

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2936 OF 2016

Kamlesh Patel.

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr.S.C.Naidu with Mr.T.R.Yadav i/b. Mr.Bipin Vijay Tiwari, for the
Petitioner.

Ms.Jyoti Chavan, AGP for Respondent Nos.1 to 5.

Ms.Ushajee Peri, for Respondent No.2.

Mr.Rui Rodrigues with Ms.Rimi Jain, for Respondent No.4.

Mr.Aparna Deokar i/b. M.P.Vashi Associates, for Respondent No.7.

**CORAM: NARESH H.PATIL AND
G.S.KULKARNI, JJ**

DATED: 16th July, 2018

P.C.:

1. Heard the learned Counsel for the parties. By this petition,
the petitioner seeks following reliefs:

“(a) for a declaration that the Impugned Order dated 26th
October,2015 of the State Commission for Women (Exhibit
A hereto) is a nullity and non est;

(b) that a writ of certiorari or any other writ, order or

direction be issued calling for the papers and proceedings of C.R.No.5580 and after ascertaining the legality and validity of the Impugned order dated 26th October,2015 (Exhibit A hereto) passed by the State Commission for Women this Hon'ble Court, do quash and set aside the said impugned order;

(c) that the implementation, continuance and coming into force of the said Order dated 26th October,2015 (Exhibit A hereto) be stayed pending the hearing and final disposal of the present petition;”

2. On behalf of respondent no.2, an affidavit is filed today.

Paragraph 28 of the said affidavit reads thus:-

“28. With respect to paragraphs 7-10, the contents thereof are denied in so far as they are inconsistent with and in contradiction to the facts as mentioned by me hereinabove. I reiterate that my complaint to the State Commission for women was against the Respondent College and Management with respect to the victimization meted out to me on account of my sexual harassment complaint by issuing me a false and malicious Show Cause Notice about my competence and initiating a Disciplinary Proceedings against me. I say that the petitioner was already terminated by this time and as such he was not a necessary party to the investigation by the State Commission for Women. I say that the Petitioner is not a necessary party to the investigation and there has been no violations of any natural justice principles in the investigation by the State Commission for Women. I say that the State Commission for Women adopted the findings of the UWDC on the factum of sexual harassment of me by the petitioner and as such did not undertake any investigation into the issue of

sexual harassment. It therefore follows that neither the Petitioner nor was I ever called upon to lead any evidence on the factum of sexual harassment.”

3. During the course of hearing, the learned Counsel for the management has placed on record a simple copy of the order dated 25th May,2016 passed by the Division Bench of this Court in Writ Petition (lodg) No.1422 of 2016, which is a petition filed by the management wherein respondent no.2 herein Mrs.Mythili Sapre is impleaded. The order reads thus:-

- “1. Issue notice returnable on 15th June,2016.
2. Prima facie we are of the considered view, that the recommendations by the UWDC are beyond its jurisdiction. In any case it is the specific contention of the learned counsel for the petitioner that those recommendations have been duly complied with by terminating one Mr.Patel and paying salary to Smt.Sapre as per the 6th Pay commission.
2. In that view of the matter the ad-interim relief in terms of prayer clause (d) granted.”

4. In respect of the allegations of sexual harassment, two forums have dealt with the issue and passed the orders, namely (I) State Commission for Women and (II) University Women Development Cell (UWDC) constituted under the orders of the Vice Chancellor's Directions (VCD). The State Commission's order is dated 26th October,2015 and

University Women Development Cell's (UWDC) order is dated 27th June,2012.

5. As of today, the position according to the learned Counsel is that the petitioner was terminated on 18th December,2011 (otherwise termination) and formally a termination order was issued on 23rd July 2012. Admittedly the petitioner has not challenged any termination order before the College Tribunal so far, and according to the learned Counsel the petitioner decided to exhaust the remedy by approaching different forums namely (a) petition to the Vice Chancellor and (b) the present petition. Admittedly, the management has not reinstated the respondent no.2 so far. In the course of hearing we gathered that the management interpreted the ad-interim order passed by the Division Bench of this Court in Writ Petition No.1422 of 2016 as an order which protect them from not reinstating respondent no.2.

6. The learned Counsel for respondent no.2 fairly submitted that respondent no.2 had approached the State Commission for Women with her grievance in respect of her victimization by the college management where a show cause notice was issued to her pursuant to the complaint made by her in respect of sexual harassment. In fact respondent no.2 in

the said proceedings initiated before the State Commission was not inviting any relief and finding against the petitioner. The learned Counsel hastened to add here that before the State Commission, the order of the UWDC was placed and it seems that the Commission's reasoning are also based on the reasoning included in the order passed by UWDC.

7. The anxiety of the petitioner seems to be that in case clarification is issued to the effect that the State Commission for Women does not record findings against the petitioner for sexual harassment of respondent no.2, then the petitioner would resort to appropriate statutory remedy as permissible in law. Further the concern of the petitioner seems to be the observations in the UWDC's order which involves the petitioner as a person who is responsible for sexually harassing respondent no.2. Mr.Rodrigues, learned Counsel for the University submits that the report of UWDC body constituted under the Vice Chancellor's directions is placed before the Vice Chancellor for approval.

8. Coming back to the petition at hand, the concern of the petitioner as addressed in view of the additional affidavit filed and the statement of the learned Counsel for respondent no.2 recorded herein, it is clarified that we are not giving any findings in respect of the innocence of

the petitioner. In this regard it is left to the petitioner to resort to statutory forums which are made available under the relevant statute of the University. Respondent no.2 is at liberty to resort to an appropriate forum as it is informed that she has not been reinstated so far.

9. In view of the statement of the learned Counsel appearing for Respondent no.2 and the reply affidavit filed, in case the petitioner resorts to appropriate remedy in respect of his termination before any forum, the said forum would deal with the issue without being influenced by the answer given to issue no.1 in the inquiry held by the State Commission.

10. In view of the aforesaid observations, the Writ Petition is disposed of.

(G.S.KULKARNI, J.)

(NARESH H. PATIL, J.)