

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.03.2019**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

AND

THE HONOURABLE MR.**JUSTICE P.D.AUDIKESAVALU**

W.P. No.3524 OF 2019

T.Amirtha Ganesan ... petitioner

Vs

- 1 National Human Rights Commission
rep by Asst. Registrar (Law)
Manav Adhikar Bhawan Block C GPO
Complex INA New Delhi-110 023
- 2 Director of School Education
Directorate of School Education
Perunthalaivar Kamarajar Building Complex
Anna Nagar Puducherry
- 3 Under Secretary to Govt
(School Education) Perunthalaivar kamarajar
Building Complex Anna Nagar Puducherry
- 4 Tmt.K.Mallika ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari to call for the records pertaining to the order passed in Lr. No.27/32/0/ 2012- WC dated 26.09.2018 on the file of the first respondent and quash the same.

For petitioner : Mr.R.Natarajan

For Respondents : Mr.Ramesh, A.G.P. (Puducherry)

ORDER

(made by K.K.SASIDHARAN, J.)

The National Human Rights Commission in total violation of Section 16 of the Protection of Human Rights Act, 1993, passed an order dated 26 September 2018, holding that the petitioner was responsible for causing mental harassment to the complainant, the 4th respondent herein and recommended to the Government of Puducherry to pay her a sum of Rs.1,00,000/- for violation of human rights. The Government of Puducherry after making payment to the complainant, passed an order in G.O.Ms.No.56, Directorate of School Education, dated 19 December 2018, directing recovery of the amount from the salary of the petitioner in four equal instalments. The order is under challenge at the instance of the aggrieved, primarily on the ground that before passing such an order involving civil consequences, the National Human Rights Commission ought to have conducted enquiry with notice to him.

2. We have heard the learned counsel for the petitioner. We have also heard the learned Additional Government Pleader on behalf of the Union Territory of Puducherry. None appears on behalf of respondents 1 and 4, in spite of printing the name in the cause list after service.

3. The petitioner is presently working as Head Master Grade-I,

4th respondent was the Headmistress in Government Primary School, Navarkulam during the tenure of the petitioner as Deputy Director of Schools, Zone-1. The fourth respondent appears to have given a complaint against the petitioner and the other members of the faculty of Government Primary School, Navarkulam, relating to certain incidents that took place prior to 28 September 2011. The Deputy Director (Women Education), initiated proceedings pursuant to the said complaint. The complaint was also enquired by the police Department (PCR Cell). The complaint was dropped based on the enquiry. Thereafter, the matter was taken up by the National Commission for Schedule Caste. The Commission directed the Education Department to consider the complaint afresh. The Enquiry Officer appointed by the Education Department pursuant to the direction issued by the National Commission for Schedule Caste has given a clean chit to the petitioner. Thereafter, the National Commission directed the Government of Puducherry to constitute a three member committee to enquire into the matter of which one should be from the schedule caste community. The committee so appointed conducted enquiry.

4. The Director of Civil Supplies and Consumer Affairs, who was he Chairman of the Committee and the Director of Social Welfare, who was the member of the Adhoc Complaints Committee opined that there is only evidence of mental harassment. However, the other member, who is stated to be the Managing Trustee of ADECOM Network, was of the view that the

harassment was due to the position of the complainant as a Dalit woman and therefore, it was a case of caste discrimination.

5. The National Human Rights Commission earlier took cognizance of the matter on receipt of the complaint from the fourth respondent. Subsequently, the report of the Ad hoc Complaints Committee was forwarded to the Human Rights Commission. The Commission issued notice to the Union Territory of Puducherry to show cause as to why monetary relief be not recommended to the victim. The Government of Puducherry in turn issued a notice to the petitioner. The petitioner submitted a detailed response to the said notice to the Government of Puducherry.

6. The Commission without either issuing notice to the petitioner or considering the response submitted by him, straight away passed the impugned order dated 26 September 2008, recommending under Section 18(a)(i) of the Protection of Human Rights Act, 1993, a sum of Rs.1,00,000/- to the complainant. Since it was a time bound order, the Government of Puducherry appears to have paid the amount to the fourth respondent. The Government thereafter issued an Order dated 19 December 2018, without notice to the petitioner for recovering a sum of Rs.1,00,000/- from his salary in four equal monthly installments.

7. The core question is as to whether the commission was correct in arriving at a finding that the petitioner harassed the fourth respondent and that the State must pay compensation to the complainant without conducting a statutory enquiry.

8. There is no dispute that the Ad-hoc Complaints Committee in its report to the State Government opined that there was evidence of mental harassment undergone by the complainant. There was no further action taken by the Government of Puducherry on the basis of the said report. The National Commission considered the report and recommended to pay the compensation for violation of human rights.

9. Section 16 of Protection of Human Rights Act 1993 provides that persons likely to be prejudicially affected should be heard by the Commission.

The provision reads thus :-

16. Persons likely to be prejudicially affected to be heard

If, at any stage of the inquiry, the Commission-

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

10. The Commission without hearing the petitioner concluded that the complainant was subjected to mental harassment by the petitioner and it was due to her position as a Dalit woman. Even if the basic material for arriving at such conclusion was the report submitted by the Ad hoc Committee to the Union Territory of Puducherry, still the Commission ought to have issued notice to the petitioner. The order passed by the Commission would involve civil consequences to the petitioner and as such, he should have been given an opportunity to submit his response. The report submitted by the Ad hoc Complaints Committee was not given to the petitioner. The Commission without any regard to Section 16 of the Act, proceeded to take a decision. The order passed by the Commission is in violation of the principles of natural justice.

11. The Government of Puducherry also committed the very same mistake by issuing an order in G.O.Ms.No.56, Directorate of School Education dated 19 December 2018 directing recovery of the amount from the salary of the petitioner in four equal instalments. It is not the case of the Government of Puducherry that before passing the order in G.O.Ms.No.56,

Directorate of School Education, notice was issued to the petitioner and his views were taken. There was no liberty given by the Commission to the Government of Puducherry to recover the amount from the petitioner. The act of making payment was nothing but a unilateral action at the instance of the Government of Puducherry. There is no question of recovering the amount from the salary of the petitioner as he was not a party to the proceedings before the National Human Rights Commission. Similarly, no notice was issued to him before making payment by the Union Territory of Puducherry. We are therefore of the view that the orders under challenge are liable to be quashed on account of the violation of the principles of natural justice.

12. We quash the order dated 26 September 2018 on the file of the National Human Rights Commission and the consequential order in G.O.Ms.No.56, Directorate of School Education, Secretariat Wing, dated 19 December 2018.

13. In the upshot, we allow the Writ Petition. No costs. Consequently, W.M.P.No.3831 of 2019 is also dismissed.

(K.K.SASIDHARAN, J.) (P.D.AUDIKESAVALU, J.)

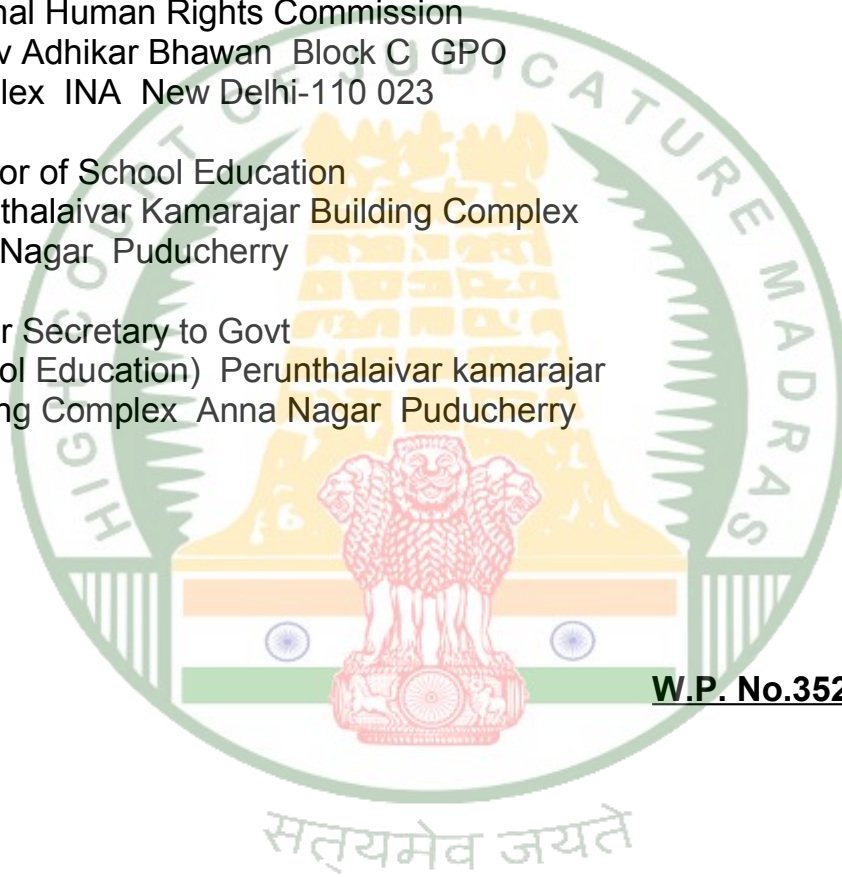
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K.K.SASIDHARAN, J.
and

P.D.AUDIKESAVALU, J.
(tar)

To

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