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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10682 OF 2016

Council of Scientific & Industrial Research and Anr. ... Petitioner
V/s.
Mrs. Arti Santosh Harle and Anr. ... Respondents

Mr. Anilkumar K.P. a/w Ms. Priyanka Kumar for the Petitioner.
Ms. Pooja V. Thorat for the Respondent No.1.

CORAM : A.S.OKA AND M.S. SONAK, JJ.

DATE : 1st OCTOBER 2018.

ORAL JUDGMENT (Per A.S. Oka, J.)

1 Notice for final disposal was issued on 21st August 2018. By this petition under Article 226 of the Constitution of India, the challenge is to the judgment and order dated 22nd April 2016 passed by the Central Administrative Tribunal. The first respondent is employed as a Scientist in National Chemical Laboratory (for short "NCL") which is controlled by the Council of Scientific and Industrial Research (CSIR) at Pune. On 21st October 2015, a charge memo/charge-sheet was issued to the first respondent. An Original Application was filed by the first respondent before the Central Administrative Tribunal. There were two substantive prayers in the original application which read thus :-

"A] By issue of an appropriate order or direction, Hon'ble Tribunal may hold that the Respondent Nos.3 and 4 presided over by Respondent Nos.5 and 6 respectively should not conduct any departmental enquiry against the

present applicant, and further be pleased to restrain the Respondents more specifically Respondent No.4 i.e. the Director of National Chemical Laboratory, Pune headed by Respondent No.6 from conducting any departmental enquiry against the present applicant in furtherance of the charge sheet/ memorandum dated 21.10.2015 issued by the Respondent No.4.

- B] By issue of an appropriate order or direction, the Hon'ble Tribunal may be pleased to appoint, or direct the Respondents to appoint a Enquiry Committee and a disciplinary authority, which is headed by persons who are no way related to the Council of Science and Industrial Research, and further direct the disciplinary authority so appointed to take appropriate decision permissible in law based on the Report submitted by such Enquiry Committee.”

2 The Respondent No.5 to the Original Application was the Director General of CSIR at the relevant time and the Respondent No.6 was a Director of NCL - CSIR at the relevant time. The Tribunal in the impugned judgment has referred to the nature of charges in the charge sheet served upon the first respondent. In paragraph 9 of the impugned order, the Tribunal noted that perusal of the documents show that the first respondent has many grievances such as harassment at workplace, discrimination and non-conducive environment for discharge of her duties. It is alleged that as the first respondent belonged to the Scheduled Caste, she has been subjected to undignified and inhuman treatment. It is noted that the first respondent made certain allegations about the financial irregularities in award of a particular contract. It is pointed out that the first respondent made specific allegations about financial irregularities in award of contracts to M/s. Icon Analytical and monopoly

business and EMKE Medical Shoppee. The Tribunal observed that the allegations of harassment, discrimination, etc. relate to perceptions which need to be substantiated with evidence of actual acts of harassment. The Tribunal observed the allegations made in respect of award of contracts and monopoly business were verifiable and in fact, the authorities of NCL under the directions of CSIR had made an attempt in this direction by constituting two Committees to look into the grievances. It is found in paragraph 9 that the first respondent did not co-operate with the Committees and did not appear for presenting any evidence to substantiate her complaints and allegations. The Tribunal observed that the very fact that the first respondent did not co-operate with the Committees and did not produce evidence to substantiate her complaints against the Director General of CSIR and the Director of NCL gives an impression that she is not serious in prosecuting the complaints and it shows that there is no need to form an Inquiry Committee to look into the complaints. Further in paragraph 9, the Tribunal observed that apprehension of the first respondent of bias in respect of complaints made by her, whether substantiated or not, needs to be verified seriously.

3 In paragraph 10, it is noted that the first respondent has made allegations against the Respondent No.5 in the Original Application who was the Director General of CSIR at the relevant time. It is further observed that she has also made allegations against Respondent No.6 who was working as the Director of NCL. The submission of the first respondent is recorded that any person working in the Respondent No.5 or the Respondent No.6 will be influenced by the said respondents in the

conduct of inquiry. Ultimately, in paragraph 10, the Tribunal held thus :-

“..... Such being the case despite her recklessness and the tendency to jump levels in sending representations containing allegations against her colleagues and superiors the fact remains that any inquiry conducted by an officer who works under the Respondent No.5 or Respondent No.6 will always bear the possibility of the applicant alleging bias in the conduct of the Inquiry. The Respondent's contention that the inquiry has been entrusted to Shri Y. Ramakrishna who is the Sr. Controller of Administration from CSIR – Indian Institute of Chemical Technology, therefore, does not adequately address the issue of bias since the said Inquiry Officer works under the Respondent No.5 who is Director of CSIR.”

(underlines supplied)

4 The learned counsel appearing for the petitioners (CSIR and NCL) submitted that there is no finding recorded by the Tribunal that the fairness of the inquiry conducted by Shri Y. Ramakrishna, the Enquiry Officer will be affected as there is a material to show that either the Respondent No.5 or the Respondent No.6 in the Original Application entertained a bias against the petitioner. He submitted that only because there is a possibility of the first respondent alleging bias in the conduct of inquiry that the impugned order has been passed. He submitted that now both the Respondent Nos.5 and 6 in the Original Application are no longer there. The Respondent No.5 and 6 in the Original Application have been replaced by Professor Ashutosh Sharma and Professor Ashwini Kumar Nangia respectively. He pointed out that the orders of appointment of the said persons have been annexed to the affidavit of Mrs. Pooja Prashant Kulkarni dated 30th August 2018 filed by the petitioner.

5 The learned counsel appearing for the first respondent invited our attention to the nature of allegations in the charge sheet served to the first respondent. She pointed out the factual statements recorded in paragraph 7 of the impugned judgment and order. Her submission is that considering the nature of allegations made by the first respondent against the Respondent No.5 in the original application who was the then Director General of CSIR, the Tribunal was right in holding that the Inquiry Officer working under the said Respondent No.5 to the original application is likely to be influenced and there is always a possibility of bias. She pointed out an affidavit in rejoinder filed by her today. She pointed out that in the year 2016, the first respondent had filed a complaint against the newly appointed Director of NCL for not initiating action against a fellow employee who had physically assaulted the first respondent. She pointed out that in the complaint made by the first respondent to the police authorities against the various authorities of CSIR, allegations of inaction have been made against the newly appointed Director of NCL. She pointed out that as the first respondent has made allegations against the predecessors of newly appointed Director General of CSIR, notwithstanding the appointment of new Director General, the issues of bias and breach of principles of natural justice remain. She would, therefore, submit that the Tribunal rightly directed that the Ministry of Science and Technology will refer the matter to appropriate authority for entrusting the proceedings to an officer from any Ministry/Department/ Organisation outside CSIR

which is not under the administration of the Respondent No.3. Therefore, she submitted that no interference is called for.

6 We have carefully considered the submissions. We have already quoted the finding recorded by the Tribunal in paragraph 5 of the impugned judgment. Perusal of the entire impugned judgment shows that there is no finding recorded that the Respondent No.5 or the Respondent No.6 or both of them entertained any bias against the first respondent. It is merely observed that any inquiry conducted by an officer who works under the Respondent No.5 or the Respondent No.6 will always bear the possibility of the first respondent alleging bias in the conduct of the inquiry. When we made a query to the learned counsel appearing for the first respondent whether there is any material on record of the Tribunal to show that the first respondent made allegations of bias against Shri Y. Ramakrishna who has been appointed as the Inquiry Officer, she stated that there is no such material on the record of the Tribunal.

7 Thus, taking the findings of the Tribunal as correct, at highest, there is only a possibility of the first respondent alleging bias in the conduct of the inquiry. There is no finding that the existence of any such bias is established by the first respondent. There is not even a prima facie finding that such bias against the Respondent No.5 or the Respondent No.6 or in the Original Application the Inquiry Officer has been established by the first respondent.

8 However, by the impugned order, the Tribunal went to the extent of directing that not only that the disciplinary proceedings should be entrusted to an officer from outside the CSIR but also from any Ministry/Department/Organisation which is not under the administrative control of the Respondent No.3. The Tribunal went to the extent of directing that the Inquiry Officer/ Disciplinary Authority and the Appellate Authority may be appointed exclusively for such disciplinary proceedings as a special case from outside CSIR and from organisation or Ministry or Department over whom the Respondent No.3 has no administrative control. The Respondent No.3 in the original application was the Director General of CSIR who is named in his personal capacity as the Respondent No.6. Such drastic directions of creating special authorities, both Disciplinary and Appellate, for dealing only with the disciplinary inquiry of the first respondent have been issued though there is no finding that the first respondent has established allegations of bias.

9 Now a new Director General has been appointed of CSIR under the order dated 24th August 2018 after the approval of the Appointment Committee of the Cabinet. The new Director General who is the Secretary of the Department of Science and Technology has been given additional charge of the post of the Director General. Going by the affidavit in rejoinder filed by the first respondent, she has made no allegations of bias against the newly appointed Director General. The only contention in the rejoinder is that because she has made allegations against his predecessors, it will be appropriate to

appoint an authority other than the authority working under CSIR. It is impossible to accept that the newly appointed Director General will entertain any bias against the first respondent only because the first respondent has chosen to make allegations against his predecessors. Even a new Director of NCL has been appointed on 29th February 2016. It is pertinent to note that admittedly there were no allegations made before the Tribunal against the Inquiry Officer appointed.

10 In view of the changed circumstances as reflected from the additional affidavit of the petitioner and even otherwise, we find absolutely no justification for the directions which are issued under the impugned order. Admittedly, the Director General of CSIR is an officer who is superior to the Director of NCL. Admittedly, there are no allegations made against the person who presently occupies the post of Director General of CSIR. Assuming that the Inquiry Officer is a subordinate officer of the Director General, we fail to understand how allegations of bias in the inquiry proceedings can be justified as of today.

11 Hence, the petition must succeed and we pass the following order :-

ORDER

- (i) The impugned judgment and order dated 22nd April 2016 is hereby quashed and set aside and the Original Application No.9 of 2016 is hereby dismissed;

- (ii) We make it clear that we have made no adjudication on the merits of the charge sheet served upon the Respondent No.1 and all contentions of the first respondent in the inquiry proceedings are kept open;
- (iii) Rule is made partly absolute on above terms.

(M.S. SONAK, J.)

(A.S.OKA, J.)