

GAHC010035622023



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

Case No. : WP(C)/949/2023

PRAVEEN V S
S/O- K SAHARAN NAIR,
PRIYAS ANNAPURNA POST, THIRUNANANTHAPURAM, KERALA.

PERMANENT ADDRESS-
AND PRESENTLY HOLDING THE POST OF JT. GM (COMMERCIAL),
AIRPORTS AUTHORITY OF INDIA AND POSTED AT JAY PRAKASH
NARAYAN INTERNATIONAL AIRPORT, PATNA

VERSUS

THE AIRPORT AUTHORITY OF INDIA AND 6 ORS.
REP. BY THE REGIONAL EXECUTIVE DIRECTOR
AIRPORTS AUTHORITY OF INDIA, REGIONAL HEADQUARTER, NORTH
EASTERN REGION, LOKPRIYA GOPINATH BORDOLOI INTERNATIONAL
AIRPORT, GHY, ASSAM- 781015

2:THE EXECUTIVE DIRECTOR
AIRPORTS AUTHORITY OF INDIA
REGIONAL HEADQUARTER
NORTH EASTERN REGION
LOKPRIYA GOPINATH BORDOLOI INTERNATIONAL AIRPORT
GHY
ASSAM- 781015

3:THE GENERAL MANAGER (HR)
AIRPORTS AUTHORITY OF INDIA
SAFDARJUNG AIRPORT
NEW DELHI- 110003

4:THE CHAIRMAN
DISCIPLINARY AUTHORITY

AIRPORTS AUTHORITY OF INDIA

SAFDARJUNG AIRPORT
NEW DELHI- 110003

5:THE GENERAL MANAGER (HR)
(INQUIRY OFFICER)
AIRPORTS AUTHORITY OF INDIA
NETAJI SUBHASH CHANDRA BOSE INTERNATIONAL AIRPORT
KOLKATA-700052

6:INTERNAL COMPLAINTS COMMITTEE
REGIONAL HEADQUARTERS
NORTH EASTERN REGION
REP BY THE CHAIRPERSON

7:MS. PHIBAHUNLANG SWER
ASSTT. MANAGER (COMMERCIAL)

AIRPORTS AUTHORITY OF INDIA
IMPHAL AIRPORT

Advocate for the Petitioner : MR. S BANIK

Advocate for the Respondent : SC, A A I

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 26.02.2024

Heard Mr. S. Banik, learned counsel for the petitioner. Also heard Mr. R. Dubey, learned standing counsel, Airports Authority of India for the respondent Nos. 1 to 6 and Ms. Dr. N. Barooah, learned counsel for the respondent No.7.

2. The respondent No.7 lodged a complaint on 29.01.2020, before the Regional Executive Director, Airports Authority of India, RHQ, NER, Guwahati

complaining of sexual harassment at workplace against the petitioner. The said complaint was made under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 (Act of 2013 in short). The said complaint was placed before the Internal Complaints Committee i.e., respondent No.6. During the proceedings of the ICC, there was a conciliation between the petitioner and the respondent No.7 and on the basis of such conciliation, the petitioner and the respondent No.7 issued a statement on 30.09.2020, stating that they have arrived to a conclusion today during the proceeding of the meeting to conciliate the matter and that they were both forgetting all the past bitterness and shall maintain a good official relationship to each other and that no such situation may arise in future. It was further declared that no further follow ups shall be made in the matter from both their sides.

3. In terms of the statement made by the petitioner and the respondent No.7 on 30.09.2020, the complaint proceedings was closed by way of an Inquiry Report dated 02.11.2020. The conclusion of the Inquiry Report reads as under:

“CONCLUSION:

No conclusion could be made regarding the complaint dated 24.01.2020 due to the lack of evidences/ proof/ witness. Sh Praveen totally denied the incident.

The complainant and Sh. Parveen VS wanted for the reconciliation and they don't want the complaint to be followed up further.

Hence the request of reconciliation is forwarded for the acceptance. The Committee would like to bring to the notice of the concerned authority the request of Ms.Phibahunlang Swer not to post both of them in the same office.”

Accordingly, on the basis of the aforesaid conclusions, the Inquiry Report

was forwarded for acceptance.

4. However, the respondent No.7 by a Communication dated 25.02.2021, addressed to the General Manager (HR), Airports Authority of India, Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi-3 mentioned that the fact that there was no evidence is incorrect and in that regard had forwarded certain objectionable materials to the addressee and requested to take necessary action to modify the statement for closing the case. The relevant portion of the letter dated 25.02.2021, is also reproduced herein below:

“Even after the hearings from both parties, the matter remained inconclusive; therefore, I agreed to have the one on one conversation with Praveen V.S to conciliate the matter, as it was taking a toll on my mental peace.

Therefore, to conclude that, "the case could not be substantiated due to lack of evidence", is false and biased statement. I am hereby forwarding the screenshots of the Whatsapp chats and images that I had received from Praveen V.S, so It is requested to take necessary action to modify the statement for closing the case.”

5. On the basis of the communication dated 25.02.2021, the respondent authority initiated the Departmental Proceeding by Memorandum dated 25.02.2022 against the petitioner under Regulation 29 of the AAI Employees (Conduct, Discipline & Appeal), Regulations, 2003 and also appointed an Inquiry Officer by order dated 13th of March, 2023. The petitioner being aggrieved with the initiation of the Departmental Inquiry is before this Court by way of the present writ petition.

6. The learned counsel for the petitioner submits that the Act of 2013 is a special act in respect to prevention of sexual harassment of women at workplace and therefore submits that unless there is a recommendation made

by the respondent No.6, the initiation of Departmental Proceeding by the respondent authorities is not tenable for which the entire proceedings needs to be set aside and quashed.

7. The learned counsel for the petitioner has drawn the attention of this Court to Section 10 of the Act of 2013, particularly, Section 10(4) which provides that where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be. He submits that as the petitioner and the respondent No.7 has come to a conciliation and has issued a statement to that effect and the ICC accordingly has closed the matter, the initiation of the Departmental Proceeding against the petitioner should be set aside and quashed. The learned counsel for the petitioner has also drawn the attention of this Court to the additional affidavit filed by the petitioner, particularly, to the Circular dated 05th of November, 2014, issued by the Executive Director (HR) Airports Authority of India, whereby, the AAI policy circulated on prevention and redressal of grievances relating to sexual harassment at workplace was superseded and the Act of 2013 was adopted.

8. Mr. R. Dubey, learned standing counsel for the AAI, fairly submits that no recommendation was made by the ICC and therefore, the Departmental Proceeding initiated against the petitioner may not be tenable in law. He however submits that after the communication dated 25.02.2021, was received from the Respondent No.7, the authorities have forwarded the matter to the ICC and the ICC by communication dated 04.05.2022, replied back that as the

complaint was disposed of on mutual consent between the parties, there was no need to go for further proceedings as the matter was closed based on mutual consent/joint statement submitted to the Committee.

He however submits that the initiation of Departmental Proceeding against the petitioner was an independent exercise by the respondent authorities.

09. Dr. N. Barooah, learned counsel for the respondent No.7 also fairly submits that the respondent No.7 had indeed written the letter dated 25.02.2021 to modify the concluding part of the ICC report, wherein, it was stated that due to lack of evidence/proof/witness no conclusion could be made regarding the complaint dated 24.01.2020. She submits that the petitioner had all the evidences and had submitted the same before the authorities and therefore, the observation made in the conclusion has affected the dignity and reputation of the respondent No.7 by way of which her integrity and reputation is questioned as on today. She therefore submits that the petitioner only wants to maintain her dignity, reputation and integrity by having the concluding part of the Inquiry Report modified.

10. After hearing the learned counsel for the parties and on consideration of the materials available on record, this Court has noticed that the petitioner and the respondent No.7 has issued a joint statement on 30.09.2020, whereby, it was stated that they have arrived to a conclusion during the proceeding of the meeting to conciliate the matter and that they were both forgetting all the past bitterness and shall maintain a good official relationship to each other and that

no such situation may arise in future. This Court has also considered the Inquiry Report dated 02.11.2020, and the conclusion part which has also been reproduced herein above.

11. The communication made by the respondent No.7 dated 25.02.2021, was only to modify the concluding part of the Inquiry Report dated 02.11.2020, on the ground that she had sufficient evidence to prove her complaint against the petitioner and therefore, such observations made in the conclusion of the Inquiry Report was unfounded and the same should be modified and case may be closed.

12. Section 10(1) of the Act of 2013 provides that the Internal Committee or as the case may be the Local Committee may before initiating an Inquiry under Section 11 and at the request of the aggrieved woman takes steps to settle the matter between her and the respondent through conciliation. The records would indicate that there was indeed a conciliation between the petitioner and the respondent No.7 and thereafter, they issued the statement dated 30.09.2020. Section 10(4) of the Act of 2013 provides that when there is a conciliation between the parties, no further inquiry shall be conducted by the Internal Committee or the Local Committee as the case may be. The records further indicate that the ICC had made no recommendation against the petitioner and had in fact closed the matter inasmuch as, the parties have come to a conciliation.

13. In the facts and circumstances of the case as narrated hereinabove, this

Court is of the considered opinion that the respondent authorities could not have initiated the Departmental Proceeding against the petitioner and accordingly, the Order dated 13th of January, 2023, issued by the Disciplinary Authority, Airports Authority of India appointing the Inquiry Officer to inquire into the charges and the Memorandum dated 25th of October, 2022, initiating the Departmental Proceedings against the petitioner are set aside and quashed.

14. Considering the peculiar nature of the case in hand and also after considering all the materials on record, this Court is of the considered opinion that the dignity and reputation of the respondent No.7 should also be protected by this Court. Accordingly, exercising the powers under Article 226 of the Constitution of India, this Court hereby directs that the first paragraph of the conclusion of the Inquiry Report dated 02.11.2020, shall stand deleted.

15. With the above observations and directions, this writ petition is disposed of.

JUDGE

Comparing Assistant