

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 23.08.2013

+ **LPA 330/2013**

S. RAJU AIYER

.... Appellant

versus

JAWAHARLAL NEHRU UNIVERSITY AND ORS. Respondents

Advocates who appeared in this case:

For the Appellant : Ms S. Janani.

For the Respondents : Mr Mohinder J.S. Rupal.

CORAM:-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED, ACTING
CHIEF JUSTICE**

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present appeal impugns the order dated 13.03.2013 passed by a learned Single Judge of this Court in W.P.(C)2541/2011. The learned Single Judge has dismissed the writ petition filed by the appellant whereby the appellant had, *inter-alia*, challenged the punitive measure of compulsory retirement imposed on the appellant on account of him being found guilty of sexual harassment.

2. It is contended before us that the findings of guilt returned by the Enquiry Committee, Disciplinary Authority and the Appeals Committee are based on no evidence and are, thus, perverse. It is also contended on behalf

of the appellant that the Registrar of the respondent is not the Competent Authority to impose the penalty and, therefore, the order imposing penalty is without jurisdiction and is liable to be set aside.

3. The learned Single Judge has rejected the contentions urged on behalf of the appellant and has held that the findings arrived at by the Enquiry Committee, which conducted the inquiry into the allegations levelled against the appellant, are correct and there is no perversity in the finding of guilt returned by the authority. The learned Single Judge has also rejected the contention that the Registrar of respondent no. 1 university is not competent to impose penalty as the same could have been imposed only by the Vice Chancellor.

4. The appellant was employed with the respondent no. 1 university as a Personal Assistant. A complaint was made by respondent no. 5, who is working as an Associate Professor at the Centre for South, Central, Southeast Asian and Southwest Pacific Studies, that she was harassed by the appellant. The substance of the allegations made in the complaint are as under:-

1. The appellant made frequent calls at the residence of respondent no. 5 on 10.4.2008, 12.4.2008 and 15.4.2008 and had consequently harassed her unnecessarily;

2. The appellant had sent two emails to respondent no. 5 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. The said e-mails are stated to have been deleted by respondent no.5;

3. The appellant had followed and stalked respondent no.5 during her evening walks and thereby had created an overbearing and intimidating situation for her. It is also alleged that while crossing her at her evening walk on 28.9.2008, the appellant was touching himself in an obscene manner. All his actions of passive intimidation had seriously hampered respondent no. 5 in her routine.

5. The respondent no.1 University has constituted a Gender Sensitisation Committee against Sexual Harassment by a notification dated 16th April, 1999. The Committee so constituted is charged with the function of implementing the policy of respondent no.1 against sexual harassment and also the guidelines as laid down by the Supreme Court in the case of **Vishakha v. State of Rajasthan: (1997) 6 SCC 241.** The respondent no.1 University has also published Rules and Procedures of the Gender Sensitization Committee, which are applicable to the complaints of sexual harassment made on the campus of the respondent no. 1 university. The said Rules and Procedures are hereinafter referred to as “GSCASH Rules”.

6. On receipt of the complaint, the Gender Sensitisation Committee Against Sexual Harassment (hereinafter referred to as “GSCASH Committee”) of respondent no. 1 issued a restraint order dated 30.09.2008 against the appellant. The complainant (respondent no.5) reported a violation of this restraint order and, thus, a second restraint order was issued to the appellant on 26.02.2009. In terms of the GSCASH Rules, the complaint made by respondent no. 5 was examined by the Complaint Screening Committee and based on the recommendations of the Complaint Screening Committee, an Enquiry committee was formed on 12.03.2009 to

inquire into the allegations made against the appellant. The Enquiry Committee framed the following charges:-

“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.”

7. The appellant denied the charges. The Enquiry Committee recorded the statement of respondent no. 5 (complainant) and examined 8 (eight) witnesses. The evidence of the 8 witnesses was also provided to the appellant although their identities were not disclosed. Although, the appellant was given full opportunity to submit questions for cross-examination of the witnesses in accordance with the GSCASH Rules, the appellant did not avail of the said opportunity and did not submit any questions for any of the complainant’s witnesses. However, the appellant did submit questions for the complainant and answers with respect to them were duly recorded. It is recorded that the conduct of the appellant before the Enquiry Committee was rude and that he also tried to intimidate the members of the Enquiry Committee. The tone and tenor of the letters written by the appellant to the Enquiry Committee is also rude and offensive. The learned counsel appearing on behalf of the appellant has fairly conceded that the complainant had misbehaved with the Enquiry

Committee and his conduct was offensive and most undesirable. Be that as it may, the Enquiry Committee proceeded with the inquiry and after examining the witnesses and collecting the evidence arrived at the following 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 gesture 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.”

8. In view of their findings, the Enquiry Committee recommended that the appellant be imposed the penalty of compulsory retirement without reduction of any financial benefits. The enquiry report dated 19.02.2010, was forwarded to the GSCASH Committee.

9. The Registrar of respondent no. 1 university issued a memorandum dated 25.06.2010 intimating the appellant that the Enquiry Committee had submitted a report wherein the appellant was found guilty of sexual harassment and that report and the recommendations made therein, had been accepted. The appellant was informed that a major penalty of compulsory retirement from the university without any reduction in financial benefits was proposed to be imposed and he could make any representation with respect to the same which would be considered by the Competent Authority. The contents of said Memorandum dated 25.06.2010 are reproduced as under:

“MEMORANDUM

WHEREAS an Enquiry Committee was constituted by the GSCASH to enquire into the complaints of sexual harassment received from Dr. Shankari Sundararaman, Associate Professor, CSCSEASWPS/SIS against Sh. S. Raju Aiyer, Personal Assistant, CSPILAS/ SLL&CS.

AND WHEREAS the GSCASH Committee served the charges against Sh. S.Raju Aiyer based on the report of the GSCASH Complaint Screening Committee and whereas the said Enquiry Committee has conducted a formal enquiry on the charges leveled against Sh. Raju Aiyer as per GSCASH norms.

AND WHEREAS the Enquiry Committee submitted the report of the enquiry vide its report dated 19th February 2010.

AND WHEREAS the Enquiry Committee, having inquired into the charges, has found him guilty of the charges framed against him.

AND WHEREAS the undersigned, after careful consideration of the report of the Enquiry Committee, has accepted the report and its recommendations and proposes to impose upon him the major penalty of Compulsory Retirement from the University service without any reduction in financial benefit.

Now, Therefore, Sh. S. Raju Aiyer is hereby given an opportunity of making representation on the penalty so proposed. Any representation that he may wish to make on the penalty proposed will be considered by the competent authority. Such representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of this Memorandum, falling which the penalty as proposed above is liable to be imposed on him without any further notice.

The receipt of this Memorandum should be acknowledged.

Sd/-
(V.K. JAIN)
Registrar”

10. The appellant sent various letters seeking certain documents and also informed that he would be exercising his right to appeal, to an Appeals Committee, against the penalty being imposed on him.

11. On 29.07.2010, the Registrar of the respondent no. 1 issued another memorandum informing the appellant that the Vice Chancellor had accepted the report submitted by the GSCASH Committee and after considering the representation of the appellant was satisfied that the charges levelled against the appellant were correct. Consequently, a penalty of compulsory retirement without any reduction in financial benefits was imposed on the appellant and his name was struck off from the rolls of the university. The said memorandum dated 29.07.2010 reads as under:

“MEMORANDUM

WHEREAS an Enquiry Committee was constituted by the GSCASH to enquire into the complaints of sexual harassment received from Dr. Shankari Sundararaman, Associate Professor, CSCSEASWPS, SIS against Sh. S. Raju Aiyer, Personal Assistant, CSPILAS, SLL&CS.

AND WHEREAS the GSCASH Committee served the charges against Sh. S. Raju Aiyer based on the report of the GSCASH Complaint Screening Committee and whereas the said Enquiry Committee has conducted a formal enquiry on the charges leveled against Sh. Raju Aiyer as per GSCASH norms.

AND WHEREAS the Enquiry Committee having enquired into the charges submitted the report of the enquiry vide its report dated 19th February 2010.

AND WHEREAS the Enquiry Committee has found him guilty of the charges framed against him.

AND WHEREAS the Vice-Chancellor has accepted the Report submitted by the GSCASH Committee.

AND WHEREAS the undersigned vide memorandum dated 23rd June 2010 informed Sh Raju Aiyer of the proposal to impose upon him the major penalty of Compulsory Retirement without any reduction in financial benefit from the University service. He was given an opportunity of making representation on the penalty so proposed.

AND WHEREAS the undersigned after careful consideration of the representation submitted by Sh. Raju Aiyer in response to memorandum dated 23rd June 2010 and the comments of the Chairperson, GSCASH on the said representation and after taking into account the circumstances of the case, is satisfied that the charges against Sh. Raju Aiyer are correct.

NOW, THEREFORE the penalty of "Compulsory Retirement without any reduction in financial benefit" is hereby imposed on Sh. S. Raju Aiyer with immediate effect and accordingly his name stands struck off from the rolls of the University.

The receipt of this Memorandum should be acknowledged.

Sd/-
(V.K. JAIN)
REGISTRAR"

12. Aggrieved by the memorandum dated 29.7.2010, the appellant preferred a writ petition being W.P.(C) No. 5791/2010, which was disposed of by an order dated 22.09.2010 passed by a learned Single Judge of this Court, permitting the appellant to file an appeal and to raise all contentions before the Appeals Committee. Liberty was granted to the appellant to

approach the Court again in the event the appellant was aggrieved by the decision of the Appeals Committee. The learned single judge further directed that “in the event an appeal was filed the same would be disposed of expeditiously, preferably within a period of 3 months from the date of filing of the appeal”.

13. The appellant filed an appeal under the GSCASH Rules on 03.08.2010 which was considered by the Appeals Committee as constituted by the Vice Chancellor of the respondent no. 1 university. The Appeals Committee considered the entire matter and also separately met with the appellant and the complainant. The Appeals Committee after examining the matter concluded that the penalty of compulsory retirement without any reduction in financial benefits was adequate. A copy of the report dated 29.11.2010 of the Appeals Committee was forwarded to the Vice Chancellor who accepted the same in his capacity as the Chairman of the Executive Council. A memorandum dated 15.12.2010 along with a copy of the report of the Appeals Committee was forwarded to the appellant. The said memorandum reads as under:

“MEMORANDUM

WHEREAS, Sh. S. Raju Aiyer has submitted an appeal dated 3rd August 2010 under GSCASH rules, as he is dissatisfied with the disciplinary action taken against him;

And Whereas, the Vice-Chancellor constituted an Appeals Committee, as per GSCASH rules, consisting of Prof. Nandu Ram - EC's nominee, Prof. Vidhu Verma - Chair and Prof. Saraswati Raju - Centre for Women Studies/SSS to consider his appeal against the imposition of penalty of Compulsory

Retirement on him without any reduction in financial benefit vide memorandum dated 29th July 2010.

And Whereas, the Appeals Committee was informed of the Hon'ble Court's order/22.9.2010 conveyed vide Dasti. No.28537-A/DHC/WRITS/D-82010 dated 28th September 2010.

And Whereas, The Chairperson of Appeals Committee vide letter dated 29th November 2010, has submitted the report of the Appeals Committee to the Vice-Chancellor;

And Whereas, the Appeals Committee interviewed the defendant and the complainant and discussed the matter separately at length with both of them;

And Whereas, the Appeals Committee is of the view that 'compulsory retirement' without any reduction in financial benefits imposed on Mr. Raju Aiyer is adequate.

Now, therefore, Whereas, considering the time-frame of the Hon'ble High Court's direction to dispose of the case within three months which is expiring on 22nd December 2010 and as it is not likely to hold a meeting of Executive Council before 22nd December 2010, the Vice-Chancellor, in his capacity as Chairman of the Executive Council, has accepted the report of the Appeals Committee, and the matter will be reported to the Executive Council at its next meeting.

A copy of the report of Appeals Committee is enclosed.

The receipt of this memorandum should be acknowledged.

Sd/-
(V.K. JAIN)
REGISTRAR"

14. Aggrieved by the decision of the Appeals Committee, the appellant preferred yet another writ petition being W.P.(C) No. 62/2011. It was

contended on behalf of the appellant that the acceptance of the report of the Appeals Committee by the Vice Chancellor is bad in law as the recommendations of the Appeals Committee are to be placed before the Executive Council as per Rule X(3)(iv) of the GSCASH Rules which reads as under:

“The Appeals Committee shall report to the Executive Council of Jawaharlal Nehru University its findings and recommendations on the nature of the action to be taken on the appeal”

15. The contention of the appellant that Rule X(3)(iv) of the GSCASH Rules had been violated was accepted by a learned single judge of this court and the writ petition being W.P.(C) no. 62/2011 was disposed of by an order dated 06.01.2011, the operative part of which, reads as under:

“Having regard to what has been noticed above, I direct respondent No.1 to convene a meeting of the Executive Council within three months and place the recommendation of the Appeals Committee before it for its decision. In the meanwhile, the petitioner shall be allowed to retain the official accommodation on normal licence fee and in the event of an unfavourable order against the petitioner, he shall not be evicted from the accommodation till the expiry of a period of 15 days after the decision of the Executive Council.

Needless to say that in case, the decision of the Executive Council goes against the petitioner, he shall be at liberty to approach the Court again.

With this direction, the writ-petition is disposed of.”

16. In compliance with the directions issued in W.P.(C) 62/2011, the recommendations of the Appeals Committee, disposing of the appeal filed by the appellant against the penalty imposed on him by the memorandum dated 29.07.2010, was placed before the Executive Council of the respondent no. 1 university. The Executive Council considered the same at a meeting held on 05.04.2011 and passed the following resolution:

“Resolved to accept the recommendations of the Appeals Committee that the penalty of compulsory retirement without any reduction in financial benefits imposed on him will stand.”

17. Aggrieved by the rejection of his appeal, the appellant preferred the writ petition being W.P.(C) 2541/2011 which has been dismissed by the order dated 13.03.2013 impugned in the present appeal.

18. It is contended before us that there is no evidence to hold the appellant guilty of the charges levelled against him. In particular, the learned counsel appearing for the appellant has contended that the emails alleged to have been sent by the appellant, have not been produced as the same are stated to have been deleted. The appellant has also drawn our attention to the report obtained by the Cyber Cell of Delhi Police, which indicates that the appellant did not access his email account on 11/12.04.2008 i.e. the dates on which the alleged offending emails to the complainant were alleged to have been sent.

19. We are unable to accept the contention urged on behalf of the appellant that there is no material or evidence against the appellant in respect of the charges levelled against him. The Enquiry Committee had

examined 8 witnesses and after considering the evidence available and the depositions received, the Enquiry Committee was satisfied that the appellant was guilty of the charges levelled against him. In our view, there is sufficient material to indicate that the appellant had been intimidating respondent no. 5 and had used vulgar gestures. It is also an admitted case that the appellant had made telephone calls to respondent no. 5 and respondent no. 5 had given her evidence that appellant had used derogatory language during those calls. Thus, even if the emails which are alleged to have been sent by the appellant in April 2008 are ignored, there is sufficient material available on record to find the appellant guilty of sexual harassment. Even, in respect of the emails alleged to have been sent in April 2008, the complainant has given evidence with regard to the same and this is not a case where evidence with regard to the said emails is completely absent. A Constitution Bench of Supreme Court, in the case of **Union of India v. H.C. Goel**: AIR 1964 SC 364, has held as under:

“23. In exercising its jurisdiction under Art. 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which dealt with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charges in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not.”

20. In proceedings under Article 226 of the Constitution of India, the court is not required to re-appreciate the evidence on the basis of which finding have been returned in a domestic disciplinary proceeding. Thus, the evidence on the basis of which the Enquiry Committee has found the appellant guilty cannot be re-appreciated in these proceedings. We are not called upon to re-examine the material considered by the Enquiry Committee and the Appeals Committee as all that we are required to examine is whether there was any material on the basis of which the Enquiry Committee could have come to a conclusion that the appellant was guilty of harassing respondent no.5 and whether the required procedure was followed.

21. The respondent no. 1 university has followed the GSCASH Rules which are in accordance with the guidelines issued by the Supreme Court in the case of *Vishakha v. State of Rajasthan* (*supra*). Although, the identities of the witnesses have been concealed in accordance with the GSCASH Rules, nonetheless a copy of their depositions was made available to the appellant and the appellant was given due opportunity to submit questions to the witnesses. The appellant was also given full opportunity to lead evidence in his defence. In the circumstances, the appellant has been afforded adequate opportunity to contest the charges levelled against him and we do not find any error in the decision making process.

22. We are in agreement with the view of the learned Single Judge that there is no perversity in the findings arrived at by the Enquiry Committee

and the Appeals Committee and, thus, we find no ground to interfere with the penalty imposed on the appellant.

23. The second contention raised on behalf of the appellant is that the Registrar was not authorised to impose the penalty on the appellant. This contention is also without merit. Rule VII (i) provides for the report of the Enquiry Committee to be forwarded to the Vice Chancellor for consideration of the appropriate university authorities. The memorandum dated 29.07.2010 issued by the Registrar indicates that the report of the Enquiry Committee dated 19.02.2010 was submitted by the GSCASH Committee to the Vice-Chancellor of the respondent no. 1 university and he had accepted the same. The report of GSCASH Committee having been accepted by the Vice Chancellor, the procedure of Rule VII of the GSCASH Rules has been indisputably complied with. In the present case, the appellant had also preferred an appeal and the report of the Appeals Committee was also accepted by the Vice Chancellor in his capacity as the Chairman of the Executive Council and subsequently by the Executive Council of the respondent no. 1 university at its meeting held on 05.04.2011. It is, thus, indisputable that the penalty imposed on the appellant has been approved by the Vice-Chancellor as well as the Executive Council of the respondent no.1 university. The Registrar of the respondent no. 1 is a “university functionary” as per Rule III(ix) of the GSCASH Rules and there is no infirmity in his acting on behalf of the university for the purposes of the Disciplinary Proceedings. In any view of the matter, the grievance that the penalty has been imposed by the Registrar and not the Vice-Chancellor of the university does not survive as the

decision to impose the major penalty has been affirmed by the Appeals Committee which has the approval of not only the Vice-Chancellor, but also of the Executive Council of the respondent no. 1 university.

24. We find no merits in the present appeal and the same is dismissed without any order as to costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, ACJ

AUGUST 23, 2013
RK/MK

