



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

Case No. : WP(C)/233/2024

Dr. Philip Modi
Son of Late Tembo Modi,
resident of RGU Campus,
Rono Hills Doimukh,
PO and PS Doimukh,
Papumpare District,
Arunachal Pradesh

VERSUS

The Union of India and 3 Ors
represented by the Secretary,
University Grant Commission,
Ministry of Human Resources

2:The Vice Chancellor cum Chairman Executive Council
Age: 0
Occupation :
Rajiv Gandhi University
Rono Hills Doimukh
Papumpare District
Arunachal Pradesh

3:The Registrar
Age: 0
Occupation :
Rajiv Gandhi University
Rono Hills Doimukh
Papumpare District
Arunachal Pradesh

4:The Inquiry Officer
Age: 0
Occupation :
Rajiv Gandhi University
Rono Hills Doimukh
Papumpare District
Arunachal Pradesh

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : Marto Kato, Dy.S.G.I.
Tamar Gadi SC RGU

BEFORE
HONBLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

Date : 19-06-2024

Heard Mr. Tadup Tana Tara, learned counsel for the petitioner and Mr. Marto Kato, learned Dy.S.G.I. appearing for the respondent No. 1. Also heard Mr. Tamar Gadi, learned standing counsel for the Rajiv Gandhi University appearing for respondent Nos. 2 to 4.

2. Petitioner is an Associate Professor in the Department of Commerce at Rajiv Gandhi University (RGU, in short), Arunachal Pradesh and resides in an allotted Quarter of said University. Informant Smti Kekom Lombi on 25.09.2023 filed an FIR before the Women Police Station Itanagar, alleging that on 24.09.2023, between 04:00 PM to 05:00 PM while her minor daughter, aged about six years visited the house of the petitioner to play with the daughter of the petitioner and when she was playing with his daughter, her friend, at his house, she was called to his room, wherein the petitioner undressed the complainant's minor daughter, touched and licked her private part.

3. After filing the said FIR, Itanagar Women Police Station Case No. 93/2023 under Section 376 of the IPC read with Section 4 of the POCSO Act was registered against the petitioner and he was arrested on 25.09.2023 itself. Since he was detained in custody for more than 48 hours, the authorities of the RGU by its order, dated 29.09.2023, suspended the petitioner from service directing him not to leave the Headquarters of said University without obtaining prior permission of the competent authority.

4. After investigating the case, the police on 21.12.2023, vide No. 156/2023, submitted the charge-sheet in Itanagar Women Police Station Case No. 93/2023 with the charge under Section 376 of IPC read with Section 4 of the POCSO Act against the petitioner. Accordingly, POCSO Case No. 02/2024 was registered in the Court of Special Judge (POCSO), Papum Pare District, Arunachal Pradesh at Yupia arising out of said Itanagar Women Police Station Case No. 93/2023 and 20.06.2024 is the date fixed for consideration of charge in the said POCSO Case.

5. It is to be noted herein that subsequently, learned Special Judge (POCSO), Papum Pare District granted bail to the petitioner in said POCSO Case No. 02/2024.

6. During pendency of said POCSO Case No. 02/2024 before the learned Special Judge (POCSO), Papum Pare District; the respondent university, on 14.04.2024, issued Memorandum of Charge to the petitioner with the following article:

“That the petitioner committed sexual assault upon a minor girl (daughter of Rinching Tsering and Kekyllom Lombi) on 24.09.2023 inside the premises of RGU.”

7. Along with the said Memorandum of Charge dated 14.04.2024, the respondent university have also incorporated the statement of the imputations of misconduct or misbehaviour in support of the article of charge framed against the petitioner as well as the list of documents and the list of witnesses, proposed

during the said inquiry as Annexures - II, III and IV, directing him to submit his reply, if any, within 10 days from the receipt of the said Memorandum of Charge dated 14.04.2024.

8. On receipt of said Memorandum of Charge from the respondent university, the petitioner, on 17.04.2024, submitted his written reply, denying the allegation levelled against him relating to the incident involved in the case.

9. The petitioner on 03.06.2024 also filed a representation before the Registrar of the respondent university to suspend/stay the Departmental Inquiry initiated against him on 14.04.2024 till the conclusion of the Trial of said POCSO Case No. 02/2024, pending before the Special Judge (POCSO), Papum Pare District, Arunachal Pradesh stating that the criminal action relating to said POCSO Case No. 02/2024 against him as well as the disciplinary proceeding initiated by the respondent University against him are on same set of facts and grounds. In that regard the petitioner in his said representation dated 03.06.2024 citing the decisions of the Hon'ble Supreme Court in the cases of *Kushewar Dubey Vs. M/s. Bharat Coking Coal Ltd. and Others*, reported in (1988) 4 SCC 319 as well as in the case of *Captain M. Paul Anthony Vs. Bharat Cold Mines Ltd. and Another* reported in (1999) 3 SCC 679, submitted before the respondent University that since both the criminal action and the disciplinary proceeding against him are grounded upon the same set of facts, therefore, the disciplinary proceeding initiated against him by the respondent University should be stayed.

10. As the respondent University did not reply to his said representation of dated 03.06.2024, the petitioner has filed this writ petition on 14.06.2024, praying amongst others for a direction to the respondent RGU to set aside and quash the operation of the impugned Departmental Inquiry initiated against him by issuing the Memorandum of Charge dated 14.04.2024 and further prayed for direction that

the respondent University shall not proceed with the said departmental proceeding initiated against him till the conclusion of the regular criminal Trial of said POCSO Case No. 02/2024 arising out of Itanagar Women Police Station Case No. 93/2023 pending before the learned Special Judge (POCSO), Papum Pare District, Yupia, Arunachal Pradesh.

11. Relying on the decisions of the Hon'ble Supreme Court in the cases of *Kushewar Dubey* (supra) as well as *Captain M. Paul Anthony* (supra) and a decision of a co-ordinate Bench of this Court in the case of *Lalit Kumar Singh Vs. Arunachal Pradesh Rural Bank and Others* reported in *2022 (2) GLT 184*, Mr. T. T. Tara, learned counsel for the petitioner has submitted that since the departmental proceeding initiated against the petitioner by the respondent RGU issuing the Memorandum of Charge on 14.04.2024 as well as the criminal case against him, i.e., POCSO Case No. 02/2024 pending before the learned Special Judge (POCSO), Papum Pare District, are based on identical and similar facts and that charges in said criminal case against the petitioner are grave in nature, therefore, the disciplinary proceeding initiated against the petitioner by the respondent University needs to be interfered with by this Court.

12. While the matter was taken up for Motion on 17.06.2024, during its deliberation, Mr. T. Gadi, learned standing counsel for the respondent University apprised the Court that pursuant to the disciplinary proceeding initiated against the petitioner vide the Memorandum of Charge dated 14.04.2024, the concerned Inquiry Officer has already submitted the Inquiry Report before disciplinary authority of the University. As such on 17.06.2024, the respondent university was directed to apprise the Court as to when the petitioner appeared before the concerned Inquiry Officer and as to when the Inquiry Officer submitted the inquiry report before the disciplinary authority of the respondent University and fixed the

matter today.

13. Mr. Gadi, learned standing counsel for the respondent university today placed before the Court that after receipt of notice on 13.05.2024 from the Inquiry Officer, the petitioner appeared before the said authority on 16.05.2024 in the hearing of the said inquiry and on the said date the statements of the petitioner as well as other witness including the victim and informant were also recorded by the Inquiry Officer in presence of the petitioner.

14. It is also placed before the Court by Mr. Gadi, learned standing counsel for the respondent University that on 22.05.2024, the Inquiry Officer directed the petitioner to submit the written response within a period of 24 hours from the date of receipt of the said communication, asking him to response the following queries:

- (i) Whether the incident of the alleged sexual assault and molestation of a minor child mentioned in FIR by Smti. Kekyllombi happened in the accommodation/quarter allotted in your name by the University within the premisses of Rajiv Gandhi University?*
- (ii) Whether a written FIR, dated 25.09.2023 filed against you in the Police Station, Doimukh for molestation of a minor child has defamed the reputation and sanctity of the lone Central University in the State?*

15. Mr. Gadi on behalf of the respondent University submitted that though the petitioner received the said communication dated 22.05.2024 of the Inquiry Officer on the same date itself, but the authorities concerned neither received any communication nor written reply from the petitioner with regard to those queries. Mr. Gadi further stated that the Inquiry Officer on 30.05.2024 submitted its Inquiry Report before the authority concerned of the respondent University and that on 14.06.2024 the University's Executive Council accepted the said Inquiry Report of the Inquiry Officer submitted on 30.05.2024 pertaining to the allegation of sexual assault, harassment and molestation of the minor child by the petitioner and that

the matter is now pending for obtaining legal opinion by the University regarding imposition of major penalties upon the petitioner as per the relevant Rules of Central Civil Services (Classification Contral and Appeal) Rules, 1965 as applicable.

16. To that extent, Mr. Gadi, placed before the Court copies of the (i) Notification dated 25.03.2024 of the Registrar of the University regarding appointment of the Inquiry Officer as well as the Presenting Authority, pertaining to the disciplinary inquiry initiated against the petitioner by the respondent University, (ii) receipt of the letter dated 13.05.2024 by the petitioner from the Inquiry Officer regarding hearing of the inquiry on 16.05.2024, (iii) communication dated 22.05.2024 issued by the Inquiry Officer, received by the petitioner on 22.05.2024, (iv) Inquiry Committee Report dated 30.05.2024 and (v) Minutes of the 58th Executive Council Meeting of the respondent University held on 14.06.2024 regarding consideration of the report submitted by the said Inquiry Committee on 30.05.2024 with regard to allegation of sexual assault, harassmtent and molestation of a minor child by the petitioner.

17. It is seen that the petitioner in this petition is totally silent regarding receipt of hearing notice of the disciplinary inquiry dated 13.05.2024 and his appearance as well as participation in the said hearing on 16.05.2024 before the Inquiry Officer in the disciplinary inquiry initiated against him on 16.04.2024 and the petitioner suppressed those facts before the Court.

18. Since the disciplinary inquiry against the petitioner with regard to the Memorandum of Charge dated 14.04.2024, issued by the respondent University pertaining to allegation of sexual assault, harassmtent and molestation of the minor child on 24.09.2023 in the allotted quarter of the respondent university is already over and during hearing of the inquiry on 16.05.2024, the petitioner did not object regarding such inquiry before the Inquiry Officer pertaining to the Memorandum of

Charge, dated 14.04.2024, issued by the respondent University, the prayer of the petitioner to set aside and quash the said departmental inquiry initiated on 14.04.2024 and not to proceed with the departmental proceeding initiated against him on the basis of the said Memorandum of Charge, dated 14.04.2024, cannot be considered at this stage.

19. It is also seen that in said POCSO Case No. 02/2024, prosecution evidence is yet to be recorded and from the Charge-sheet dated 21.12.2023 filed in the said Case, we have seen that there are altogether 14 named prosecution witnesses including the informant, the victim, daughters of the petitioner, wife of the petitioner and others. From the inquiry report place by Mr. Gadi, learned standing counsel for the respondent University it is seen that the Inquiry Officer on 16.05.2024 recorded the statements of the informant, her husband, their minor victim, both the daughters of the petitioner, the petitioner himself, his wife, his two neighbours and also a professor from the Department of Commerce of the said University and all such recording of statement of the witnesses were made in presence of the petitioner, without his objection.

20. It is will settled that the proceedings in criminal case as well as in disciplinary proceeding against an incumbent/employee are two different propositions. In the Court of law with regard to the criminal trial, barring a few Acts, as settled, it is the burden on the State to prove beyond all reasonable doubt; whereas in service law in case with disciplinary proceeding, it is preponderance of the probabilities.

21. Considering the entire facts and circumstances stated above, the Court is of the view that the propositions of law laid down by the Hon'ble Apex Court in the cases of *Kushewar Dubey* (supra) as well as *Captain M. Paul Anthony* (supra) will not be applicable in the present case since the petitioner without any objection already appeared before the Inquiry Officer on 16.05.2024 in the disciplinary

inquiry that was initiated against him by the respondent University pursuant to the Memorandum of Charge, dated 14.04.2024, whereas the petitioner only on 03.06.2024 has submitted his representation before the respondent University, much after the hearing/inquiry that took place on 16.05.2024, noted above, in which he participated before the Inquiry Officer without any objection and that the Inquiry Report dated 30.05.2024 that was already submitted by the Inquiry Committee has already been accepted by the Executive Council of the respondent University on 14.06.2024.

22. For the reasons above, this writ petition being devoid of merits, stands dismissed.

23. Needless to say that in the event the respondent University, contemplates to take any action upon the petitioner on the basis of the Inquiry Report dated on 30.05.2024 in pursuance of the disciplinary inquiry initiated against him pertaining to the Memorandum of Charge dated 14.04.2024, noted above, then the respondent University shall follow the relevant procedure as per CCS (CCA) Rules, 1965 as applicable.

JUDGE

Comparing Assistant