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

Date of decision : 26th July, 2018

+ W.P.(C) 8222/2003

DR.A.DAILI

..... Petitioner

Through Mr.A.K.De, Mr.Rajesh
Dwivedi and Ms.Ananya De, Advs.

versus

JAWAHARLAL NEHRU UNIVERSITY Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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JUDGMENT (ORAL)

1. The petitioner, who was working as a Technical Officer in the Jawahar Lal Nehru University (JNU) was issued a charge-sheet, on 2nd August, 2002, by the Gender Sensitisation Committee Against Sexual Harassment (hereinafter referred to as “the Gender Sensitisation Committee”) constituted in the JNU, based on a complaint, by Ms.Um Ean Kyo, alleging that the petitioner had sexually harassed her on 15th July, 2003. The communication from the Gender Sensitisation Committee to the petitioner opined, *prima-facie*, that the grievance of Ms. Kyo indicated that the petitioner had sexually harassed her and that, therefore, an Inquiry Committee, consisting of five persons (apparently in line with the directions of the Supreme Court in *Vishaka v. State of Rajasthan, (1997) SCC Cri. 932*) had been constituted to enquire into the complaint. The petitioner was invited to submit his written statement and to appear before the said Committee

on 5th August, 2002.

2. It is not necessary to enter into the particulars of the proceedings before the Gender Sensitisation Committee; suffice it to state that the report of the said Committee, dated 3rd September, 2002 found the petitioner guilty of sexually harassing Ms. Kyo.

3. Guideline No.5, in para 17 of the judgment of the Supreme Court in *Vishaka (supra)* directs that, where the conduct of the Officer, complained against, amounts to misconduct in employment as defined by the relevant Service Rules, appropriate disciplinary action is required to be initiated by the employer in accordance with the Rules. Apparently in compliance with this guideline, the report of the Gender Sensitisation Committee was forwarded, to the petitioner, by the Vice-Chancellor of the JNU, in his capacity as disciplinary authority *vide* Memorandum dated 13th January, 2003, requiring the petitioner to show cause as to why disciplinary proceedings be not initiated against him, for having sexually harassed Ms. Kyo.

4. The petitioner responded *vide* communication dated 17th January, 2003, which deserves to be reproduced in *extenso* thus:

“
To Prof. G.K. Chadha,
Vice Chancellor,
Jawaharlal Nehru University,
New Delhi-110067

Dated: 17th January, 2003

Dear Sir,

This humble note refers to your kind Memorandum

No.F.1/25/Admn.1, dated 13.1.03 which I received on 15.1.03 (AN) (after my return from the Safdarjung Hospital).

2. I am really surprised to note that the Memorandum under reference does not elucidate to my reply dated 7th Nov., 2002, which was submitted to Prof. Balveer Arora, Rector, JNU, in response to his letter No. REC.1/G/9/2002/213, dated 9.10.02.

3. However, you had very kindly given me opportunity to present my case personally on 26.12.12 and gave me a very patient hearing. I am of the considered opinion that I submitted before you of my innocence in the matter. I was also convinced that the factual position of my side of the story presented by me vide my letter dated 7th Nov. 02 had convinced the University authorities, and presumed that the matter was treated as closed.

4. I really feel pained to know that the University had chosen to ignore my reply dated 7th Nov., 02 and asked me to show-cause as to why disciplinary proceedings may not be initiated against me.

5. Let me re-iterate my position as I am convinced that I have not done anything which could be construed as 'uncivilised action'.

6. However, I do humbly submit that being born and brought up from a NAGA Christian Family, I have the courage and wisdom to say that I am very sorry in case any of my actions resulted in unintended misery, commotion and pain to anyone in the University, including the student, in spite of my affection as a Father to a daughter and yet the child took otherwise. Needless to mention here that during my 32 (Thirty Two) years long service since 1970, in the Jawaharlal Nehru University, never before has such an allegation been raised against me by any student. I have tried my level best all through these years to maintain my reputation as a straight forward and honest employee of the University. I have been eagerly forward to my honourable retirement from the University service w.e.f. January, 31, 2003 so that I can relax with my family members in Nagaland and spent the rest of my life in peace and harmony.

7. Will the Jawaharlal Nehru University – allow me to attain my dream at the fag-end of my career, or does the University want me to spend the rest of my years in misery and mental trauma and thereby crucify me at the altar of Fatherly love and compassion!

8. Having said so, I hereby tender my unqualified apology from the core of my heart, in case my honest actions have been misinterpreted or misconducted and thereby hurt the sentiments of the named student or others related to her.

9. Sir, with my above brief exposition I leave the Final decision to your fair Judgement as I have full confidence in your wisdom. I have nothing more to say in the matter.
Let almighty God Bless you always.

Thanking you, Sir.

Yours Sincerely,

Sd/-
(Dr. A. Daili)
CSSS/ SSS/ JNU”

5. This response, from the petitioner, resulted in the issuance of the Memorandum dated 27th January, 2003, to the petitioner, by the Vice-Chancellor, which, too, merits reproduction in *extenso*:

“ JAWAHARLAL NEHRU UNIVERSITY
ADMINISTRATION BRANCH

No.F.1/25/Admn.I
2003.

January 27,

MEMORANDUM

WHEREAS Jawaharlal Nehru University, pursuant to the directions Supreme Court of India has constituted a Committee known as GSCASH to look into the complaints of sexual harassment at the University Campus by teachers, students and non-teaching employees etc.;

AND WHEREAS Ms Um Eran Kyo, a student of SLL&CS lodged a complaint with GSCASH against Dr. Daili,

Technical Officer in teh Centre for the Study of the Social Systems, SSS;

AND WHEREAS on the basis of the complaint received from Ms. Um EM Ean Kyo, GSCASH conducted an enquiry and found Dr. Daili guilty;

AND WHEREAS he was given a personal hearing on 26-12-2002 to explain his conduct;

WHEREAS Dr.A. Daili, was asked vide Memorandum No. F.1/25/Admn.I/78 13-1-2003 to show as to why disciplinary proceedings should not be initiated against him for the sexual harassment alleged to have been him to Ms. Um Kan Kyo;

AND WHEREAS Dr. Daili vide his reply dated 17-1-2003 has not denied the allegations of misconduct but has stated that he had no intention of sexual harassment. He has further tendered unqualified apology for his conduct;

AND WHEREAS on a careful consideration of the Enquiry Committee Report, the personal hearing given to Dr. Daili on 26-12-2002 and the reply dated 17-1-2003 to the show cause notice, the undersigned has come to the conclusion that Dr. Daili is not a fit person to be retained in the service of the University and accordingly proposes to impose upon him the penalty of compulsory retirement with 15% cut in the gratuity;

NOW, THEREFORE, Dr. A. Daili, Technical Officer, is hereby given an opportunity of making representation against the penalty proposed above. Any representation which he wishes to make against the penalty proposed will be considered by the undersigned. Such a representation, if any, should be made in writing and submitted so as to reach the undersigned not later than 48 hours from the date of receipt of the memorandum, failing which it will be presumed that he has no representation to make and the proposed penalty shall be imposed on him without any further notice.

Sd/-
G.K. CHADHA
VICE-CHANCELLOR

Dr. A. Daili
Technical Officer
CSSS/ SSS
JNU”

6. The petitioner again responded to the aforementioned Memorandum dated 27th January, 2003, reiterating that he had not done any wrong to Ms. Kyo, and seeking that the allegation against him be dropped.

7. By the impugned order dated 29th January, 2003, the Vice-Chancellor proceeded to award the petitioner a penalty of compulsory retirement from service with 15% cut in gratuity, under Rule 57 (vii) of the applicable rules.

8. The petitioner, is, therefore, before this court.

9. Mr. De, learned counsel for the petitioner, contends, and in my opinion rightly, that the disciplinary authority seriously erred in treating para 8 of the letter dated 18th January, 2003 (*supra*), from the petitioner, as confessional in nature. It is clear, from a reading of the letter dated 17th January, 2003, that the petitioner categorically denied the allegations against him, and entered the apology in para 8 only as a caveat thereto, almost by way of disclaimer. The Vice-Chancellor, was, therefore, obviously in error, in assuming that the petitioner had admitted the allegations against him and merely limited his defence to tendering an unqualified apology.

10. Significantly, the petitioner, in his subsequent communication

dated 28th January, 2003, again emphasised that he had never committed the alleged act regarding which the complaint had been launched by Ms. Kyo. Unfortunately, the said assertion was also ignored, by the Vice-Chancellor, while imposing, on the petitioner, the penalty of compulsory requirement of service with 15% cut in gratuity, *vide* his subsequent order dated 29th January, 2003.

11. It is also disquieting to note that the order dated 29th January, 2003 is a practically verbatim reproduction of the Memorandum dated 27th January, 2003. On the face of it, it appears that the decision to penalise the petitioner had already been taken on 27th January, 2003, and that the opportunity, extended to him, by the said Memorandum, to make a representation, was purely chimerical in nature.

12. Viewed any which way, the manner in which the disciplinary authority has proceeded in the present case, is contrary to law and is *ex facie* perverse. The Vice-Chancellor obviously misunderstood the submissions of the petitioner, assuming, entirely erroneously, that the petitioner had not denied the allegations levied against him, and had merely apologized therefor.

13. Resultantly, the penalty of compulsory retirement with 15% cut in gratuity, awarded to the petitioner *vide* order dated 29th January, 2003, cannot sustain and is accordingly quashed and set aside.

14. Given the fact that the present case has remained pending in this court since 2003, and the petitioner is reportedly now almost 78 years

of age, the respondent is directed to disburse to the petitioner, all benefits which would be due to him. Disbursal of benefits to the petitioner is to be effected consequent to the quashing, by me, of the penalty imposed on him, expeditiously, and at any rate within a period of eight weeks from the date of receipt of a certified copy of this judgment.

15. There shall be no order as to costs.

JULY 26, 2018/rk

C.HARI SHANKAR, J.



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