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

+ W.P.(C) No. 7929/2015, CM No.18457/2015 (for directions) & CM No.16019/2015 (for direction).

DR. SANDHYA TIWARI

..... Petitioner

Through: Ms. Maninder Acharya, Sr. Adv. with
Ms. Madhumita Bhattacharya, Adv.

Versus

UNIVERSITY OF DELHI AND ORS.

..... Respondents

Through: Mr. Mohinder J.S. Rupal, Adv. for R-1.
Mr. Shiv Ram Singh, Adv. for R-2.
Mr. B.N. Singhvi, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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15.09.2015

1. Notice of this petition was issued and counter affidavits have been filed by the respondent no.2 Indira Gandhi Institute of Physical Education and Sports Sciences (hereinafter called College) affiliated to the respondent no.1 University of Delhi and the respondent no.3 Dr. Dhananjay Shaw employed as Associate Professor with the respondent no.2 College. The petition was thus ripe for hearing and hearing was commenced.

2. The senior counsel for the petitioner argued, (i) that the petitioner employed with the respondent no.2 College had made a complaint against the respondent no.3, also employed in the respondent no.2 College; (ii) that though the complaint of the petitioner against the respondent no.3 was not of sexual harassment but the respondent no.2 College has misconstrued

the same as a complaint of sexual harassment and proceeded to enquire therewith as a complaint of sexual harassment; (iii) that the complaint of the petitioner against the respondent no.2 was of misconduct, within the meaning of Appendix introduced vide Amendment dated 19th March, 2014 to Ordinance XI of the University Calendar i.e of not abiding by the professional ethics, and should be enquired as a complaint of misconduct and not as a complaint of sexual harassment; and, (iv) that this petition has been filed for a direction to the said effect to the respondent no.2 College.

3. Being of the view that the respondent no.3 should be having no objection to being inquired into for a charge of breach of professional ethics which appeared to me to be a less severe charge than a charge of sexual harassment, it was enquired from the counsel for the respondent no.3 whether the respondent no.3 had any objection thereto.

4. The counsel for the respondent no.3 contended that the complaint of the petitioner was enquired as a complaint of sexual harassment owing to the petitioner herself marking a copy of the said complaint made to the Principal of the respondent no.2 College, to Dr. Sarita Tyagi, Chairperson of the College Complaint Committee (CCC) constituted under the Ordinance XV D of the University Calendar to enquire into the complaints of sexual harassment. It is further contended that the said CCC enquired into the said complaint of sexual harassment, with the petitioner participating therein, and held about five to six sittings and has vide order dated 10th August, 2015 exonerated the respondent no.3 from the charge made by the petitioner of sexual harassment. It is further contended that this petition has been filed on 18th August, 2015, after knowledge of the respondent no.3 having been so

exonerated from the false charge made by the petitioner against him, and to keep him embroiled in a departmental inquiry to prevent him from taking over as officiating Principal of the respondent no.2 College which is due to him as per seniority. It is yet further contended that the husband of the petitioner Dr. Sandeep Tiwari, also employed in the respondent no.2 College, is next in seniority to the respondent no.3 and the purpose of filing this petition is only to enable the husband of the petitioner to become the officiating Principal instead of the respondent no.3.

5. Faced therewith, the senior counsel for the petitioner contended that the husband of the petitioner is present in the Court and the Advocate for the petitioner on his behalf as well is willing to make a statement that he is not wanting to be considered for appointment as officiating Principal and though the respondent no.3 may not be appointed but the person next in line of seniority be appointed as the officiating Principal till the inquiry into the misconduct of breach of professional ethics is completed against the respondent no.3.

6. At this stage, the counsel for the respondent no.1 University of Delhi pointed out that though the petitioner is arguing today that the charge made by her against the respondent no.3 was not of sexual harassment but in prayer (c) of this writ petition dated 18th August, 2015 has sought the following relief:-

“c) issue a writ of mandamus or any other appropriate writ order or direction directing the respondents to comply with the mandate of the provisions of the Sexual Harassment of Women

at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

7. The counsel for the respondent no.3 also states that the tenor of the entire writ petition is of the complaint against the respondent no.3 being of sexual harassment.

8. Faced therewith, the senior counsel for the petitioner contended that the petitioner is not pressing prayer (c) of the writ petition and is not pressing the charge of sexual harassment against the respondent no.3. It is further stated that the report of the CCC exonerating the respondent no.3, if at all in existence, has not been made available to the petitioner. It is yet further contended that the exoneration, even if any, by the CCC of the respondent no.3 of the charge of sexual harassment is of no avail in as much as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 had come into force on 9th December, 2013 and after coming into force thereof, the complaint of sexual harassment is to be enquired into in the manner provided therein i.e. by an Internal Complaints Committee to be constituted thereunder and not by the CCC constituted under Ordinance XV D of the University Calendar. It is however reiterated that as argued in the opening arguments, the petitioner is not seeking an inquiry under the new law and is only seeking a inquiry into the misconduct of breach of professional ethics in terms of Ordinance XII of the University Calendar. It is further argued that there are complaints by several other faculty members and staff of the respondent no.2 College against the respondent no.3 who is a ill tempered person as is evident from the counter affidavit filed by the respondent no.2 College itself.

9. The counsel for the respondent no.2 College has drawn attention to the order dated 31st August, 2015 to contend that it was on the insistence of the counsel for the petitioner on that date that he had made a statement that the respondent no.2 College will appoint a fresh Committee in terms of Sexual Harassment Act and will conduct an inquiry and the respondent no.2 College has initiated that process.

10. The senior counsel for the petitioner controverts and draws attention to the order dated 19th August, 2015 by which notice of the petition was issued to contend that the petitioner on that date itself had stated that she is seeking action under Ordinance XI and states that the petitioner on 31st August, 2015 also had insisted upon constitution of a Committee to enquire into the misconduct of breach of professional ethics and not of sexual harassment.

11. The respondent no.2 College in its counter affidavit dated 28th August, 2015 has *inter alia* pleaded that,

- (i) the petitioner in the meetings held on 23rd July, 2015, 5th August, 2015 and 10th August, 2015 of the CCC raised objection to the members thereof *inter alia* on the ground that the Convenor of the said Committee was not senior to the respondent no.3 and to another member on the ground of that member having made some comments during the hearing of the CCC attempting to mould the opinion of the other members;
- (ii) CCC in its representation dated 10th August, 2015 was of the unanimous opinion that the allegations of the petitioner in her complaint do not fall under the definition of Sexual Harassment

and that there was nothing in the testimony of the petitioner which could lead to the guilt of the respondent no.3 and mere quarrelling over a change of venue and by saying “*ye to miya biwi ka college hai*” did not constitute sexual harassment though may have offended the petitioner; and

- (iii) the petitioner on 12th August, 2015 had issued a notice for constitution of a Sexual Harassment Committee under the Sexual Harassment Act supra.

12. The aforesaid shows that the relief which the petitioner tried to get from this Court in the opening arguments is indeed an afterthought and there appears to be merit in the contention of the respondent no.3, of the petitioner attempting to keep the respondent no.3 involved in some inquiry or the other with an intent to affect his career.

13. The conduct of the petitioner even otherwise is not found to be *bona fide*. The petitioner, while making the complaint dated 27th April, 2015 marked a copy thereof to the CCC which was to enquire into the complaint of sexual harassment and not into the misconduct of breach of profession ethics. Not only so, the petitioner participated in the hearings held by CCC and after the report dated 10th August, 2015 thereof being against her, on 12th August, 2015 in the legal notice got issued to the respondent no.2 College continued to press the charge of sexual harassment by contending that enquiry by CCC was bad in law. Not only so, even when this petition was filed on 18th August, 2015, in addition to the charge of sexual harassment, the relief of disciplinary proceedings for misconduct of breach of professional ethics was also sought. The charge of sexual harassment was

not given up. However today, perhaps realising the weakness and falsity of the charge of sexual harassment, that the said charge has been given up.

14. The senior counsel for the petitioner now states that if the writ petition is being dismissed, the petitioner is not giving up the charge of sexual harassment.

15. The aforesaid also speaks volumes of the conduct of the petitioner. Either according to the petitioner she was sexually harassed or she was not. The petitioner cannot, depending upon the way the wind is blowing, choose to decide whether to press the charge of sexual harassment or not.

16. The senior counsel for the petitioner at this stage states that the petitioner cannot be left remediless. She also states that she has earlier also argued that the respondent no.2 College along with its counter affidavit has filed the complaints of other faculty members and staff against the respondent no.3 and which has not been recorded.

17. It has already been recorded above. Also, the complaints of others are not the subject matter of this petition.

18. I have at this stage asked the senior counsel for the petitioner whether now according to the petitioner her complaint is of sexual harassment or not.

19. The senior counsel, without answering the same, states that the complaint of the petitioner is before the respondent no.2 College and it should be investigated as per law. Again it is stated that it should be enquired as per Ordinance XI and not as a complaint of sexual harassment.

20. In my view, as would be borne out from above, this petition is clearly filed in abuse of process of law and of the Court. The petitioner is not entitled to any relief. The petition is dismissed.

Though no direction at the instance of the petitioner can be given to the respondents, the same will not come in the way of the respondents proceeding in accordance with law.

I refrain from imposing costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 15, 2015

‘pp’ ..