

GAHC040001382024



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

Case No. : WP(C)/456/2023

Smti Mishimbu
Age: 47
Occupation :
Address:R/o Mohanbari
P.O / P.S Mohanbari
District Dibrugarh
Assam
Phone No. 7005415609

VERSUS

The State of AP and 4 Others
Address:represented by the Secretary to the Government of Arunachal Pradesh
Department of Food and Civil Supplies
Block No. 03
room no. 02. 1st Floor
Civil Secretariat
Itanaga 791111

2:The Director Food and Civil Supplies
Address:Arunachal pradesh
Naharlagun- 791110

3:The Joint Director of Food and Civil Supplies-cum-Additional Resident
Commissioner
Address:Government of Arunachal Pradesh
Mohanbari-786012

4:The Internal Complaints Committee
Address:Department of Food and Civil Supplies
Government of Arunachal Pradesh

Civil Secretariat
Itanagar- 791111

5:Shri Feroj Modi
Address:Joint Director of Food and Civil Supplies
Directorate (HQ) Department of Food and Civil Supplies Government of Arunachal
Pradesh
- 791111

Advocate for the Petitioner : Mr. T. Garam

Advocate for the Respondent: Mr. R.H. Nabam(AAG)
Nos. 1 to 4 Ms. P. Pangu

Advocate for the Respondents: Mr. C. Modi
No. 5

**BEFORE
HONBLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

Date : 13.05.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. T. Garam, learned counsel for the petitioner. Also heard Mr. R. H. Nabam, learned Additional Advocate General assisted by Ms. P. Pangu, learned Government Advocate for the respondent Nos. 1, 2, 3 and 4 and Mr. C. Modi, learned counsel for the respondent No. 5.

2. The petitioner is an employee under the Department of Food and Civil Supplies, Government of Arunachal Pradesh at Mohanbari. The State of Arunachal Pradesh, the Director, Food and Civil Supplies, the Joint Director of Food and Civil Supplies-cum-Additional Resident Commissioner, the Internal

Complaints Committee of the same Department are arrayed as respondent Nos. 1, 2, 3 and 4.

3. The petitioner has filed this application under Section 226 of the Constitution of India for issuance of a writ in the nature of Certiorari or Mandamus or any other appropriate writ with a direction to set aside and quash the impugned order of transfer dated 07.08.2023 whereby the petitioner was transferred from the Office of ARC, Mohanbari to the Lower Dibang Valley, Roing. Vide order of transfer dated 11.08.2021 the petitioner was posted at DRC, Mohanbari and she was also In-Charge as the Drawal and Disbursement Officer (DDO for short) at Mohanbari vide order dated 27.04.2022. Meanwhile, the respondent No. 5 vide order dated 11.01.2022 took charge as Joint Director of Food & Civil Supplies-cum-Additional Resident Commissioner (ARC for short) at Mohanbari.

4. It is averred by the petitioner that the respondent No. 5 made several inappropriate advances towards the petitioner. The petitioner avoided the advances. However, to wreak vengeance, the respondent No. 5 who was unsuccessful in his pursuit to harass the petitioner stopped allotting any work to the petitioner. Works were assigned to the employees who were junior to the petitioner, which resulted in the immense mental agony of the petitioner. The petitioner was hesitant to proceed with any formal complaints against the respondent No. 5, who was her senior.

5. It is further contended that vide order dated 21.04.2023, the petitioner was

directed to hand over the charges of the DDO to the respondent No. 5 to avenge the resistance of the petitioner towards his indecent advances. As the order was issued with *malafide* intent, the petitioner did not hand over the charges of DDO but, vide order dated 26.04.2023 the respondent No. 5 through an ex-parte order took over the charges from the petitioner as the DDO. Annexure – D and E are the orders dated 21.04.2023 and 26.04.2023.

6. It is further contended that as the respondent No. 5 ceaselessly pursued with his indecent proposal, the petitioner who was suffering from such harassment, filed a complaint before the Internal Complaints Committee constituted under Section 4 of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* (hereinafter referred to as the Act of 2013). The said Committee intimated the respondent No. 5 regarding the complaint filed by the petitioner on 25.05.2023 (Annexure-G). Meeting was held and the enquiry was conducted. As the petitioner did not reciprocate to the advances made by the respondent No. 5, she was kept out of all important official work.

7. Meanwhile, the petitioner took medical leave and was granted leave vide order dated 31.07.2023. Surprisingly, while the petitioner was still on leave, the respondent authorities issued the impugned order dated 07.08.2023 through which the petitioner was transferred from Mohanbari to Lower Dibang Valley, Roing as District Food and Civil Supplies Officer and the respondent No. 5 was transferred from Mohanbari to the Directorate Headquarter, Naharlagun (Annexure-J). It is contended that the order of transfer was illegal and is in

violation of the Office Memorandum dated 09.09.2016, which is marked as Annexure-K.

8. The learned counsel for the petitioner has submitted that the Annexure-K i.e. the Office Memorandum dated 09.09.2016 clearly reflects that:

“3. Further, to ensure fair inquiry, Ministries/Departments may also consider transferring the suspect officer/ charges officer to another office to obviate any risk of that officer using the authority of his office to influence the proceedings of the Complaints Committee.”

9. It is also submitted by the learned counsel for the petitioner that the impugned action is also in violation of the Section 12 of the Act of 2013. The impugned action is also in violation of the rights of the petitioner guaranteed by Articles 14 and 16 of the Constitution of India. Thus, this Court can exercise its extraordinary power under Article 226 of the Constitution of India.

10. The petitioner's order of transfer has been stayed by this Court vide order dated 21.09.2023 and the petitioner is at present posted at Mohanbari. It is prayed by the petitioner that the impugned order of transfer dated 07.08.2023 be quashed and set aside.

11. Per contra, respondent No.2 and 5 have filed affidavits-in-opposition refuting the averments of the petitioner. The respondent No. 5 has stoutly denied having subjected the petitioner to sexual harassment at work place. It is

also submitted that the petitioner has not come with clean hands. The petitioner was already released vide order dated 05.09.2023, in pursuant to the order dated 11.08.2023, but the petitioner without challenging the order dated 11.08.2023, has approached this Court in a surreptitious manner, concealing the order dated 11.08.2023.

12. Both the respondents No.2 and 5 have submitted that as soon as the petitioner lodged complaint dated 01.05.2023, Internal Complaint Committee (ICC) was constituted. It is also admitted that indeed the respondent No.5, took charge as regular Joint Director, Food and Civil Supplies-cum-Additional Resident Commissioner, Government of Arunachal Pradesh, (JD.FCS-cum-ARC), joined on 03.04.2023 at Mohanbari in the interest of public service. The respondent No.5, appeared before the Internal Complaint Committee (ICC) and proceedings were conducted by the Internal Complaint Committee (ICC). Finally, the Internal Complaint Committee (ICC) submitted its report on 19.12.2023. The report of the Internal Complaint Committee (ICC) is marked as Annexure-11 of the Interlocutory Application (C) 175(AP)/2023. It is submitted that the respondent No.5 has come out clean as Internal Complaint Committee (ICC) has exonerated him from the charges by the complainant. It is fairly admitted that no written request was made by the aggrieved woman to the ICC or the Local Committee for transfer. It is also admitted that during medical leave of the petitioner, the transfer order was issued. However, it is contended that as the petitioner did not cooperate with her duties, the ex-parte order for taking over charge of Drawing and Disbursement Officer (DDO) was issued by the respondent No.5.

13. It is contended by the respondents that the common order of transfer has been misconstrued by the petitioner. It is admitted that the respondent No.5 was transferred from Mohanbari to his present place of posting in order to facilitate an inquiry on allegation of sexual harassment to the petitioner, but the transfer of the petitioner was a routine transfer according to the Transfer and Posting Policies of the respondent authorities. At present, when the respondent No.5 has been exonerated of the charges levelled against him by the petitioner, this petition has become infructuous and the respondents have prayed to dismiss the petition.

14. I have considered the submissions at bar with circumspection. I have considered the submission that the respondent No.5 has been exonerated from the charges of sexual harassment at work place but it cannot be ignored that the petitioner was transferred out of turn and in violation of the provision of Section 12(1) of the Act of 2013. It is also true that while the petitioner was on medical leave, the order of transfer dated 07.08.2023 was issued as there was an enquiry going on, regarding the allegation of sexual harassment. It was in that context, the impugned order was issued by the Secretary of Food and Civil Supplies.

15. Assailing the said order, the learned counsel for the petitioner has relied on the decision of Hon'ble the Supreme Court in ***Chandrabhai K. Bhoir and Others versus Krishna Arjun Bhoir and Others***, reported in ***(2009) 2 SCC 315***, wherein it was held and observed that;

“26. Thus, the said issue, in our opinion, did not attain finality. In any view of

the matter, an order passed without jurisdiction would be a nullity. It will be a coram non judice. It is non est in the eye of the law. Principles of res judicata would not apply to such cases. (See Chief Justice of A.P. v. L.V.A Dixitulu, Union of India v. Pramod Gupta and National Institute of Technology v. Niraj Kumar Singh.)”

16. Reverting back to the instant case, it is apparent that the petitioner did not make any such request for recommendation of transfer by Internal Committee or the Local Committee. The learned counsel for the petitioner has drawn the attention of this Court to the Office Memorandum dated 09.09.2016.

17. Learned counsel for the petitioner has also submitted that the Annexure-J of the petition clearly reflects that the order of the transfer was passed subsequent upon the ongoing inquiry of alleged sexual harassment case between the petitioner and the respondent No.5.

18. Learned Additional Advocate General, Mr. R. H. Nabam has submitted that order of transfer was passed during the inquiry proceeding only to facilitate fair inquiry. It is also submitted that at present, when the inquiry is complete and respondent No.5 has been exonerated, the grievance of the petitioner has become infructuous.

19. In view of the forgoing discussion, it is hereby held that the order dated 07.08.2023, was passed dehors Section 12 of the Act of 2013. In the light of the decision of Hon'ble the Supreme Court in the case of **Chandrabhai K. Bhoir (Supra)**, the impugned order dated 07.08.2023, so far as the petitioner is

concerned, is hereby set aside.

20. The respondents are at liberty to proceed with the further course of action subject to the terms and conditions of the transfer policies.

21. The writ petition accordingly, stands disposed of.

No order as to costs.

JUDGE

Comparing Assistant