

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT. JUSTICE T. RAJANI

WRIT PETITION No.30632 of 2017

ORDER: (*Per VRS,J*)

The petitioner, who is employed as a Senior Assistant in the Court of the Principal Senior Civil Judge, Kovvur, West Godavari District, has come up with the above writ petition, challenging an order of suspension and a charge memo.

2. Heard Mr. J. Sudheer, learned counsel for the petitioner.
3. It appears that the 2nd respondent herein gave a complaint to the Principal District Judge against the petitioner herein, alleging sexual harassment. The complaint was forwarded by the Principal District Judge to the Internal Complaints Committee constituted in terms of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short 'the Act'). The Committee gave a report on 07.03.2017, recommending disciplinary action. On the basis of the said report, the Principal District Judge placed the petitioner under suspension by an order, dated 16.05.2017, and issued a charge memo, dated 06.07.2017, initiating major penalty proceedings. Aggrieved by the initiation of such action, the petitioner is before us.
4. After fairly conceding that he cannot assail the charge memo and the order of suspension on merits, Mr. J. Sudheer, learned counsel

for the petitioner, submitted that the whole action is legally vitiated. The legal grounds, on which the learned counsel for the petitioner assails the suspension order and the charge memo, are:

- (1) that the constitution of the Internal Complaints Committee, is not in tune with Section 4(5) of the Act;
- (2) that though the Committee is empowered under Section 11(3) to exercise the same powers as that of a civil Court under the Code of Civil Procedure, the Committee failed to follow the said procedure before coming to the conclusion that it did;
- (3) That since the report to be submitted by the Internal Complaints Committee under Section 13(3) is of such a nature that the petitioner could be visited with civil and penal consequences, the Committee should actually conduct a full-fledged enquiry before holding a person guilty of sexual harassment; and
- (4) that the petitioner having already been transferred twice before the impugned action, there was no necessity to place him under suspension.

5. We have carefully considered the above submissions.

6. On the first contention, it is true that under Section 4(5) of the Act, a Presiding Officer or any member of an Internal Complaints Committee, who has been found guilty in any disciplinary proceedings or against whom disciplinary proceedings are pending,

shall be removed from the Committee. But, that does not mean that the action taken by the Committee comprising of the members against whom disciplinary proceedings are pending, gets vitiated. The acts carried out by the Committee, cannot be held to be vitiated, merely because of the fact that a couple of members of the Committee became liable to be removed from Office under Section 4(5). Hence, the first contention deserves to be rejected.

7. On the second contention, it is true that under Section 11(3), an Internal Complaints Committee is vested with the same powers as that of a civil Court, for the purpose of summoning and enforcing the attendance of any person, requiring the discovery and production of documents and all connected matters. In other words, the Committee is empowered to take both oral and documentary evidence before coming to a conclusion on the question of harassment.

8. But, the question, whether such a power conferred upon the Committee would make the report submitted by them final and conclusive, has to be seen in the context of the provisions of Section 13 and Rule 9. Section 13(1) of the Act states that upon completion of an enquiry, the Internal Complaints Committee should provide a report of its findings, within a period of ten days. If the Committee comes to the conclusion that the allegations are not proved, the Committee shall recommend to the employer that no action is required to be taken. This is under sub-section (2). Where the Committee

comes to the conclusion that the allegations are proved, the Committee may recommend two things, under sub-section (3).

Sub-section (3) of Section 13 may be usefully extracted as follows:

“(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be –

- (i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;*
- (ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15.*

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman.

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.”

9. Keeping in mind the clauses (i) and (ii) of sub-section (3) of Section 13, if we have a look at Rule 9 of the Rules framed under the Act, it could be seen that the Committee is empowered to recommend any action against the erring Officer, including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, termination of the services or

undergoing a counseling or carrying out community service. Rule 9 reads as follows:

“Manner of taking action for sexual harassment:- Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counseling session or carrying out community service.”

10. If we have to hold that the report submitted by the Internal Complaints Committee is final and conclusive, it would result in serious consequences. Let us take, for instance, a case where a person is guilty of serious misconduct. The power of the disciplinary authority to impose the penalty of dismissal or removal from service or reduction in rank, cannot be taken away by Rule 9. Rule 9 does not talk about dismissal from service, removal from service or reduction in rank. It is true that Rule 9 uses the expression “*terminating the respondent from service*”. But, termination *simpliciter* is not one of the penalties that could be imposed upon a Government servant. This is why Section 13 (3) (i) enables the Committee to recommend to the employer to take action for a misconduct, in accordance with the Service Rules. If the Service Rules enable an employer to dismiss an employee from service, the requirement for the conduct of a domestic enquiry is not at all dispensed with by Section 13(3) or Rule 9. If the findings recorded by the Internal Complaints Committee under

Section 13(3) are to be taken as final and conclusive, the employer will not be able to conduct any domestic enquiry at all. In the domestic enquiry, the report of the Internal Complaints Committee may be one of the pieces of evidence. But, the power of the employer to conduct a domestic enquiry is not taken away by Section 13(3). In that sense, the findings recorded by the Internal Complaints Committee cannot be taken to be final and conclusive.

11. If that is so, what is the purport of the clause (ii) of Section 13(3) where the Internal Complaints Committee is entitled to recommend the deduction of any sum for payment to the aggrieved woman from the salary of the respondent. In our considered opinion, the deduction that the Committee can recommend under clause (ii) of sub-section (3) of Section 13 cannot also take place without an enquiry by the employer. If it can take place without an enquiry by the employer under the Service Rules, the employee will be left with no alternative even to defend such action. Therefore, in our considered opinion, the report under Section 13(3) is only a fact finding report and may constitute one of the pieces of evidence in the domestic enquiry. Hence, the non-adherence to the prescription contained in Section 11(3) by the Internal Complaints Committee, cannot make the report completely vitiated. It may cast a dent upon the evidentiary value of the report, but that is a question to be addressed only in the domestic enquiry.

12. The third contention of the learned counsel for the petitioner is that the Act requires the enquiry by the Internal Complaints Committee to be concluded within ninety days, and that in this case, the time limit exceeded. But, the time limit prescribed cannot be taken to be a water tight compartment, divesting the Internal Complaints Committee of the powers to proceed further. There are so many enactments prescribing the time limit for the conclusion of even enquiries by Courts, Labour Courts and Tribunals. The non-adherence to the time schedule, will not make the reports submitted, a dead letter. Hence, the third contention cannot also be accepted.

13. The last contention of the learned counsel for the petitioner is that the petitioner was already transferred twice, and that there was no necessity for the suspension. But, the transfers probably happened before the report of the Internal Complaints Committee. This is because the Act itself prescribes under Section 12, a right to transfer the employee during the pendency of the enquiry by the Internal Complaints Committee. Therefore, the action taken after the submission of the report of the Internal Complaints Committee, cannot be found fault with, merely because an action under Section 12(1) had already been taken.

14. One last contention raised by the learned counsel for the petitioner is that in Annexure-III to the charge memo, the disciplinary authority has included the names of the members of the Internal

Complaints Committee as the witnesses. The grievance of the petitioner is that the persons, who were present at the scene of occurrence, were not even cited.

15. It is true that the members of the Internal Complaints Committee cannot be cited as witnesses. They actually hold Office as a Statutory Committee constituted in terms of the Act. Therefore, we do not know how the members of the Internal Complaints Committee were cited as witnesses. But, this is an objection that the petitioner can take in the course of enquiry. Insofar as other witnesses are concerned, it is always open to the petitioner to examine them as his own witnesses or at least summon them as third party witnesses through the Enquiry Officer.

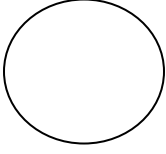
16. Therefore, with the above observations, the Writ Petition is dismissed.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

T. RAJANI, J.

11th September, 2017
cbs



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN ✓
AND
THE HON'BLE SMT. JUSTICE T. RAJANI



Writ Petition No.30632 of 2017
(dismissed)

11th September, 2017

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*THE HON'BLE SMT. JUSTICE T. RAJANI

+W.P.No.30632 of 2017

% 11-09-2017

N.N.V.S. Prasada Rao

.. Petitioner

Vs.

\$ The Principal District Judge, West Godavari,
Andhra Pradesh and another

.. Respondents

<GIST:

>HEAD NOTE:



! Counsel for petitioner : Mr. J. Sudheer

^ Counsel for respondents : ---

? CASES REFERRED : ---