

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No15247 of 2011 and 13203 of 2014
& M.P.No.1 of 2011 in W.P.No.15247 of 2011
& M.P.Nos.1 and 2 of 2014 in W.P.No.13203 of 2014

W.P.No.15247 of 2011:

DR.R.RAJENDRAN

... PETITIONER

Vs.

1. BOARD OF GOVERNORS
REP.BY THE CHAIRMAN
NATIONAL INSTITUTE OF TECHNICAL TEACHERS TRAINING
AND RESEARCH (NITTTR)
TARAMANI, CHENNAI-113
2. THE DIRECTOR
NATIONAL INSTITUTE OF TECHNICAL TEACHERS
TRAINING AND RESEARCH (NITTTR)
TARAMANI, CHENNAI-113
3. V.VEERASAMY
SENIOR ADMINISTRATIVE OFFICER,
NITTTR
TARAMANI, CHENNAI-113
4. DR.A.KALANIDHI
CHAIRMAN
ENQUIRY COMMITTEE
COMMON WEALTH SCIENCE & TECHNOLOGY ACADEMY
FOR RESEARCH ISTE PROFESSIONAL CENTRE
25, GANDHI MANDAPAM ROAD
ANNA UNIVERSITY CAMPUS
CHENNAI- 25
5. DR.S.DHANAPAL
PROFESSOR AND HEAD,
CDC MEMBER-SEXUAL HARASSMENT PREVENTION COMMITTEE
NITTTR
CHENNAI-113

6. R.VANAJAKUMARI
SR.P.A. TO DIRECTOR
MEMBER-SEXUAL HARASSMENT PREVENTION COMMITTEE
NITTTR
CHENNAI-113

7. DR.S.RENUKA DEVI
ASSOC. PROFESSOR- EDUCATION
MEMBER & PRESENTING OFFICER
CHARIPERSON-SEXUAL HARASSMENT PREVENTION COMMITTEE
NITTTR, CHENNAI-113

... RESPONDENTS

W.P.No.13203 of 2014:

DR.R.RAJENDIRAN

... PETITIONER

Vs.

1. BOARD OF GOVERNORS
REP. BY THE CHAIRMAN
NATIONAL INSTITUTE OF TECHNICAL TEACHERS TRAINING
AND RESEARCH (NTTTR) SOCIETY
TARAMANI, CHENNAI-600113

2. THE DIRECTOR & MEMBER SECRETARY
NATIONAL INSTITUTE OF TECHNICAL TEACHERS TRAINING
AND RESEARCH (NTTTR) SOCIETY
TARAMANI, CHENNAI-600113

3. SHRI.V.VEERASAMY
CONSULTANT (ADMIN)
NATIONAL INSTITUTE OF TECHNICAL TEACHERS TRAINING
AND RESEARCH (NTTTR) SOCIETY
TARAMANI, CHENNAI-600113

4. DR.KALANIDHI
CHAIRPERSON
ENQUIRY COMMITTEE ISTE PROFESSIONAL CENTRE
25, GANDHI MANDAPAM ROAD
ANNA UNIVERSITY CAMPUS
CHENNAI-25

5. DR.S.MOHAN
C-28 3RD CO OP. ROAD
DELHI AVENUE, IIT
CHENNAI-36

... RESPONDENTS

Prayer in W.P.No.15247 of 2011 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus calling for the records of the 3rd respondent and quash the said Memorandum dated 17.9.2010 under Reference No. Estt./Inq.Com/2010/1451 and direct the 1 to 3 respondents to conduct de-nova proceedings by competent members.

Prayer in W.P.No.13203 of 2014 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order Estt/ DP/ RR/2014/129 dated 8.4.2014 passed by the 2nd respondent and quash the same as illegal and further direct the 2nd respondent to reinstate the petitioner in continue service with all attendant benefits.

For Petitioner : Mr.P.Chandrasekaran for
Mr.P.Jagadeesan

For Respondents : Mr.A.Mohan for R1 to R3 and R5 to R7 in
W.P.No.15247 of 2011 and for R1 to R3 & R5
in W.P.No.13203/2014
Mr.K.Mahendran for M/s.Mccan Law Firm
for R4 in W.P.No.15247/2011
Mr.E.V.Kumar for R4
in W.P.No.13203/2014

COMMON ORDER

The petitioner Dr.R.Rajendiran has filed these two writ petitions. In the first writ petition, viz., W.P.No.15247 of 2011, he sought for a prayer to quash the memorandum dated 17.9.2010 in Reference No. Estt./Inq.Com/2010/1451 and with a further direction to conduct denova proceedings by competent members. In the second writ petition, namely W.P.No.13203 of 2014, he challenged the correctness of the order dated 8.4.2014, passed under Rule 5(1) of the Recruitment and Service Rules of the Institute read with Rule 11(viii) of CCS (CC& A) Rules, 1965, imposing the major penalty of "removal from service", which shall not be a disqualification for future employment under the Government.

2. The petitioner Dr.R.Rajendiran was appointed as a Lecturer in Psychology in University of Madras on 4.8.1993. He became Senior Lecturer, Department of Psychology, Annamalai University on 20.2.2003 on deputation basis and joined as Reader in UGC Academic Staff College, University of Madras from February, 2003. while he was serving as Reader, he has published 24 research papers, guided 8 students in Ph.D., and

with his guidance, four persons have been awarded doctorate. In addition thereto, he was also a guest faculty for M.B.A in various institutions like Loyola College, Versatile Business School, AAM Business School, Chennai, IIKM Business School and Madras School of Social Work. Finally on 5.5.2005, he joined service as an Associate Professor in the National Institute of Technical Teachers Training and Research, Taramani. While he was guiding Ph.D scholars, he has also given his consent to be a guide for one Mrs.S.Pressila Daissy, who was earlier a research scholar under the guidance of Thiru Mukhopadhyaya. Citing various reasons, she sought for change of guide in her letter dated 1.12.2008. Since the earlier guide was not showing any progress or improvement in her research work, she requested the petitioner to take up her research work. Thereafter, the Madras University accepted her request and passed an order dated 22.6.2009, permitting to undergo her research work under the guidance of the petitioner. Thereafter, due to her ill-health, she discontinued her research work as early as 15.4.2010 and after a period of three months, she expressed her desire for another change of guide on 5.7.2010. Later on, she wrote a letter dated 23.7.2010 to the second respondent/Director, National Institute of Technical Teachers Training and Research (in short "NITTR") expressing her desire to discontinue the research work under the guidance of the petitioner.

3. Accepting the letter written by Mrs.Pressila Daissy, the second respondent himself has taken her as the third guide in the Institute. For the reasons best known to the second respondent, wrongly believing the letter written by Mrs.Pressila Daissy stating that he had some problem with the petitioner while doing her Ph.D research work and misunderstanding that Mrs.Pressila Daissy was put to unnecessary sexual harassment, constituted a committee, under the chairmanship of the fourth respondent Dr.Kalanidhi.

4. According to the petitioner, the constitution of the enquiry committee is in gross violation of Sub Rule 25(C) of Rule 3(c)- Prohibition of Sexual Harassment of Working Women of Central Civil Services (Conduct) Rules, which clearly says that the Committee should be headed by a woman and not less than half of its member should be women, while so, Dr.A.Kalanidhi, Former Vice-Chancellor, Anna University, Chennai has been wrongly appointed to head the committee.

5. Therefore, the petitioner, raising objections to the constitution of the committee and its head, which is in violation of the aforesaid Rule, has filed the writ petition No.15247 of 2011. When the writ petition No.15247 of 2011 came up for admission on 29.6.2011, this Court has granted an interim order of stay for a period of four weeks.

6. During the pendency of the Writ Petition No.15247 of 2011, ignoring the fact that the constitution of the committee has been stayed by this Court vide order dated 29.6.2011, the fourth respondent has proceeded with the enquiry. Without even issuing any show cause notice to the petitioner, the second respondent, accepting the report of the fourth respondent, passed the impugned order dated 8.4.2014, imposing the punishment of removal from service on the petitioner, against which W.P.No.13203 of 2014 has been filed.

7. The learned counsel for the petitioner would submit that while Mrs.Pressila Daissy was working as a Research Scholar under the petitioner's guidance, by letter dated 23.7.2010 has given a complaint that the petitioner had started assaulting her verbally in person and through phone which led her to lot of stress, ill health and made her lose further hope that he would guide her smoothly thereafter. For this particular reason, she decided to discontinue her research work and also for change of guide. Thereafter, the Registrar of the University in his letter dated 16.8.2010 granted permission to Dr.S.Mohan, Director to guide Mrs.S.Pressila Daissy for the remaining period of her research. In the meanwhile, without even inquiring into the said complaint given by Mrs.Pressila Daissy, the Director of National Institute of Technical Teachers Training and Research, the second respondent herein issued a memo dated 17.9.2010, without framing any charge against him, treating the letter of the Research scholar as sexual harassment of working woman, under Rule 3 (c)(i) & (ii) (e) of the Central Civil Services Conduct Rules. Again on the same day, another memo dated 17.9.2010 was issued appointing an enquiry committee. In the mean time, Mrs.Pressila Daissy, quoting the charge memo issued against the petitioner that he has been called for enquiry relating to sexual harassment, specifically denied making any such allegation of sexual harassment in her letter dated 22.9.2010. Under this background, the learned counsel for the petitioner submitted that when the complainant Mrs.Pressila Daissy herself came forward in her letter dated 22.9.2010 denying the allegation made by the committee that she had not given any complaint relating to sexual harassment against the petitioner, the respondents ought to have dropped the false proceeding. On the other hand, the 4th respondent/Chairman of the enquiry committee, in his letter dated 3.11.2010 directed the petitioner to be present on 16.11.2010 for personal enquiry with regard to the complaint given by the research scholar Mrs.Pressila Daissy. Immediately on receipt of the complaint, the petitioner requested the committee to furnish all the copies on 8.11.2010. However, the same having not been furnished, he appeared for the enquiry on 16.11.2010. Thereafter, he received another memo, asking him to appear for

the personal hearing on 17.11.2010. But the complainant was absent. Continuing his arguments, he submitted that when the complainant was absent in the enquiry; that the complainant also had written a letter stating that she has not made any complaint alleging sexual harassment against the petitioner and that without any evidence, oral or documentary, more particularly, when the complainant was not examined, the notice of enquiry should have been recalled. A mere reading of the letter clearly shows that the complainant Mrs.Pressila Daissy, for whose cause a committee was constituted, has made a clarification that she was not put to sexual harassment and also further requested the second respondent not to proceed with the enquiry regarding allegations of sexual harassment.

8. In spite of the letter dated 22.9.2010 written by the complainant, viz., Mrs.Pressila Daissy to the second respondent, denying that no such allegation of sexual harassment has been made to her, the committee headed by the fourth respondent Dr.A.Kalanidhi ought not to have proceeded with the enquiry, in any event, in the light of Sub Rule 25(C) of Rule 3(c)- Prohibition of Sexual Harassment of Working Women, of Central Civil Services (Conduct) Rules, and even ignoring the order of interim stay granted by this Court in writ petition No.15247 of 2011, suo motu proceeded with the enquiry and finally submitted a report, finding the petitioner guilty of the charges. When the complainant had not even taken part in the enquiry, overlooking the letter written by Mrs.Pressila Daissy stating that she was not put to sexual harassment by the petitioner, and without framing any charge memo, calling for explanation and thereby flagrantly violating the principles of natural justice, approved the report of the enquiry committee dated 20.6.2011 and wrongly passed the order of removal on 8.4.2014, which is totally impermissible in law.

9. The learned counsel for the petitioner would contend vehemently that nowhere in the impugned order, the disciplinary authority has mentioned that the order of removal has been passed after issuing a definite charge memo calling for explanation from the petitioner or after holding proper enquiry or after furnishing the report of the enquiry to the petitioner, again calling upon him further explanation to the report of the enquiry officer. Therefore, without conducting proper enquiry and affording opportunity to the petitioner, either by the enquiry committee or by the disciplinary authority, the major penalty of removal has been illegally imposed on the petitioner, who was not even found fault with by the complainant in respect of the sexual harassment. Therefore, the impugned order is liable to be set aside, by allowing the writ petition, he pleaded.

10. Drawing the attention of this Court to the letter given by Mrs.Pressila Daissy to the second respondent with regard to not proceeding with the enquiry, since the said Mrs.Pressila Daissy has not made out any sexual allegation or harassment on the petitioner, the learned counsel for the petitioner repeatedly submitted that the cause of the complaint is nowhere connected to the constitution of the enquiry committee for the simple reason that the only allegation made by Mrs.Pressila Daissy was that she was verbally attacked by the petitioner. It has been further clarified by the same complainant stating that no obscene words, that would lead to sexual harassment, have been made by the petitioner. She further clarified in her letter dated 22.9.2010 that the enquiry committee headed by the fourth respondent need not be proceeded further, as she never intended any sexual harassment against the petitioner. That apart, learned counsel further pleaded, this Court also has passed an order staying the operation of the enquiry committee by order dated 29.6.2011. Besides, when the writ petition NO.15247 of 2011 has been pending till date, the respondents ought not to have allowed the committee to proceed further in the matter.

11. Continuing his argument, the learned counsel would contend that in any event, since the author of the complainant, Mrs.Pressila Daissy has come forward in her written letter dated 22.9.2010, addressing persistently not to proceed with enquiry as there was no sexual harassment in all fairness to the second respondent, the second respondent ought to have wound up the enquiry committee, but he has not done so. Showing personal vengeance, the second respondent proceeded wrongly and by violating Sub Rule 25(C) of Rule 3(c)-Prohibition of Sexual Harassment of Working Women, of Central Civil Services (Conduct) Rules, and also without following the doctrine of principles of natural justice, has passed wrongly the impugned order, removing the petitioner from service, therefore, the learned counsel for the petitioner submitted that the impugned order shall be liable to be quashed, with suitable direction to the second respondent to reinstate the petitioner forthwith and pay him all the consequential benefits.

12. Mr.A.Mohan, learned counsel for the respondents 1-3, 5 to 7 in W.P.No.15247 of 2011 and for respondents 1 to 3 in W.P.No.13203/2014 fairly conceded before this Court that no charge memo was issued against the petitioner setting forth the charges against the petitioner calling upon him to submit his explanation. Again to the specific contention made by the learned counsel for the petitioner that a copy of the enquiry report was not furnished to the petitioner, again he conceded that such a copy was not furnished to the petitioner giving him an opportunity to submit his explanation to the enquiry report.

That shows that the principles of natural justice while holding domestic enquiry have been completely violated.

13. Heard the learned counsel on either side and perused the materials on record.

14. Firstly, Mrs.Pressila Daissy, after joining as full time Research scholar (non-stipendary) in the Department of Educational Management and Applied Psychology, under the guidance of Professor B.Mukhopadhyay on 23.1.2008, after a few months, wrote a letter dated 1.12.2008 alleging that he never encouraged her for scholarship and emotionally tortured her alleging that she is a psychiatric patient. Therefore, she sought for change of guideship. In her letter dated 5.12.2008, Mrs.Pressila Daissy requested the Director/2nd respondent to transfer her Ph.D full time research to the petitioner citing that he has specialized in the field of life skill development among the engineering students. Again she has made a letter dated 23.7.2010 stating that the petitioner got irritated and started assaulting her verbally in person and through phone, which caused lot of stress, ill-health and made her lose hope that he would guide her smoothly thereafter. A reading of the letter dated 23.7.2010 does not throw any iota of proof that the petitioner had sexually harassed her. Again the very same complainant Mrs.Pressila Daissy, full time Research scholar, after coming to know that a committee has been constituted on 17.9.2010 to enquire into the allegation of sexual harassment against the petitioner, sent a letter dated 22.9.2010 to the Director stating that she did not face any sexual harassment and the words "verbal assault" connotes literal quarrel over petty things. In this regard, it is necessary to extract the letter itself as follows:

"The order issued to Dr.Rajendran quoted that I have given a letter regarding sexual harassment I have never meant that I would like to make some clarifications.

I did not face any sexual harassment.

The word verbal assault contests the literal quarrel over petty things.

Therefore, I kindly request you not to take any further action regarding allegations of sexual harassment.

Thanking you"

15. In the light of the letter dated 22.9.2010 written by Mrs.Pressila Daissy directly to the Director, NITTR, it is not known how the respondents proceeded further with the enquiry against the petitioner without even holding a preliminary enquiry with the complainant.

16. Secondly, the second respondent taking advantage of the letter of the Research Scholar dated 23.7.2010, issued a memo dated 17.9.2010 without framing charges against the petitioner and reading into the letter as a sexual harassment of working woman under Rule 3(c)(1) and (2) of the Central Civil Services (Conduct) Rules, clearly indicating that the Director has proceeded hastily.

17. Thirdly, when a memo for enquiry dated 17.9.2010 was issued without framing charges against the petitioner, it is not known how the Enquiry Committee came to be constituted against a working Associate Professor. It may be mentioned that when the complainant, in her letter dated 22.9.2010 to the second respondent, has mentioned that she did not face any sexual harassment and the words "verbal assault" connotes literal quarrel over petty things and therefore not to take any further action regarding the allegation of sexual harassment, it is at this stage, the respondents 2 and 3 should have examined the complainant. Admittedly, in the present case, Mrs. Pressila Daissy, who was the complainant, remained absent after writing the letter dated 22.9.2010 not to proceed with the enquiry. Whereas the respondents 2 and 3 colluding with each other, proceeded with the enquiry with a finding against the petitioner that Dr. R. Rajendran had involved in a woman harassment case and the enquiry revealed that he had spent money to induce her. When the complainant herself did not take part in the enquiry and no evidence whatsoever was produced, it is not known how a finding can be reached that the petitioner had induced her to come and stay in his flat without rent and later when she had complained, he started demanding rent. None of the findings could be accepted in view of the fact that the complainant did not take part in the enquiry, more particularly when she had already written a letter dated 22.9.2010 not to proceed with the enquiry. In this regard, it is more important to refer to sub-rule 24 of Rule 3-C of the Prohibition of Sexual Harassment of Working Women, as follows:

"(24) Cases of trivial nature should be eliminated:-

Rule 3(1) of the Central Civil Services (Conduct) Rules, 1964 provides that a Government servant shall at all times maintain absolute integrity and devotion to duty and do nothing unbecoming of a Government servant. This rule serves the specific purpose of covering acts of misconduct not covered by other specific provisions of the rules. It is, therefore, necessary that Disciplinary Authorities should first satisfy themselves that the alleged acts of misconduct do not attract the provisions of any specific rule before taking recourse to Rule 3(1) *ibid*. Where action is

taken under Rule 3(1) particularly on grounds of unbecoming conduct, special care should be taken to eliminate cases of a trivial nature. Supervisory Officers should look into this matter during periodic inspections and ensure that disciplinary proceedings under Rule 3(1) are not initiated on grounds which are unjustified."

18. A reading of the above shows that it is always necessary that disciplinary authorities should first satisfy themselves that the alleged acts of misconduct do not attract the provisions of any specific rule before taking recourse to Rule 3 (1) on grounds of unbecoming conduct, special care should be taken to eliminate cases of a trivial nature. Again the rule says that supervisory officers should look into the matter during periodic inspections and ensure that disciplinary proceedings under Rule 3(1) are not initiated on grounds which are unjustified. Since the disciplinary authority has completely given a go-by to sub rule 24 of Rule 3(c), the impugned order clearly shows that the respondents 2 and 3 have acted with an ulterior motive to punish the petitioner for no wrong, therefore the same is liable to be set aside.

19. Turning to the contentions made by the petitioner's counsel that the constitution of the enquiry committee member is wholly illegal, it is pertinent to visit the memorandum dated 17.9.2010, constituting an enquiry committee to enquire into the allegation made by Mrs.Pressila Daissy against the petitioner. The enquiry committee consists of the following members.

- | | |
|--|-------------|
| i. Dr.A.Kalanithi
Former Vice Chancellor
Anna University,
Chennai 32 | Chairperson |
| ii. Dr.S.Dhanapal,
Professor & Head, CDC
Member-Sexual Harassment
Prevention Committee
NITTR, Chennai 113 | Member |
| iii. Shri V.Veerasingam,
Sr. Admn. Officer
Member-Sexual Harassment
Prevention Committee,
NITTR, Chennai 113 | Member |
| iv. Smt.R.Vanajakumari,
Sr.P.A. to Director
Member-Sexual Harassment
Prevention Committee
NITTR, Chennai 113 | Member |

v. Dr.S.Renuka Devi
Associate Professor, Education
Chairperson,
Sexual Harassment
Prevention Committee
NITTR, Chennai 113

Member & Presenting Officer

20. Further, sub rule 25(c) of Rule 3(c) also has been completely violated. The relevant portion of the said rule reads as follows:

... (iii) The complaint mechanism should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment."

21. A reading of the above shows that the Complaints Committee should be headed by a woman and not less than half of its members should be women. Further to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either new or other body who is familiar with the issue of sexual harassment.

22. When Sub-rule 25(c) clearly shows that the Complaints Committee should be headed by a woman and not less than half of its members should be women, in the present case, Dr.A.Kalanidhi, former Vice Chancellor has been made as the Chairman in violation of the above Rule.

23. Finally, at the risk of repetition, it may be mentioned herein that when the complainant herself has stated that she did not face any sexual harassment at the hands of the petitioner, the second respondent, circumventing sub-rule (24) of Rule 3-C of the Prohibition of Sexual harassment of working women, prescribing that the cases of trivial nature should be eliminated, wrongly constituted the enquiry committee without even issuing charge memo against the petitioner and violently proceeded against the petitioner against the letter dated 22.9.2010, which is in gross and flagrant violation of the principles of natural justice. Therefore, the order of removal, which is wholly unwarranted, is liable to be set aside. Accordingly, the impugned order is set aside.

24. Since the petitioner, who was serving as Associate Professor of NITTR, Tharamani, Chennai has been unceremoniously removed by the second respondent, for the unknown reasons, as a result the petitioner and his family have been put to grave prejudice, this Court is inclined to impose costs of Rs.25,000/- payable by the second respondent to the petitioner. Needless to mention that the petitioner shall be reinstated in service with all consequential benefits, within a period of three weeks from the date of receipt of a copy of this order.

25. With the above direction, Writ Petition No.13243 of 2014 stands allowed as prayed for and the Writ Petition No.15247 of 2011 stands closed, as nothing survives for adjudication. Consequently, the Miscellaneous Petitions stand closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ajr

To

1. THE CHAIRMAN
BOARD OF GOVERNORS
NATIONAL INSTITUTE OF TECHNICAL TEACHERS TRAINING
AND RESEARCH (NITTTR)
TARAMANI, CHENNAI-113
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+2cc's to Mr.A.Mohan, Advocate, S.R.Nos.23380 & 23378
+1cc to Mr.E.V.Kumar, Advocate, S.R.No.23379
+4cc's to Mr.P.Jagadeesan, Advocate, S.R.Nos.22937 & 22938
+1cc to M/s.Mccan Law Firm, Advocate, S.R.No.23597

W.P.No.15247 of 2011 and 13203 of 2014

LRS (CO)
CA(11/05/2016)

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