

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WP(C) .No. 26773 of 2014 (V)

PETITIONER(S) :

DR.KASTHURBA A.K. ,
ASSOCIATE PROFESSOR, DEPARTMENT OF ARCHITECTURE,
NATIONAL INSTITUTE OF TECHNOLOGY, KOZHIKODE 673 601.

BY ADV. SRI.P.RAMAKRISHNAN.

RESPONDENT(S) :

1. NATIONAL INSTITUTE OF TECHNOLOGY,
NIT CAMPUS, KOZHIKODE P.O., PIN - 673 601,
REPRESENTED BY ITS DIRECTOR.
2. THE WOMEN'S COMPLAINT CELL (WCC) ,
NATIONAL INSTITUTE OF TECHNOLOGY, NIT CAMPUS,
KOZHIKODE P.O., PIN 673 601, REPRESENTED BY ITS CHAIRMAN.
3. DR.P.P.ANIL KUMAR,
ASSOCIATE PROFESSOR,
NATIONAL INSTITUTE OF TECHNOLOGY, NIT CAMPUS,
KOZHIKODE P.O., PIN - 673 601

*ADDL. R4 IMPEADED

R4. V.C.GEETHAMANI,
PADMALAYAM, RAMANATTUKARA P.O.,
KOZHIKODE - 673 633.

(*ADDL.R4 IMPEADED AS PER ORDER DATED 27.11.2014 IN IA 16302/14.)

R1 BY ADV. SRI.MILLU DANDAPANI
R3 BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
R3 BY ADV. SMT.N.SANTHA
R3 BY ADV. SRI.K.A.BALAN
R3 BY ADV. SRI.V.VARGHESE
R3 BY ADV. SRI.PETER JOSE CHRISTO
R3 BY ADV. SRI.S.A.ANAND
ADDL.R4 BY ADV. SRI.KRISHNA PRASAD. S

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RVS.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT P1 COPY OF COMPLAINT DATED 26/12/2011 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P2 COPY OF NOTICE DATED 2/1/2013 FROM THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P3 COPY OF REQUEST DATED 3/1/2013 FROM THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P4 COPY OF PROCEEDINGS DATED 30/1/2013 OF THE 1ST RESPONDENT.
- EXHIBIT P5 COPY OF INTIMATION DATED 11/4/2013 FROM THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P6 COPY OF ENQUIRY REPORT ALONG WITH THE INTIMATION DATED 3/6/2013 OF THE 2ND RESPONDENT.
- EXHIBIT P7 COPY OF REPRESENTATION DATED 30/6/2013 FROM THE PETITIONER TO THE 1ST RESPONDENT.
- EXHIBIT P8 COPY OF REMINDER DATED 10/2/2014 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT ON 25/6/2014.
- EXHIBIT P9 COPY OF REMINDER DTED 25/6/2014 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P10 COPY OF EXTRACT OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013 (NO.14 OF 2013) .
- EXHIBIT P11 TRUE EXTRACT OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) RULES 2013.

RESPONDENT(S) ' EXHIBITS :

- EXHIBIT R3(A) TRUE COPY OF THE JUDGMENT DATED 30/03/2006 IN O.P. NO.6532/2001 OF THIS HON'BLE COURT.
- EXHIBIT R3(B) TRUE COPY OF COMPLAINT FILED BY THE MEMBERS OF THE FACULTY BEFORE THE 1ST RESPONDENT.
- EXHIBIT R3(C) TRUE COPY OF THE LETTER NO.CED/HOD/2000 DATED 19/12/2000 OF THE PROFESSOR AND HEAD OF THE DEPARTMENT OF CIVIL ENGINEERING.
- EXHIBIT R3(D) TRUE COPY OF CONFIDENTIAL ORT OF THE 3RD RESPONDENT.

- EXHIBIT R3(E) TRUE COPY OF COMPLAINT DATED 07/01/2013, FILED BY THE PETITIONER BEFORE THE NIT.
- EXHIBIT R3(F) TRUE COPY OF COMPLAINT DATED 05/02/2013 FILED BY THE PETITIONER BEFORE THE NIT.
- EXHIBIT R3(G) TRUE COPY OF COMPLAINT DATED 08/02/2013 FILED BY THE PETITIONER BEFORE THE NIT.
- EXHIBIT R3(H) TRUE COPY OF COMPLAINT WITHOUT ITS ENCLOSURES DATED 11/01/2013 FILED BY THE PETITIONER BEFORE THE CHAIRPERSON, NATIONAL COMMISSION FOR WOMEN, NEW DELHI.
- EXHIBIT R3(I) TRUE COPY OF REPORT OF THE COMMITTEE FOR PREVENTION AND REDRESSAL OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (NIT CALICUT) .
- EXHIBIT R3(J) TRUE COPY OF LETTER NO.NITC/RO/LEGAL/122 DATED 18/10/2013 OF THE REGISTRAR OF NIT CALICUT.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 26773 of 2014

Dated this the 26th day of June, 2015.

JUDGMENT

The petitioner is aggrieved by the contents of Ext.P6 report on the ground that the same has been prepared behind her back in total violation to the principles of natural justice.

2. The petitioner is presently working as Associate Professor in the Department of Architecture in the first respondent institute. She had preferred complaints against the third respondent before the first respondent complaining of harassment at workplace. The said complaints had been forwarded to the second respondent committee. The grievance of the petitioner is that the said committee, without affording a hearing to the petitioner, who is the complainant, prepared Ext.P6 report.

3. In the counter affidavit filed by the third respondent, it was contended that the third respondent entered service as Lecturer at National Institute of Technology

(NIT), Kozhikode, in September, 1991 and not in 1992, as stated by the petitioner. Though the petitioner entered service earlier, she could complete her probation only after the completion of probation of the third respondent in the category of lecturer. The probation period for the post of Lecturer is two years. The third respondent completed in September 1993 ie, within two years. The petitioner's probation was declared only in 1994 ie, after four years of her joining duty. The declaration of her probation was delayed because of her unsatisfactory performance. This became a source of perennial envy for the petitioner towards the third respondent. Because of the earlier completion of probation by the third respondent, he became her senior in the department. She challenged the same before this Court in O.P.No.6532 of 2001, which was dismissed by this Court as per the judgment dated 30.3.2006. The petitioner was appointed Head of the Department of the Faculty of Architecture for the period from February, 2011 to February 2013. The post of H.O.D.is a tenure post for a period

of two years, to be filled up by rotation, by giving opportunity to all the professors and Associate Professors of the Faculty or the Department concerned. When the petitioner was working as H.O.D. of Architecture, there was lot of complaints against her functioning. The petitioner conducted herself in the most arbitrary and dictatorial manner. The smooth functioning of the Department became almost impossible with her at the helm of affairs. This resulted in all the other members of the Faculty filing complaints before the first respondent. This was done in the best interest of the Institution and the student community. The third respondent is only one of the signatories to Ext.R3(b). But this has also contributed to the hostility of the petitioner towards the third respondent. It is also submitted that the petitioner, before she had become H.O.D. of the Faculty of Architecture, had insulted the third respondent and another senior faculty member Sri. Jayakumar, using most abusive language, quite unbecoming of a woman. The third respondent reported the matter to the first

respondent, which led to an enquiry into the matter, by a three member committee consisting of Dr. K.N. Ramachandran, Professor, Department of Civil Engineering, Dr. V.J. Kurian, Professor, Department of Civil Engineering and Dr. A.P. Shashikala, Lecturer, (Senior Scale), Department of Civil Engineering. At the end of the enquiry, the petitioner was found guilty of the allegation and she was severely warned by the NIT. By letter No.CED/HOD/2000 dated 19.12.2000 of the Professor and Head of the Department of Civil Engineering, the third respondent was informed that the committee had found that the petitioner picked up a quarrel with the third respondent and used abusive words against him, that she has been advised to desist from such actions in future, that in case she commits such mistakes in future, the matter will be brought to the notice of higher authorities for further action and in such circumstances, the third respondent was advised to treat the matter as closed for the time being in the interest of maintaining cordial atmosphere in the Department. Ext.R3

(c) is also a reason for the petitioner to nurse the hostility towards the third respondent. The petitioner wanted to continue as H.O.D. even after completion of her term of two years. The third respondent was the next person to become H.O.D by rotation. The petitioner wanted to thwart the third respondent becoming H.O.D. with a view to achieve this, the petitioner had even resorted in entering of adverse remarks in his confidential reports, in her capacity as H.O.D. She entered adverse comments in his confidential reports stating that the Council of Architecture had made adverse comments about the third respondent's performance. As a matter of fact, in the report of the Council of Architecture, there was no personal remarks about any member of the faculty. The petitioner deliberately caused wrong information to be imported into the confidential report with clear malafide intentions. The term of the petitioner as H.O.D. expired on 7.2.2013. The third respondent was given charge of HOD w.e.f. 8.2.2013, for a period of two years, in accordance with the provisions of the

NIT Statute. The petitioner had started filing false complaints against the third respondent before various authorities. Ext.P1 is only one of the series of such complaints filed by the petitioner against the third respondent. The petitioner states in Ext.P5 about a similar complaint filed before National Commission for Women, New Delhi. He was given to understand that the National Commission for Women had forwarded the petitioner's complaint to the State Women's Commission. The State Women's Commission issued a summons to the third respondent and her for attending an enquiry on 21.3.2013. The third respondent attended the enquiry. The petitioner resorted to this tactic to put the third respondent to maximum harassment and also on finding that the second respondent Women's Complaint Cell (WCC) had understood the frivolous nature of the petitioner's complaints like Ext.P1. The petitioner herself wanted to stultify the enquiry initiated by the second respondent on Ext.P1 and similar frivolous complaints filed by her against the third

respondent, by her own self defeating conduct of approaching various authorities simultaneously. When the 2nd respondent was seized the matter, it was most ill advised on her part to have approached other authorities like the Women's Commission. She caused initiation of proceedings by the second respondent and she herself wanted to keep the proceedings in abeyance. It shows that she has been ill motivated through out. No person in her senses can take such steps. The petitioner tried her level best to thwart the third respondent becoming HOD. She started filing complaints against the third respondent from January 2013 onwards. In addition to Exts. R3(e) to R3(g), the petitioner on 11.1.2013 filed a complaint before the Chairperson, National Commission for Women, New Delhi. Pursuant to the complaints filed by the petitioner, a Women's Complaint Cell was constituted in NIT Calicut, which looked into the complaints and heard the petitioner. The petitioner's complaints were found to be absolutely baseless. Therefore, the committee did not make

any specific recommendation. This is evident from the report of the Committee. The NIT Calicut constituted another committee as per Ext.P4 in which Adv. Geethamani V.C., a senior lady Advocate of the Calicut Bar was also nominated as a member of the WCC at NIT Calicut. This Committee also considered the complaints of the petitioner after giving multiple opportunities to be heard, it was before this committee that the petitioner filed Ext.P5 stating that she had approached the National Commission for Women and therefore the proceedings may be kept in abeyance. The petitioner did so, when the committee could understand that the petitioner's allegations against the third respondent were absolutely unfounded and ill motivated. It was this full fledged committee that filed Ext.P6 report in which the third respondent's innocence is fully established and the conduct of the petitioner is severely criticized. A reading of Ext.P6 report would bring to light the way in which the petitioner conducts herself. From Ext.P6, it is very clear that the petitioner took

maximum liberty with the second respondent committee and that the petitioner simply wanted to make the committee a mockery with the sole intention of sullyng his name and making personal gain for herself. The conduct of the petitioner before the committee shows that she behaves not in a proper and reasonable manner expected of an educated woman, let alone a teacher in the position of Associate Professor. The petitioner has no qualms in stooping to any level to pursue her ill motivated adventure against the persons who do not succumb to her demands. She wanted the second respondent committee to find the third respondent guilty. But the second respondent could understand her real motive. The committee found that her complaints were completely unsubstantiated. In such a situation, she started questioning the integrity of the persons comprising the committee. She even went to the extent of stating that the Chairperson of the Committee prepared a fake report by forging the signature of Advocate Geethamani. By Ext. R3(j), the Registrar of NIT Calicut,

sought clarification from Adv. Geethamani in the matter. In Ext.R3(j) itself, Adv. Smt. Geethamani certified that the signature in the report is hers and only hers. In this context, it is submitted that Ext.P6 does not contain the covering letter attached to it. The number CPSH/NIT/2012/1 dated 16.4.2013 mentioned in Ext.R3(j) is in fact the number and date of the covering letter of Ext.P6. The committee is one which is properly constituted strictly in accordance with law. The committee has given sufficient opportunity to the petitioner to establish her case. But she miserably failed to do so. She in fact ran away from the proceedings of the committee. Her allegations against the committee are in absolute bad faith. Ext. P6 does not suffer from any illegality, irregularity or impropriety. Therefore, the third respondent prayed for a dismissal of the petitioner.

4. In the counter affidavit filed by respondents 1 and 2, they contended that the report of the second respondent was after a detailed enquiry. They contend that the second

respondent committee in its first meeting on 5.11.2012 considered this complaint and decided to request the petitioner to appear before the committee on 7.11.2012. Since the petitioner was not available at NIT, Calicut for a few days the notice for hearing could not be served to her. Subsequently, she was requested to appear before the committee on 3.1.2013. Her statement could not be recorded on the same day. Subsequently, she was requested to appear before the committee on 10.1.2013, but she had not chosen to appear. Therefore, according to the committee, they decided to scrutinize the relevant records available and submitted Ext.P6 report to the Director, NIT, Calicut.

5. Arguments have been heard.

6. The definite case of the petitioner is that she has specifically requested that the proceedings of the committee be kept in abeyance temporarily as she had moved the women's commission. As no orders were passed on her request, she had gone to appear before the committee on

11.4.2013 to appraise the committee in person about her grievances. However, she was asked by the chairperson to wait outside while deliberations were going on the room behind her back. Thereafter, the chairperson had come out and informed the petitioner that she may leave as the proceedings had been kept in abeyance. The petitioner alleges that believing the words of the chairperson, the petitioner had left the premises. It was only thereafter that to the utter surprise of the petitioner that Ext.P2 report had been served on her. The petitioner alleges that the impugned report has been prepared in total violation of the principles of natural justice without affording an opportunity of hearing the petitioner.

7. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 has been enacted by the Parliament, keeping in view the necessity of protecting women against sexual harassment at their workplace as the same would amount to violation of the Fundamental Rights of women to equality under Articles 14

and 15 of the Constitution of India and her right to live with dignity under Article 21 of the Constitution of India and the right to work in a safe environment free from sexual harassment.

8. The additional fourth respondent was subsequently impleaded as the external member of the committee. She was asked to file separate affidavit wherein she has stated that she being the external committee member, was hearing another case of same nature against one Dr. Pradeep Kumar while the case of the petitioner was pending. She would further stated that numerous documents were produced in the case of Dr. Pradeep Kumar and at that time report against the petitioner was also brought before the fourth respondent. It is stated that the report regarding Dr. Pradeep Kumar was also passed on the same day ie, 16.4.2013 on which Ext.P6 was passed. It is stated that the petitioner has signed the report prepared by the committee but it is a fact that the petitioner was not given a chance of personal hearing. It is stated that the petitioner

was not present before the committee to substantiate her case at any point of time while the fourth respondent was present in the committee.

9. I see no reason to disbelieve the statement given by the additional fourth respondent who was an external member. As it came out that the report was prepared without affording the petitioner an opportunity of being heard, it is quite unnecessary to go into the findings entered into by the committee.

Therefore, the writ petition is allowed. Ext.P6 is quashed. Respondents 1 and 2 are directed to afford a personal hearing to the petitioner on the basis of Ext.P1 complaint and complete the enquiry and submit a report before the authority concerned within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.