

GAHC010213452015



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6372/2015

PROF. MAGUNI CHARAN BEHRA
S/O- LT. ANANTA BEHRA, PRESENT R/O- S.E. BUILDING, COLLEGE ROAD,
KHELMATI, P.O.- N. LAKHIMPUR, PIN- 787001, DIST.- LAKHIMPUR, ASSAM.
PERMANENT R/O VILL.- BAIKUNTHAPUR, P.O.- BRAHAMANI GAON, P.S.-
BAHUDENPUR, DIST.- BHADRAK, ODHISA, PIN- 756165.

VERSUS

THE VICE CHANCELLOR, RAJIB GANDHI UNIVERSITY and ANR
RONO HILLS, DIOMUKH, ITANAGAR, ARUNACHAL PRADESH, PIN- 791112.

2:THE REGISTRAR
RAJIB GANDHI UNIVERSITY
RONO HILLS
DIOMUKH
ITANAGAR
ARUNACHAL PRADESH
PIN- 791112

Advocate for the Petitioner : MR.S SHARMA

Advocate for the Respondent : MR. S K DEORI (SC, RAJIV GANDHI UNIVERSITY)

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 25.04.2023

Heard Ms S G Baruah, learned counsel for the petitioner and Mr S K Deori,

learned counsel for the respondent.

2. The case of the petitioner is that while acting as a Director of Arunachal Institute of Tribal Studies of Rajiv Gandhi University, he was accused of molestation and sexual harassment of a female research student and accordingly, the petitioner was put under suspension and a show cause notice dated 10.10.2013 was issued for initiating the departmental proceeding against the petitioner. On similar allegations, Itanagar Women PS Case No. 57 of 2013 was registered under Sections 354/342 of the IPC, which was tried as GR Case No. 432 of 2013. Initially, in respect of the departmental proceeding, a three-member inquiry committee was constituted vide notification dated 18.10.2013. The three-member inquiry committee had submitted its report, with finding to the effect that the petitioner was guilty of committing sexual harassment and molestation. It is projected that thereafter the Executive Council of Rajiv Gandhi University vide resolution taken in a meeting dated 19.03.2014, decided to constitute a one-man inquiry committee and accordingly, a one man inquiry committee was constituted of Shri Raksap Yomcha, IPS (Retired) to enquire into the allegations as per memorandum and articles of charges. In the meanwhile, in the departmental proceeding, charges were framed against the petitioner and as criminal trial was also going on, the petitioner has approached this Court by filing this writ petition under Article 226 of the Constitution of India, and has prayed for declaring the departmental proceeding initiated consequent upon the show-cause notice dated 10.10.2013, to be illegal, improper, invalid non-est and void-ab initio and to set aside the said departmental proceeding.

3. Upon a query of the Court, it has been submitted at the Bar by the learned counsel for the petitioner that in the criminal trial, the stage of defence witness

is over and the case is now fixed for final argument.

4. The learned counsel for the petitioner has also questioned the constitution of the one-man inquiry committee and in this regard the learned counsel for the respondent had submitted that the three member inquiry committee in its finding had, *prima facie*, found the petitioner guilty of committing sexual harassment and molestation. Nonetheless, the decision of the 13th Executive Council of the Rajiv Gandhi University resolution No. EC:13:12, Shri Raksap Yomcha, IPS (Retired), former DIGP, was appointed as the One-Man Inquiry Committee to conduct the inquiry against the petitioner. It was submitted by the learned counsel for the respondents that after the commencement of the inquiry, the Presenting Officer had sent summons to the petitioner on 10.05.2014, 21.05.2014, 05.06.2014, 18.06.2014 by e-mail and on 09.07.2014 via SMS from his mobile and as the petitioner did not turn up and did not raise any question against the constitution of one-man inquiry committee before 05.07.2014, the objection dated 05.07.2014 raised by the petitioner was rejected having been made after two months after the constitution of the one-man inquiry committee on 30.04.2014.

5. It appears from the memorandum of charges served on the petitioner that the said memorandum was issued on 15.10.2013, which was accompanied with the statement of articles of charges. Therefore, it is apparent that after service of memorandum of charges dated 15.10.2013 upon the petitioner, the three-member inquiry committee was constituted vide notification dated 18.10.2013. However, after the three-member inquiry committee had submitted its report, the Executive Council of the Rajiv Gandhi University took a resolution in its 13th Executive Council meeting held on 19.03.2014 to appoint a one-man inquiry

committee. Accordingly, a one-man committee was constituted vide order no. ET/PF-060/MCB/95 (Vol.II) dated 30.04.2014. It may be mentioned that in the minutes of the 14th Executive Council Meeting held on 14.07.2015 at Pg. 131, the date of order no. ET/PF-060/MCB/95 (Vol.II) is mentioned as 30.04.2014, but in the letter dated 18.07.2014 issued by the Registrar I/C of the Rajiv Gandhi University, the date of said order is mentioned as 01.05.2014.

6. The Court finds that the composition of the local committee to make inquiry against the conduct of the petitioner is not in accordance with Section 7 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The respondent has not been able to show from their acts and statutes that it was permissible for by the University authorities to constitute a one-man inquiry committee after the three-member inquiry committee submitted its report. Moreover, the respondent has not been able to bring anything on record to show that how the inquiry against the petitioner could be ordered thrice, first in the disciplinary proceeding that has been initiated by service of memorandum dated 15.10.2013 on the same set of allegation, second inquiry by the Three Member Committee regarding sexual harassment of woman was ordered vide notification dated 18.10.2013, i.e. after service of memorandum of charges dated 15.10.2013, as indicated hereinbefore, and thirdly, by a one-member inquiry committee constituted vide notification No. ET/PF-060/MCB/95 (Vol. II) dated 30.04.2014/ 01.05.2014.

7. It is not in dispute that the disciplinary proceeding was instituted earlier and the inquiry committee was constituted thereafter. Therefore, the petitioner has been able to demonstrate that he had suffered prejudice as there was every likelihood that the inquiry regarding alleged sexual harassment which was

ordered later in point of time had the potential of being referred to in the department proceeding instituted vide memorandum dated 15.10.2013. The petitioner has also been able to demonstrate that he had suffered prejudice because the constitution of the local committee of inquiry is not constituted in accordance with Section 7 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The respondent has not been able to show that they had constituted a local committee in terms of Section 7 of the said Act. In this case in hand, the inquiry has been conducted by a committee specifically constituted for the case of the petitioner. One of the allegation of the petitioner is to the effect that the one-man inquiry committee was constituted of a person, who was drawing a pay of scale lower to the petitioner. Accordingly, the Court finds that as the one-man inquiry committee had not been constituted as per the statutory requirement of Section 7 of the said 2013 Act. Moreover, to have a one-man committee constituted of a person, who draws lower scale of pay than the petitioner, has definitely prejudiced the petitioner. The petitioner has been able to show that the enquiry report by a three member committee was not discarded and as the Three-member Enquiry Committee had held the petitioner guilty, the subsequent inquiry ordered by a one-man committee would be hit by the principles of double jeopardy as envisaged under Article 20(2) of the Constitution of India as the petitioner has been subjected to a fresh prosecution for same offence.

8. Under such circumstances, the Court is inclined to hold as follows:-

- a) That as the criminal trial is at the stage of argument with the prosecution evidence and defence evidence being closed, the petitioner will not suffer any prejudice if the departmental proceeding

is allowed to proceed.

- b) That the Court is inclined to specifically direct that in the departmental proceeding, which would now commence from the stage it has been stayed, reliance cannot be placed on the inquiry report by the three-member and/ or one-member inquiry committee, as the said two committees were constituted after initiation of the departmental proceeding vide memorandum dated 15.10.2013.
- c) As the inquiry report by the three-member committee has not been set aside by the Executive Council of the Rajiv Gandhi University, it would be open to the respondent authorities to take the said matter to its logical conclusion. This is because it could not be shown that the University Act, Statute, Ordinance, etc. as it stands today, has empowered the Executive Council to constitute a One-man committee without setting aside the finding given in the report of the three-man committee constituted to inquire into allegation of sexual harassment of women.

9. It may be mentioned that the learned counsel for the petitioner as well as the learned counsel for the respondent has placed reliance on the case of *Captain M. Paul Anthony – Vs- Bharat Gold Mines Ltd. & Another*; reported in (1999) 3 SCC 679. There is no necessity to discuss the said decision because in the meanwhile, the stage of defence evidence of the criminal trial is already over, for which the petitioner would not suffer prejudice, if the departmental proceeding is allowed to resume.

10. The writ petition stands allowed to the extent as indicated above.

11. There would be no order as to cost.

JUDGE

Comparing Assistant