

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.2.2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

Writ Petition No.33820 of 2014
and
M.P.No.1 of 2014

- 1.The Principal Secretary to Govt.,
Home Dept., Fort St. George,
Chennai-9.
- 2.The Director General of Police,
Tamil Nadu, Chennai.
- 3.The Presiding Officer of the Complaints
Committee & IGP/Vigilance/TANGEDCO,
Chennai. ... Petitioners

vs.

- 1.J.Rajendran
- 2.The Secretary to the Govt. of India,
Ministry of Home Affairs, New Delhi.
- 3.The Chairman,
Union Public Service Commission,
New Delhi.
- 4.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records in O.A.No.1080 of 2013, dated 18.9.2014 on the file of the Central Administrative Tribunal, Madras Bench and quash the same.

For petitioner : Mr.P.H.Aravindh Pandian
Additional Advocate General,
assisted by Mrs.A.Srijayanthi,
Special Govt. Pleader

For respondents : Mr.L.Chandrakumar for R1
Mr.K.Mohanamurali for R2
Mr.M.T.Arunan for R3

O R D E R
[by V.RAMASUBRAMANIAN, J.]

This Writ Petition is filed by the State of Tamil Nadu, challenging the order of the Central Administrative Tribunal, setting aside a notice of enquiry issued by the Complaints Committee, for enquiring into the complaint of sexual harassment.

2. Heard Mr.P.H.Aravindh Pandian, learned Additional Advocate General appearing for the petitioners-State, Mr.L.Chandrakumar, learned counsel appearing for the 1st respondent and Mr.M.T.Arunan, learned Central Government standing counsel for the 3rd respondent.

3. The 1st respondent in the writ petition is an Officer belonging to the Indian Police Service. By a letter dated 31.3.2005, the Principal Secretary to Government framed two charges against the 1st respondent herein. The charges read as follows:-

“CHARGE-1

That you, Thiru J.Rajendran, IPS, while serving as Superintendent of Police, Salem District from 3.4.1998 to 11.3.2001, behaved indecently with two women petitioners viz. Tmt.Sumitra and Tmt.Jamuna Rani, and also with the fellow woman officer Tmt.Venmathi, Deputy Superintendent of Police. Thus, you have failed to maintain absolute integrity and devotion to duty and conducted yourself in a manner unbecoming of a Member of Indian Police Service and thus violated Rule 3[1] of All India Services [Conduct] Rules, 1968 which corresponds to Rule 20[1] of Tamil Nadu Government Servants Conduct Rules, 1973.

CHARGE-2

That you Thiru J.Rajendran, IPS, while serving as Superintendent of Police, Salem District, had failed to furnish the agricultural income derived during the years 1999-2000 and 2000-2001 to the prescribed Authority / Government as required under rule 7[2] of Tamil Nadu Government Servants Conduct Rules, 1973 corresponding to Rule 16[2] of All India Services [Conduct] Rules, 1968 and thus violated the said rule[s].”

4. An enquiry followed and at the end, the Enquiry Officer recorded a finding in his Minute dated 22.8.2008 that the charge of misbehaviour with two women, were not proved and that the charge alleged by a co-officer was held proved on the basis of preponderance of probabilities.

5. After giving the 1st respondent an opportunity of giving a representation against the findings of the Enquiry Officer, the Government sent the file to the Union Public Service Commission for its opinion on 7.12.2009. After examining the papers, the Union

Public Service Commission sent a communication dated 23.6.2010, pointing out that the enquiry was not held in accordance with the Visakha Guidelines, and that, therefore, the State should rectify the procedural flaw.

6. However, at that time, the Government of Tamil Nadu had not constituted a Complaints Committee in terms of Visakha Guidelines. It was only under G.O.Ms.No.429, Home [SC] Department, dated 1.7.2013 that a Complaints Committee was constituted by the Government of Tamil Nadu.

7. After constituting a Committee, the Government placed the file before the said Complaints Committee and the Complaints Committee issued a notice to the 1st respondent on 19.7.2013 calling upon him to appear for an enquiry. Challenging the said notice, the 1st respondent filed an application before the Central Administrative Tribunal, Madras, in O.A.No.1080 of 2013.

8. After finding [i] that the enquiry itself was over long time ago, even before the constitution of the Complaints Committee, [ii] that the reference to the Complaints Committee itself was made by the Director General of Police after obtaining a fresh complaint on 13.12.2011, three years after the completion of the enquiry, and [iii] that in a matter which is 13 years old, on which the enquiry itself was over seven years ago, it was not proper to again go back to the Complaints Committee, the Tribunal allowed the application by a final order dated 18.9.2014 setting aside the notice issued by the Complaints Committee. However, the Tribunal directed the petitioners herein to finalise the disciplinary proceedings, based upon the enquiry report dated 22.8.2008, notwithstanding the procedural flaw indicated by the Union Public Service Commission. It is against the said order, the State has come up with the above Writ Petition.

9. Before dealing with the contentions of the learned Additional Advocate General, it is necessary to bring on record certain dates with reference to the events. They are as follows:-

[i] on 13.5.2003, a woman Officer is stated to have made a statement to the effect that while she was working as Deputy Superintendent of Police during the period from 10.4.2000 to 14.10.2000, an incident had happened; [ii] on 31.3.2005, a charge memo was issued to the 1st respondent, including an allegation of sexual harassment, against the said woman Officer on the basis of the written statement given by her, three years after the alleged incident; [iii] in the enquiry, the Enquiry Officer held the charges in respect of two women not proved, but held the charge relating to the woman Police Officer proved on the principle of preponderance of probabilities. This enquiry report is actually dated 22.8.2008; [iv] the copy of the enquiry report was forwarded to the 1st respondent on 10.9.2008 and he submitted his further representation on 11.11.2008; [v] by a communication dated 23.6.2010, the Union Public Service Commission directed the Government to refer the complaint to the Visakha Committee; [vi] the Government directed the Director General

of Police by a communication dated 13.12.2011 to obtain a specific complaint from the woman Officer; [vii] on the basis of the said communication, the Director General of Police obtained a written complaint only on 28.2.2012 from the woman Police Officer; and [viii] it was only thereafter, by G.O.Ms.No.429, Home [SC] Department, dated 1.7.2013, a Complaints Committee was constituted by the State in terms of Visakha Guidelines.

10. Considering the above sequence of events, we do not think that the order of the Tribunal was erroneous or illegal. Today, the 1st respondent is not assailing the enquiry conducted by the State on the ground that it was not in compliance with the Visakha Guidelines. It was the Union Public Service Commission which found fault with the enquiry report on the ground that it was not in accordance with the Visakha Guidelines. But the Tribunal has protected the interest of the State, by observing that notwithstanding the procedural flaw, the petitioners could finalise the disciplinary proceedings. Therefore, we do not know as to how the State could be taken to be aggrieved by the order of the Tribunal, when their interest is protected by the impugned order. Therefore, we find no reason to interfere with the order of the Tribunal. Hence, the Writ Petition is dismissed. It is open to the petitioners to send the files to the Union Public Service Commission once again, based upon the observations of the Tribunal as well as this Court, and proceed further in accordance with law and pass final orders within a period of three months from the date of receipt of a copy of this order. No costs. M.P.No.1 of 2014 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gs.

To

- 1.The Principal Secretary to Govt.,
Home Dept., Fort St. George,
Chennai-9.
- 2.The Director General of Police,
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- 3.The Presiding Officer of the Complaints
Committee & IGP/Vigilance/TANGEDCO,
Chennai.
- 4.The Secretary to the Govt. of India,
Ministry of Home Affairs, New Delhi.

5.The Chairman,
Union Public Service Commission, New Delhi.

6.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

+ 1 cc to Mr.M.T. Rrunana, Advocate Sr.8958
+ 1 cc to Mr.K. Mohanmurali Advocate SR.8200
+ 1 cc to Mr.Government pleader SR.8410

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LRS (CO)
Eu 28.02.15



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