

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 7741/2014 & CM No. 18217/14

% **16th January , 2015**

DR. MINU KASHYAPPetitioner
Through: Mr. Soumyajit Pani, Advocate.

VERSUS

SHRI LAL BAHADUR SHASTRI RASHTRIYA SANSKRIT
VIDYAPEETH & ORS. Respondents

Through: Mr. B.S.Rajesh Agrajit, Adv. for R-1.

Mr. Arunav Patnaik, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition is filed by one Dr. Minu Kashyap impugning the reports dated 8.8.2008 and 3.5.2011, issued by different committees constituted to look into the allegations of gender discrimination and harassment etc of the petitioner by the respondent no.2. At the outset, I put it to counsel for the petitioner that one writ petition challenging two totally separate enquiry reports separated by many years, and which have been made pursuant to two separate proceedings, cannot be challenged by one

petition, inasmuch as, in such a case the petition will be bad for mis-joinder of causes of action, therefore, the counsel for the petitioner confines the challenge by means of this writ petition to the subsequent/second report dated 3.5.2011. Also, and in any case, the report dated 8.8.2008 could not have been challenged in this writ petition for two very important reasons. Firstly, a report dated 8.8.2008 cannot be challenged by means of a petition which is filed over six years later on 3.11.2014. Secondly, a reading of the report dated 8.8.2008 shows (and which is barely only one page report) that actually no findings have been given but the said report shows a resolution of the disputes between the petitioner and the respondent no.2 herein. This report dated 8.8.2008 reads as under:-

“REPORT OF THE INQUIRY COMMITTEE

August 8, 2008

The Inquiry Committee consisting of Prof. Matadin. Former Dean, Faculty of Law, University of Delhi, Delhi, as Chairman and Dr. Suman Gupta, Dean, University School of Law and Legal Studies, G.G.S.I.P. University, Delhi, as Member and Shri P. Mariappan, Secretary to the Committee was constituted by Prof. Vachaspati Upadhyaya, Vice-Chancellor of Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeetha, New Delhi-16 vide his orders dated 24.8.2007 to enquire into the allegations made by Shri Manjit Singh, Assistant, Vidyapeetha against Dr. Minu Kashyap, Reader, English, Vidyapeetha and the allegations made by Dr. Minu Kashyap, Reader, English,

Vidyapeetha against Dr. B.K.Mohapatra, Registrar, SLBSRS Vidyapeeth.

The Committee met on 30.6.2008 at 2.30 PM and finalized its report on August 8,2008 after perusing the representations of Shri Manjit Singh, and Dr. Minu Kashyap and the statements given by the witnesses and other relevant documents.

The Committee had a detailed discussion with each party and the witnesses and after the discussion with them. Since the representation submitted by Dr. Minu Kashyap is baseless and fabricated the committee had decided to resolve the issue in the interest of the academic atmosphere of the Vidyapeetha. Accordingly, the Committee recommends that the matter stands resolved. The copies of all the relevant documents are enclosed.

The Committee wants to put in records that all the above-mentioned parties had co-operated nicely and very smoothly resolved the issue.”

2. In view of the above, let us now examine the petition so far as the same challenges the report of the enquiry committee and which committee was constituted pursuant to the letter of the Delhi Commission for Women dated 6.12.2010 and which has given its report dated 3.5.2011 exonerating the respondent no.2. The committee was constituted pursuant to various complaints which were made by the petitioner against the respondent no.2 alleging that respondent no.2 used to harass the petitioner. The committee which was constituted looked into the complaints filed by the petitioner, examined the documents which were filed before the

committee by the parties, and also examined the statements of various witnesses which were recorded by the committee and has referred to them in its report. The committee thereafter gave the following conclusion:-

“FINDINGS:

After examining and relying on the afore-mentioned documents/records, the Inquiry Committee arrived at the conclusion that the incident of 3.8.2007 between Dr. Minu Kashyap, Reader in English and Shri Manjit Singh, the then Assistant (SC employee) of the Vidyapeetha had taken place in the chamber of Registrar. Whereas, from the facts and circumstances, the occurrence of the incident on 20.8.2007 as alleged by Dr. Minu Kashyap against Dr. B.K.Mohapatra Registrar of the Vidyapeetha in her complaint dated 22.8.2007 could not be established as it has not been proved to have taken place. The allegations leveled in the complaint of Dr. Minu Kashyap in her complaint dated 22.8.2007 do not constitute sexual harassment.”

3. It is clear from the aforesaid para of the report of the committee, and which was of a committee comprising of a total of five members and of which three were lady members, that the allegations made by the petitioner with respect to the incident on 20.8.2007, in her complaint dated 22.8.2007 were not established/proved as having taken place.

4. The petitioner was a complainant because of whom the enquiry committee was constituted. Petitioner therefore has *locus standi* to question the report of the enquiry committee because the charged officer/respondent no.2 has been exonerated by the enquiry committee report dated 3.5.2011.

5. Ordinarily, there are four grounds on which an enquiry committee report can be challenged and which is of violation of the principles of natural justice or violation of the rules of the employer-organization/law or the findings of the committee are perverse or that the punishment imposed is disproportionate. In the present case, since it is not the charged officer who is coming before this court, the first and the last aspect of compliance of the principles of natural justice and issue of disproportionate punishment does not come into play. The issues which can be argued on behalf of the petitioner/complainant can only be with respect to perversity in the report or the report being violative of the rules of the employer-organization/law.

6. A total of grounds A to L are given by the writ petitioner and though reproducing them will make this judgment prolix, I have no option but to reproduce the said grounds inasmuch as a reference to the said grounds show that most of the grounds do not have the ingredients required

for a legal cause of action or it is found that the same are vague or that the same are wholly unsubstantiated before this Court. Also, I may observe that some of the grounds and which are with respect to the report dated 8.8.2008 challenge to which has been given up and so would not be relevant and accordingly ground (D) of the grounds which pertains to the report dated 8.8.2008 is not being reproduced. Grounds A to L minus ground D read as under:-

GROUND

- A. Because none of the committees setup has ever looked into the authenticity of the allegation made by the Petitioner.

- B. Because the “Inquiry Committee” comprising of Professor Matadin, Former Dean, Faculty of Law, University of Delhi and Dr. Suman Gupta, Dean, University of School of Law and Legal Studies, GGSI University, Delhi is being setup by the Respondent No.2 himself. The same is in violation of principles of natural justice and the well read principle of law *nemo judex in sua causa* meaning thereby *no one can be a judge of his own cause*. Hence, there would be no fair justice. The report of the said committee is liable to be rejected on the said ground alone.

- C. Because the report of the “Inquiry Committee” cannot be held to be impartial as the Respondent No.2 who engaged the members of the committee possibly to obtain a favourable report in his favour. Hence, in the interest of justice a fresh inquiry is called for comprising of the independent members.

D. xxxxxxxxxxxx

E. Because the impugned action of the Respondent no.2 in getting an inquiry done and get it approved by the Governing Body Meeting is a design created with an ulterior motive by misusing his position and office to ratify the wrongdoings.

F. Because the complaint of the Petitioner was forwarded to the “Sexual Harassment Committee” who in its report dated 26.03.2009 held that the complaint of the Petitioner is beyond the jurisdiction of the committee. Hence, it is ex-facie clear that the complaint of the Petitioner have not gone into by the said committee also.

G. Because the “Complaint Committee” was constituted in pursuant to the direction issued by the Delhi Commission for Women in its letter dated 06.12.2010 by the Respondent No.1-Vidyapeetha in terms of the guidelines laid down by the Hon’ble Supreme Court in Vishakha Vs. State of Rajasthan reported in 1997(6) SCC-241. The constitution of the said “Complaint Committee” was ratified and approved by the Governing Body (Karya Parishad) in its 74th Meeting held on 29.3.2011. It is also noted that the Respondent No.2 is being the Secretary of the Governing Body approve the same.

H. Because the constitution of the “Complaint Committee” is being ratified and approved by the Respondent No.2 alongwith other members. Hence, such constitution which has been done by the Respondent No.2 himself are incompetent to go into the authenticity of the allegation made against the Respondent No.2.

Since it is in violation of the principle of natural justice. The following case laws can be referred to:-

- (i) A.K.Kripak & Ors. Vs. Union of India & Ors. reported in 1969 (2) SCC 262.
- (ii) Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors., reported in 1978 (1) SCC 405
- (iii) Manka Gandhi Vs. Union of India, reported in 1978 (1) SCC 248.

I. Because the report dated 03.05.2011 held that the “Complaint Committee” constituted in terms of the law laid down by the Hon’ble Supreme Court in Vishakha case (supra) cannot be the allegations of “harassment at workplace and gender discrimination” and further held that the complaint dated 22.08.2007 do not constitute sexual harassment. It manifestly clear that the said committee did not probated the allegations made by the Petitioner. Hence, it is necessary that a fresh and independent inquiry may be directed to look into the allegations made therein.

J. Because the gender equality and the right to life and liberty are two most precious fundamental rights guaranteed under the Constitution of India. Such rights have been violated time and again to which the present writ petition is being filed to restore the same by issuing a writ of mandamus directing the Respondent Nos.1 and 3 jointly and severally to enquire into the allegations made by the Petitioner.

K. Because it is manifestly clear the facts stated hereinabove that admittedly the complaint of the Petitioner has not gone into and the findings of the “Inquiry Committee” vitiates on account of malafide and bias.

L. Because on the premises of the impugned reports is being prepared requires reconsideration since the reports did not

suggest any finding. Hence, the very principle of law i.e. justice must not only be done but must be seen to be done is defeated.”

7. I asked the counsel for the petitioner to urge specific reasons and grounds for challenging the enquiry report dated 3.5.2011 within the legal parameters as stated above on the basis of the aforesaid grounds, and counsel for the petitioner has argued the following aspects:-

(i) The committee which has been constituted, and which has given its report dated 3.5.2011, is an illegal committee because it has been constituted by the respondent no.2.

(ii) The report of the enquiry committee dated 3.5.2011 is liable to be quashed because the Ministry of Human Resource Development (HRD) itself in its letter dated 23.12.2013 has questioned the lack of substance in the enquiry report.

(iii) The petitioner in the alternative claims that the constitution of the enquiry committee has been ratified in the 74th meeting of the respondent no.1 constituted on 29.3.2011, and since the respondent no.2 was a member/signatory to the Minutes of Meeting dated 29.3.2011, the appointment of the committee itself is faulty.

8. All the arguments urged on behalf of the petitioner are wholly misconceived and dealt with by me hereinafter.

9. The first argument urged on behalf of the petitioner that the committee has been constituted by the respondent no.2 is a totally baseless argument because no document whatsoever has been filed before this Court to show that the committee which gave the report dated 3.5.2011 was constituted by the respondent no.2. Obviously, no document has been filed because the committee would have been constituted by the concerned authority in terms of the judgment of the Supreme Court in the case of ***Vishaka & Others Vs. State of Rajasthan & Ors. (1997) 6 SCC 241*** and the petitioner therefore has not given any details or the rules of the constitution of the committee to show that the respondent no.2 constituted the committee and that the constitution of the committee is therefore illegal. The first argument urged on behalf of the petitioner is therefore rejected.

10. The second ground urged on behalf of the petitioner by placing reliance upon the letter of the Ministry of HRD dated 23.12.2013 is once again without basis because an opinion of the Ministry can in no manner be relevant to the finality of the report of the enquiry committee dated 3.5.2011. Merely because one Deputy Secretary in the Ministry writes that the report

leaves much to be desired, cannot mean that the report on that account itself is illegal and liable to be set aside. A report can only be set aside either at the instance of the employer or the affected persons such as the petitioner/complainant only on legal grounds, and views of a person in the Ministry can have no bearing to the legal effect of the report in question dated 3.5.2011.

11. The last ground which is urged on behalf of the petitioner of respondent no.2 being a signatory of the Minutes of Meeting dated 29.3.2011, and therefore, the Committee constituted being illegal is once again an argument without merit and for which purpose let me refer to the relevant portion of the Minutes of Meeting of the respondent no.1 and which reads as under:-

“MINUTES OF THE 74TH MEETING OF THE KARYA PARISHAD OF SHRI LAL BAHADUR SHASTRI RASHTRIYA SANSKRIT VIDYAPEETHA, NEW DELHI HELD ON 29.03.2011 AT 3.30 P.M. IN THE CONFERENCE ROOM OF THE VICE-CHANCELLOR OF THE VIDYAPEETHA.

XXXXX

XXXXX

8. Orders dated 26.03.2011: To conduct inquiry under the CCS(CCA) Rules 1965 through the Complaint Committee of the Vidyapeetha on the issues as raised on the complaint letter dated

22.08.2007 of Dr. (Mrs.) Minu Kashyap, Reader (English) duly forwarded by the Delhi Commission for Women vide letter No.DCW/4-C/12-RJ/3/09 dated 06.12.2010.”

12. A reading of the aforesaid para 8 which is questioned by the petitioner shows that all that the governing council of respondent no.1 did was it ratified the aspect that Delhi Commission for Women had written a letter dated 6.12.2010 to inquire into the complaint of the petitioner, and therefore surely this *factum* cannot be against the petitioner but actually the aspect is in favour of the petitioner because the governing council of respondent no.1, and the respondent no.2 being a signatory to the Minutes of Meeting of the governing council dated 29.3.2011, has not in any manner constituted any committee or has gone against the interest of the petitioner inasmuch as the aforesaid para 8 only states that the governing council of the respondent no.1 will take action in accordance with the letter dated 6.12.2010 of the Delhi Commission for Women.

13. Also, I may note that challenge to the constitution of the committee which was constituted in 2011 cannot be questioned, in the opinion of this Court in the year 2014, and that too after the committee has gone into the matter, conducted detailed proceedings, examined witnesses,

examined documents and thereafter given its report. I do not find any pleading of the petitioner in the present case that the petitioner till she received the report in November 2011, was not aware of the constitution of the committee.

14. In view of the above, I do not find any merit in the petition and the same is therefore dismissed. No costs.

JANUARY 16, 2015
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VALMIKI J. MEHTA, J.