

GAHC010074732018



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRITPETITION (C) No. 2509/2018

**On the Death of Sabir Ahmed, His
Legal Heirs**

S/O. Maina Mia, Multi Tasking Staff,
Assam University, Silchar, Assam,
788011

1.1: Nazia Begum Laskar,

W/O: Late Sabir Ahmed, R/O:
Ithkhola Ghaniala, Zakir Land Ward
No. 3, House No. 4, P.O. and P.S.
Malugram, Silchar, Dist- Cachar,
Assam

1.2: Sahid Ahmed Laskar,

S/O: Late Sabir Ahmed R/O
Ithkhola Ghaniala, Zakir Land Ward
No. 3, House No. 4, P.O. and P.S.
Malugram, Silchar, Dist- Cachar,
Assam

1.3: Salman Ahmed Laskar,

S/O: Late Sabir Ahmed, R/O
Ithkhola Ghaniala,

Zakir Land Ward No. 3, House No. 4,
P.O. and P.S., Malugram, Silchar,
Dist- Cachar, Assam

.....Petitioners

-Versus-

1. The Assam University,
represented by its Registrar, P.O.
Assam University, Silchar, Assam,
788011

2. The Executive Council,
Assam University, P.O: Assam
University, Silchar, Assam, 788011
represented by the Vice Chancellor,
Assam University

**3. The Internal Complaints
Committee (ICC)** represented by its
Chairperson, Assam University, P.O.
Assam University, Silchar, Assam
788011

4. The Registrar,
Assam University, P.O: Assam
University, Silchar, Assam 788011

.....Respondents

:: BEFORE::

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Petitioner : Mr. M. Dutta, Advocate

For the Respondents : Mr. SC Keyal, Standing
Counsel

Date of Hearing : **05.10.2023**

Date of Judgment : **21.12.2023**

JUDGMENT & ORDER (CAV)

This writ petition was originally filed with a petitioner put into challenge the communication dated 12.02.2018, directing the petitioner to appear before the Internal Complaints Committee of the Assam University based on a complaint lodged by a girl student as well as prayer for setting aside and quashing the order dated 06.04.2018 issued by the Registrar, Assam University imposing a penalty of compulsory retirement with effect from 06.04.2018. The further prayer in the writ petition was for setting aside and quashing the recommendations of the Internal Complaints Committee (hereinafter referred to as "ICC") of the Assam University as well as the resolution No. EC:117:03=18:06.2 of the 117th meeting (Special) of the Executive Council of the Assam University.

2. The petitioner was employed as a Peon in the year 1995 which post was subsequently re-designated as Multitasking Staff (MTC). While he was rendering service as a Multitasking Staff which was a blemish free service career, on 08.02.2018, he was served with a notice dated 08.02.2018 issued by the Registrar, Assam University and he was asked to go on 15 days leave with immediate effect. The said notice was issued on the basis

of a complaint of sexual harassment made by or lodged by a lady student. Thereafter, by communication dated 12.02.2018, the Chairperson of the ICC directed the petitioner to appear before the Internal Complaints Committee (ICC) of the University in response to the complaint made by the girl student. On 12.02.2018 when the petitioner appeared before the ICC, he was informed that there is an allegation against him by the complainant that on 07.02.2018 evening after the University classes were over, the complainant had boarded a private bus in which the petitioner had also boarded and while both were travelling in the bus, the petitioner made physical contact with the lady. The ICC members did not show the complaint lodged by the girl student against the petitioner. The petitioner was asked to explain as to what had happened in respect of the incident alleged. The petitioner stated that he was ignorant about any such incident taking place and he denied that he had done anything as alleged in the complaint. As far as he could recollect, a lady student of the university was also sitting next to him in the bus. It is stated that the petitioner was asked to write that he did not know anything about the incident and that he had not done anything. Upon being directed to put it in writing, the petitioner wrote that he had done nothing and since it was a moving bus and the petitioner and the said student were sitting in adjacent seats, while the bus

took turnings, the petitioner's shoulder might have touched the complainant's shoulder and if that happened, it was unintentional. It is stated that the petitioner was asked to put that in writing and one member of the ICC dictated the petitioner to write it that there was contact with the shoulder of the petitioner with the girl student and that was a mistake. Although a copy of the complaint was sought for, but the same was refused to be handed over to the petitioner by the ICC. Subsequently, by order dated 06.04.2008, issued by the Registrar, Assam University, the petitioner was imposed a penalty of compulsory retirement with effect from 06.04.2018 under Rule 11(vii) of the CCS(CCA) Rules 1965. The said order was stated to have been passed in terms of the resolution No. EC EC:117:03=18:06.2 of the 117th meeting (Special) of the Executive Council of the Assam University.

3. The learned counsel for the petitioner submits that it is the resolution adopted by the ICC as well as by the EC and the impugned order imposing penalty on the basis of the findings of the ICC as approved by the EC, that is a matter of challenge in the present writ petition. The learned counsel for the petitioner submits that to begin with no copy of the complaint was ever served on the petitioner. When he was asked to appear before the ICC, he had appeared and having been denied of being aware of the

incident alleged. However, at the dictates of the member of the ICC, namely one Smti Tuhina Sharma Biswas, the petitioner was forced to write down that while traveling in a moving bus, his shoulder might have contacted the girl student and that was a mistake. The learned counsel for the petitioner submits that the entire process of conducting the enquiry by the ICC is totally opposed to the procedures prescribed under the Sexual Harassment of Women at Workplaces Rules 2013, which is framed under the Sexual Harassment of Women at Workplaces Act 2013. Under Rule 7 of the said Rules, petitioner is entitled to a copy of the complaint within seven (7) working days of the submission of the complaint following which the petitioner is entitled to submit his reply to the complaint within ten (10) days. It is submitted that the petitioner being a Grade-IV employee, he had no knowledge about the procedure prescribed and the consequences it will have. That apart, the major penalty of compulsory retirement was imposed without following the procedure prescribed under Rule 14 which has been violated. The penalty was imposed without any procedure followed. Under such circumstances, the prayer made by the writ petition ought to be allowed. The learned counsel for the petitioner submits that during the pendency of the writ petition, the petitioner expired and subsequently his wife as a legal heir was substituted and the present writ petition is now

being pursued by his wife as a legal heir of the late petitioner. The learned counsel for the petitioner submits that in a recent judgment of the Apex Court rendered in *Dr. Vijayakumaran C.P.V. Vs. Central University of Kerala and Ors*, reported in (2020) 12 SCC 426, the Apex Court had held that once the ICC arrives at a conclusion regarding the allegation alleged, then such complaints ought to be taken to its logical end by not only initiating departmental or regular enquiry as per service Rules but also followed by other actions as per law. In such cases, a regular enquiry or departmental action as per service Rules is also indispensable so as to enable the employee concerned to vindicate his position and establish his innocence. Pressing this judgment into service, the learned counsel for the petitioner submits that the major penalty of compulsory retirement was imposed by the Disciplinary Authority by simply accepting the findings of the ICC and the recommendations made. This is contrary to law as no proper inquiry was held enabling the petitioner to vindicate his position and explain and get all opportunity to defend his case. Under such circumstances, the learned counsel for the petitioner submits that the recommendations arrived at by the ICC is completely contrary to the procedure prescribed under the Act and the Rules of 2013 and consequently the same having been accepted and acted upon by the Disciplinary Authority without taking

recourse to a proper enquiry against the petitioner is violative of natural justice, fair play and to the provisions of law as prescribed. Under such circumstances, the recommendations of the ICC dated 06.04.2018, the acceptance of the recommendation by the EC in its (Special) meeting, by its minutes of the meeting held on 06.04.2018, as well as the impugned order dated 06.04.2018 imposing a penalty of compulsory retirement on the petitioner by the Disciplinary Authority, are incomplete contraventions of the rules and procedures prescribed, as well as the basic principles of natural justice and therefore the same should be interfered with, set aside and quashed as prayed for.

4. Per contra Mr. S.C. Keyal, learned Standing Counsel, Assam University strongly disputes the contentions raised. He submits that the records reveal that although no complaint was served on the petitioner, however, he was shown the complaint and he was given adequate opportunity to explain his position and defend himself against the allegations made. The records reveal that the complainant in graphic details have mentioned the harassment faced at the hands of the petitioner. The learned counsel for the respondent submits that since the complainant is a girl student, perhaps to prevent her identity and not face subsequent harassments in the University campus, the ICC thought it fit not to serve a

copy as it may lead to leakage of the complaint and cause further harassment, already harassed, to the girl student. The learned counsel for the respondent submits that, however, the petitioner was given sufficient opportunity and the copies of the complaint were duly shown to him and it consists of the allegation which has been clearly explained to the petitioner and to which, although he denied initially, he had given a written explanation that while traveling in the moving bus, due to the turnings taken by the bus, there was a possibility of his shoulder having touched the shoulders or shoulder of the lady and that was unintentional and if it did then it was a mistake. The said deposition of the petitioner is dated 17.02.2018 and the same is duly signed by the petitioner. It is further submitted that in the CCA (CCS) Rules, there was a subsequent amendment to the Rules which provided that if the ICC enquiry is conducted, then the Disciplinary authority may accept this Enquiry and impose punishment as per the proviso to Rule 14 (2) of the CCS (CCA) Rules. The learned counsel for the respondent submits that under such circumstances, since the Rules clearly provide that the enquiry and the findings arrived at proviso to the Rule 14 (2) would be sufficient for the Disciplinary authority to impose punishments. The same was imposed on the punishment after the recommendations were placed before the EC and

accepted by the EC in its meeting held on 06.04.2018. The learned counsel for the respondent submits that considering the facts of the case, there was substantial compliance of the procedure prescribed under the provisions of the Act and the Rules. No violation of the principles of natural justice was caused as the petitioner was given sufficient opportunity to explain his conduct and participate in the enquiry proceedings that took place. The petitioner did not choose to examine or cross examine any of the witnesses. Under such circumstances, the findings in the ICC, its acceptance by the ECA and the imposition of punishment of compulsory retirement imposed by the Disciplinary authority is perfectly valid and the same does not call for any interference as submitted by the learned counsel for the respondent. The learned counsel for the respondent submits that similar issue arising out of another University in the State has been decided by Division Bench of this Court. This Court upheld such a procedure adopted by the Disciplinary Authority based on the recommendations of the ICC. The learned counsel for the respondent refers to the Judgment of this Court rendered in *Tezpur University & Ors. Vs. C.S.H.N. Murthy (Dr.)*, reported in 2016 (3) GLT 569.

5. The respondents contest the case by filing their counter affidavit and to which a reply affidavit has also been filed by the petitioner reiterating his contentions in the writ petition.

6. The rival submissions of the learned counsels for the parties have been hard. Pleadings on record have been carefully perused. The judgments cited at the bar have been carefully noted.

7. The Prevention of Sexual Harassment of Women at Workplace Act 2013 has been promulgated in terms of the recommendations/guidelines issued by the Apex Court in the *Vishaka Vs. State of Rajasthan*, reported in (1997) 6 SCC 241. The Act read with the Rules lay down several provisions and defines what a Sexual Harassment of Women at Workplace is.

Under Section 2 defines aggrieved Woman, Internal Committee Sexual Harassment Workplace etc.

Under Section 4 of the Act, an Internal Complaints Committee is to be constituted by the employer, the Presiding Officer of which shall be a woman employed at a senior level at the workplace from amongst the employees.

Under the said Act, the Sexual Harassment of Women at Workplaces (Prevention, Prohibition, Redressal) Rules 2013 have been framed.

Rule 7 lays down the manner of enquiry into the complaint.

Under Rule 11, there is a provision for an appeal.

8. The relevant records of the ICC have also been placed before the Court. In the said records available before the Court, the complaint which was filed by the complainant is available as well as the statements of the other witnesses including the deposition of the petitioner duly signed is also available.

9. In a recent judgment of the Apex Court rendered in *2023 0 INSC 527 (Aureliano Fernandes Vs. State of Goa and Ors)*, the Apex Court has examined the concept, the powers and the procedures prescribed under this legislation. The Apex Court in the authoritative judgment has traced the history of the Act. The case projected by the petitioner therein was that there was a lack of adherence to the procedure prescribed as well as violation of the principles of natural justice. While the Apex Court, after examining the facts and the circumstances involved in the said matter, held that there was no infraction of the rules or violation of the natural justice. However, the Apex Court noticing that the entire proceedings were

conducted with undue haste, the findings were interfered with and the matter was remanded back for a fresh *de-novo* enquiry. While examining the matter, the Apex Court reiterated its earlier findings that while examining an administrative action, the Constitutional Court does not sit as an appellate authority. Its limited function while exercising judicial review is to examine the manner in which the decision assailed was arrived at. The Apex court also examined the provisions regarding the proviso to Rule 14(2) of the CCS (CCA) Rules that permits the ICC Committee to enquire into the complaint of sexual harassment within "as far as practicable" in accordance with the procedure laid down the Rules. While examining the case, the Apex Court found and concluded that the procedure prescribed under the Rules and the Act may not have been strictly followed by the committee. But what was not in dispute is that all the complaints received from time to time and the depositions of the complaints were disclosed to the appellant therein. The appellant therein was therefore well aware of the nature of the allegations leveled against him. It was held that not only was the material proposed to be used against him before the enquiry furnished, he was also called upon to explain the said material by submitting a reply and furnishing list of witnesses which he did.

10. In *Dr. Vijayakumaran C.P.V. (Supra)*, the Apex Court while examining a case assailing the order of termination issued on the basis based on the report of Internal Complaints Committee while accepting that the Internal Complaints Committee is mandated to enquire into the allegations of the complaints in terms of the provisions of the Act. But where the Internal Complaints Committee has returned a finding of sexual harassment alleged, then it is held by the Apex court that such complaints ought to be taken to its logical end by not only initiating departmental or regular enquiry as per the service Rules but also followed by the other actions as per law. In such cases, a regular enquiry or departmental action as per the service Rules is also indispensable as to enable the employee concern to vindicate his position and establish his innocence.

11. In *Tezpur University (Supra)*, a Division Bench of this Court while examining a matter pertaining to the allegation of sexual harassment, relying on the various Judgments rendered by the Apex Court declined to interfere with the order of penalty imposed therein. The Division Bench had also noted the amendments carried out in the proviso to Rule 14 (2) of the CCS (CCA) Rules. On the facts of that case the Division Bench found that the Enquiry Officer had conducted the proceedings in a fair manner, giving

full opportunity to the respondent therein and the findings reflected in the report are also recorded on the basis of cogent evidence on record.

12. Having noticed the Judgments of the Apex Court as well as of this Court and also upon due perusal of the records available, it is seen that in the present case, although the complaint lodged against the petitioner was not served as required under the Rules. The nature and the allegation made in the complaint were duly intimated to the petitioner which has not been denied. The petitioner had also in his deposition recorded that the episode of his shoulder touching the body of the girl student, while traveling together in a moving bus, is a mistake. Such categorical statement recorded and duly signed upon by the petitioner reflects that such categorical statement of the petitioner cannot be construed to be a clear denial. The averments made in the writ petition that the said statement or deposition was written and signed at the dictate of a member of the ICC, is also a bald allegation as the said member who has been named in the pleadings, namely Mrs. Tuhina Sarma Biswa, has not been arrayed as a party respondent. None of the members of the ICC have been arrayed as party respondents. The primary ground of challenge by the petitioner is that the Rules prescribed under the Sexual Harassment of Women at Workplaces Rules have been violated by not serving him a

complaint cannot be held to be a sufficient ground to return a finding that the conclusions and recommendations of the ICC are contrary to the provision. There is no material before the Court to suggest that pursuant to the deposition or statement given by the petitioner, opportunities were sought for by the petitioner to cross examine the other witnesses or question the veracity of any documents that have been relied upon. There is no averment in the writ petition nor are there any applications or representations found in the original records preferred. Consequently, as held by the Apex Court in *Aureliano Fernandes (Supra)*, although the enquiry conducted by the ICC may not have been strictly as per the provisions of the Act and the Rules, natural justice has not been found to be violated. There are substantial compliances of the other provisions enabling the petitioner to be apprised of the allegations against him as well as giving him opportunity to rebut the same along with any documents or witnesses that he may have. As submitted by the respondents that the University does not have a separate Rules or Regulations governing the service conditions and as such, it is the CCA (CCS) Rules which govern the service conditions of the employees including the petitioner. The CCA (CCS) Rules lay down a procedure in the manner as to how penalties are to be imposed. Proviso to Rule 14 (2) CCS(CCA) Rules provide that where the

ICC conducts an enquiry, the same may be used as a purpose for the Disciplinary Authority to impose further punishments as may be prescribed under law. Placing reliance on these Rules, the University placed the recommendations before the EC, which was accepted by its minutes of the meeting held on 06.04.2018, and consequently, the Disciplinary Authority, thereafter, passed imposed the punishment of compulsory retirement on the petitioner. Therefore, it cannot be said that the procedure adopted by the Disciplinary Authority imposing the punishment of penalty of compulsory retirement on the petitioner is contrary to the procedure prescribed.

13. However, in view of the Judgment of the Apex Court, it is now necessary that where major penalty is required to be imposed, a regular enquiry where the conclusions are arrived at by the ICC confirming the charges or the allegations against the delinquent employee are proved, is necessary to be resorted to by the Disciplinary Authority before imposing required punishment as prescribed under the Rules. In view of the findings of the Apex Court rendered in *Dr. Vijayakumaran C.P.V. (Supra)*, ordinarily the matter could have been remanded to the authority for conducting an enquiry as prescribed under the provisions of the Service Rules or the CCA(CCS) Rules as adopted by the University.

14. However, in the peculiar facts and circumstances of the case, the petitioner having expired during the pendency of the writ petition and the writ petition being presently pursued by his wife as a legal heir pursuant to the order dated 27.06.2023 passed in I.A.(Civil) No. 1666/2023, substituting her in place of her late husband, no useful purpose will be served by remitting the matter back to the authorities to proceed on a formal enquiry under the rules as held by the Apex Court. The wife of the late petitioner was not a witness to the incident alleged. There are no averment in the writ petition to the effect that there was evidence available with her or that that she has knowledge of such witnesses who are willing to depose in favor of the late husband and which documents or witnesses were required to be duly and carefully examined by the authorities concerned.

15. Considering all of the above, this Court is of the view that since this Court has come to a conclusion that the ICC had conducted the enquiry by substantially complying with the rules prescribed and in view of the peculiar fact and circumstances that the husband of the petitioner also expired, this Court does not find it a fit case to exercise its power under Article 226 by issuing a writ and remanding the matter back to the authorities for a fresh enquiry.

16. In view of all the above discussions, this Court is not inclined to entertain the prayers made in the present writ petition.

17. The writ petition accordingly stands dismissed. No order is to cost.

18. Interim orders, if any, stand vacated.

19. Pending I.As are also dismissed. Original records as placed before the Court by the learned Standing Council, Assam University are returned back to the Standing Counsel.

JUDGE

Comparing Assistant