam2008@rediffmail.com, and to which e-mail IDs co-relations were arrived at on account of the respondent No.5 requesting password of the e-mail ID of enchallam2008@yahoo.com. Consequent to this action certain websites' post relatable to the e-mail ID were discovered and which show assertions of sexual favours being demanded in an explicit manner. I may state that some of the explicit details contained in the enquiry committee report are stated at internal page Nos. 40 to 42 of the enquiry committee report and can be referred to.

(iii) Petitioner admitted that he did make calls to the respondent No.5, however, the petitioner claimed that he only did the same to remove the mis-understanding because the respondent No.5 is said to have scolded the petitioner as the petitioner had got his son married outside the caste i.e to a non-tamilian Brahmin, a North Indian boy. This was however proved to be wrong by the statements made by various witnesses in the enquiry committee proceedings.

(iv) The most gross aspect which is reported by the enquiry committee is that the petitioner had the gumption of threatening the various members

of the enquiry committee and which facts emerged not on one occasion, but on more than one occasions. These threats which were met out by the petitioner to the members of enquiry committee were duly reported by the members of the enquiry committee to the appropriate authority of respondent No.1. There were as many as five members in the enquiry committee of the respondent No.1-University.

(v) The stalking by the petitioner of the respondent No.5 was also proved through various witnesses whose depositions were recorded by the enquiry committee and the report of the enquiry committee shows that in spite of passing, not one, but two restraint orders restraining the petitioner from coming into contact with the respondent No.5, the petitioner continued his obdurate and offensive behavior. The petitioner used to hold his private parts while crossing the respondent No.5 at the time of stalking.

8. As per the detailed evidence which was led by the respondent No.5 before the enquiry committee, and the other evidences and record which became available to the enquiry committee, the enquiry committee has given the following findings and recommendations:

“Findings:

18. After analyzing the allegations in the Complaint, perusing the available evidentiary material on record including statements of the witnesses, Complainant’s and Defendant’s depositions, report by the Cyber Cell, the email dated 08.10.2008 on the

password verification request dated 3.10.2008 and the net searched documents dated 22.10.2008 and 24.10.2008 etc., it is proved that:

i. The Defendant has sent the two alleged obscene sexual emails to the Complainant through fictitious identity in April 2008, as alleged in the Complaint.

ii. The Complainant had complained the issue of harassment by unnecessary phone calls at untimely hours by the Defendant to the respective Chairpersons and that they had a meeting with the two Chairpersons when the defendant was advised to keep himself away from the Complainant.

iii. Defendant had made unnecessary phone calls to the Complainant at untimely hours to harass her even using derogatory language.

iv. The defendant had been following and stalking the Complainant in August-September 2008 and had used vulgar gestures on 28.9.2008. It becomes clear in the light of the above mentioned facts that the Defendant had enough motives to sexually target the Complainant and further harass her which led her to even stop her evening walks, passively intimidated her and forced her to schedule her walks at an earlier time only to avoid any mishappening due to Defendant's deliberate moves. Complainant has proved all the later misdeeds of the Defendant with sufficient evidence.

v. That apart, the Committee also views the repeated Restraint Order violations by the Defendant as also threats and intimidation tricks used by him to interfere with the Enquiry as also violation of the Office Memo issued by the appropriate authority dated 21.10.2009, seriously and therefore takes into consideration while recommending appropriate action against the defendant.

Recommendations

18. The defendant has already undergone warnings and transfer from School of International Studies to School of Languages by way of preventive measure for minimizing the interaction between the Complainant and the Defendant during the pendency of the Enquiry proceedings due to his conduct. As per GSCASH Rules, the next punishment is withholding of one or more increment not exceeding one year is a lesser punishment in this case. Suspension, even though it is given in the penalty list, it cannot be considered as a mode of punishment as it seems

too little as to the seriousness of the present case.

Therefore, in view of the above findings, the Committee recommends that the Defendant be imposed the penalty of Compulsory Retirement in view of his conduct and verification of the charges against him, Restraint order violations, non-cooperation with the Enquiry Committee as also threats and intimidation to the Committee members and the GSCASH staff and the violation of the Office Memo issued to him by the JNU administration.

I agree with Compulsory Retirement but with No loss of any financial benefit

Sd/- J.P. Maurya

Annexures:

1. Complaint dated 29.9.2008
2. Report dated 1.4.2009 of Cyber Crime Cell
3. Six (6) sets of net searched documents
4. Email dated 08.10.2008 and requests dated 3.10.2008
5. Defendant's threat letter and other ones to GSCASH and other people
6. Office Memo dated 21.10.2009
7. Restraint Order violation reports
8. Intimidation report by the staff of GSCASH

Sd/-

Sd/-

(Ms. Savita Singh, Advocate) (Prof. Sonajharia Minz)

Sd/-

Sd/-

(Dr. K.D. Usha) (Mr. H.M.K. Moodgal) (Mr. J.P. Maurya)"

9. The aforesaid shows that the enquiry committee has arrived at correct findings and given the correct recommendations. Besides the fact that legally I cannot go into details of the findings unless they are perverse, even if I was sitting as an Appellate Court or the enquiry committee itself, I find that both the enquiry committee and the appeals committee has after detailed analysis and compelling reasons found the petitioner guilty of sexual harassment of the respondent No.5. In no

manner, the exhaustive and analytical findings of the enquiry committee can at all be interfered by this Court.

10. I may state that the disciplinary authority has accepted in toto the enquiry committee's report by the order dated 29.7.2010 and the appeals committee has also thereafter passed a detailed order dated 29.11.2010 accepting the findings of the enquiry committee and the order of the disciplinary authority. The following portion of the report of the appeals committee is relevant and the same reads as under:-

“The key to understanding this case is to see that the three charges that constituted sexual harassment were made in the public domain including sexual favours that were demanded within the precincts of the workplace; further the language, gestures and interactions were of a kind that undermined the dignity of the person along with self-esteem. Such kind of interaction subverts the mission of an institution like JNU and offends the integrity of the University community.

Summary

The appeals committee did not find any merit in the accusation that the enquiry committee was unfair given the crucial points (mentioned above). Mr. Aiyer was not convincing in proving his innocence and lend support to the genuineness of the complaint filed against him. The complaint based on P, Q, R was a complaint regarding sexual harassment as the complainant perceived it.

Mr. Aiyer was given time to prepare witnesses but he did not produce any. The calculated misrepresentation of facts undermined the credibility of his own position. At the same time enquiry committee proceedings show that he often made comments that were gender-insensitive.

The fact that Mr. Aiyer resorted to mislead and misrepresent the case at several points by alleging that she was on web chat with him must be noted as these charges submit Dr. Sundararaman's character to grave scrutiny; they weaken her case and make his

stalking almost legitimate!

The chair also notes that the defendant visited the chairperson in her office personally before the first meeting of AC which is not permissible as this was a confidential committee set up by the university. The attempt to influence by sending reports and letters to members in the earlier committees as well as emails to members of the AC have also been seen as improper and inappropriate behavior.

In its recommendations the ECR states that 'the defendant be imposed the penalty of compulsory retirement' in view of his conduct and verification of the charges against him, restraint order violations, non-cooperation with the enquiry committee as also threats and intimidation to the committee members and the GSCASH staff and the violation of the Office memo issued to him by the JNU administration (ECR 15). It must be noted that the defendant does not suffer any loss of financial benefits in the recommendations. In fact JNU allowed Mr. Aiyer to retain the residential accommodation even after he filed the petition in court.

The Appeals committee is of the view that 'compulsory retirement' without any reduction in financial benefits imposed on Mr. Raju is adequate.

Sd/-

Professor Nandu Ram (Dean)

Sd/-

Professor Saraswati Raju

Sd/-

Professor Vidhu Verma (CPS)
(Chairperson)

Dated: 29 November 2010 Monday

Place: JNU"

11. In view of the aforesaid position, I do not find that there is any perversity in the findings of the departmental proceedings which require to be interfered by this Court, much less by exercising powers under Article 226 of the Constitution of India. I do not find any merit in the argument that the entire departmental proceedings are liable to be set aside because two e-mails dated 11.4.2008 and 12.4.2008 were not

provided to the petitioner, inasmuch as other detailed findings, evidences and conclusions have been given by the enquiry committee. For the self-same reasons, the claim of the petitioner that principles of natural justice are violated, have no legs to stand upon.

12. Two other points were argued on behalf of the petitioner in this Court for setting aside of the order by which the petitioner was visited with the penalty of compulsory retirement. The first aspect which is argued is that the Registrar of the respondent No.1/University which passed the order as a disciplinary authority on 29.7.2010 was not competent to pass such an order. The second argument was that the decision of the appeals committee dated 29.11.2010 is vitiated because the Vice-Chancellor of the respondent No.1/University had already accepted the report of the appeals committee before the said report of the appeals committee was accepted by the Executive Council of the respondent No.1/University.

13. In my opinion, both these arguments raised on behalf of the petitioner are in fact arguments of desperation. There is no bar which has been shown to me that a Registrar of the respondent No.1/University cannot be appointed as a disciplinary authority. To argue that Registrar is not the competent disciplinary authority only two rules have been relied upon by the petitioner before this Court under the GSCASH Rules,

and these rules are Rules (III) (xviii) & (xix), and which read as under:-

“xviii. “University authorities” shall refer to the Vice-Chancellor of Jawaharlal Nehru University, by virtue of her/his being the head of the Executive Council of Jawaharlal Nehru University, as well as any such person who is entrusted with any powers and functions to act on behalf of the University under the Jawaharlal Nehru University Act 1969, or Statutes, Ordinances or Rules thereunder. For faculty members and group ‘A’ officers, the appropriate University authority is the Executive Council, and for students and other employees, it is the Vice-Chancellor.

xix. “University functionaries” includes any person appointed, designated or nominated by the University authorities to a position of service in Jawaharlal Nehru University, and includes, but is not limited only to, the following: Dean of Students, Deans of Schools, Chairpersons of Centres, Proctors, Provosts, wardens, security personnel, health professionals, as well as persons discharging administrative responsibilities, such as the Registrar and the Finance Officer.”

Alongwith the rules reliance has also been placed upon by the petitioner to Rule IX of GSCASH which deals with penalties stating that only the University Authorities can take the action against the petitioner.

14. The first argument on behalf of the petitioner is misconceived for the reason that University functionaries as per the Rule III (xix) itself includes the Registrar. Therefore, I fail to understand as to how the Registrar could not be the disciplinary authority. Merely because it is written that Registrar will exercise his administrative responsibilities cannot mean that the Registrar will not be a University functionary and

which University functionary can undoubtedly pass an order imposing penalty against the academic and non-academic staff of the respondent No.1/University. Rule IX dealing with penalties specifically provides that University Authorities can impose the necessary punishment and University Authorities will definitely include the Registrar as per Rule III (xix) reproduced above.

15. The second argument raised on behalf of the petitioner of the action against the petitioner being bad in law on account of the Executive Council having incorrectly arrived at a decision, the said argument is an argument wholly without any foundation inasmuch as Executive Council of the respondent No.1/University is neither a disciplinary authority nor the appellate authority. The decisions imposing penalty are taken by the disciplinary authority accepting the report of the enquiry committee and by the appeals committee accepting the order of the disciplinary authority. These orders are only put up to the Executive Council. Putting up of the findings, conclusions and recommendations to the Executive Council in terms of Rule X (3) dealing with provisions for appeal, would not in any manner mean that Executive Council has to in fact approve the decisions of disciplinary authority and the appeals committee or give its own findings and reasons for accepting the reports of the disciplinary authority and the appeals committee. All that Rule X

(3) requires is that appeals committee shall report to the Executive Council of the respondent No.1/University. Mere reporting will not mean that final authority for passing penalty order will be the Executive Council of the respondent No.1/University.

16. In view of the above, I do not find any merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

MARCH 13, 2013

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