

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

Date of Decision: October 31, 2017

+ **W.P.(C) 9624/2017 & CMs. 39172-73/2017**

AMBIKA BISHT Petitioner

Through: Ms. Sumati Sharma and Ms. Neetu
Sethi, Advocates

versus

GOVT. OF NCT & ORS Respondents

Through: Ms. Manika Tripathy Pandey and Mr.
Ashutosh Kaushik, Advocates for respondents No.1,
2, 4 & 5

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

Vide order of 18th October, 2016, disciplinary action was initiated against petitioner, who was a Head-Clerk in respondent-Academy and petitioner claims that in terms of this very order of 18th October, 2016 (*Annexure A-1*), petitioner has been suspended w.e.f. 18th October, 2016 itself and the said suspension order is illegal because it has been passed by the Acting Secretary. It is submitted by learned counsel for petitioner that as per the O.M. of 24th January, 1963, an Officer performing current duties of a post cannot exercise statutory powers under the Rules. The relevant extract of the said O.M. relied upon by petitioner's counsel reads as under: -

“An officer appointed to perform the current duties of an appointment can exercise administrative or financial power

vested in the full-fledged incumbent of the post but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament (e.g. Income Tax Act) or Rules, Regulations and Bye-Laws made under various Articles of the Constitution (e.g., Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules etc.) (MHA OM No.7/14/61-Ests. (A) dated 24th January, 1963)''

So, it is submitted by learned counsel for petitioner that the suspension of petitioner is illegal and it needs to be set aside and petitioner be put back in service.

In this petition, a direction is also sought to respondent No.3-Art, Culture and Language Department, GNCTD through its Secretary to constitute a Sexual Harassment Committee under Chapter-III of *the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* in view of petitioner's complaint (Annexure A-8) where allegations of sexual harassment have been leveled against respondent No.5-Deputy Secretary-cum-Acting Secretary of *Delhi Sanskrit Academy*.

According to petitioner's counsel, the said complaint (Annexure A-8) is not being proceeded with and the initiation of the departmental inquiry against petitioner is vitiated as it has been triggered off by petitioner's complaint (Annexure A-8).

Upon notice, learned counsel for respondents No.1, 2 & 3 submits that as per Annexure A-12, respondent-Delhi Sanskrit Academy has constituted a Disciplinary Committee on petitioner's complaint (Annexure A-8) on 3rd September, 2016.

At this stage, petitioner's counsel points out that the constitution of this Committee is not in compliance with Chapter-III of *the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*.

On a query put to petitioner's counsel, it was disclosed that the disciplinary action is at the advanced stage i.e., Inquiry Officer's report has been furnished to petitioner wherein petitioner has been held guilty of the charge levelled against her. Moreover, it needs to be clarified that petitioner has made complaint (*Annexure A-8*) after the Memos (*Annexure A-5*) were served upon her.

In such a situation, this Court is not inclined to interfere at this advanced stage of the proceedings. It is left open to petitioner to question the legality of the impugned suspension order while assailing Inquiry Officer's report at the appropriate stage. So far as petitioner's complaint (*Annexure A-8*) is concerned, respondent-Delhi Sanskrit Academy shall apprise petitioner about the status of her complaint within four weeks and shall ensure that the said complaint is taken to its logical end expeditiously.

This petition and the applications are disposed of with aforesaid directions while refraining to comment on merits of the dispute raised herein.

(SUNIL GAUR)
JUDGE

OCTOBER 31, 2017

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