

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.23902 of 2009

Rajam

...Petitioner

versus

1.The Chairman-cum-Managing Director,
Indian Bank, Head Office,
No.66, Rajaji Salai,
Chennai-600 001.

2.The Assistant General Manager (HRM),
India Bank Head Office,
66, Rajaji Salai,
Chennai-600 001

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the entire records of the second respondent in letter ref. No.HO/HRM/DPC/2009 dated 05.09.2009, quash the same and direct the first respondent to take appropriate legal action including disciplinary and criminal action against the delinquent Complaint Committee Members and other competent authorities, Deputy General Manager/Competent authority and transfer the petitioner to the place of her choice.

For Petitioner : Ms.Helen Margaret Deepa for
M/s.T.Sivagnanasambandan

For Respondents : Mrs.Rita Chandrasekaran for
M/s.Aiyar & Dolia

ORDER

Writ Petition has been filed seeking for the issuance of a Certiorarified Mandamus, to call for the entire records of the second respondent in letter ref. No.HO/HRM/DPC/2009 dated 05.09.2009, quash the same and direct the first respondent to take appropriate legal action including disciplinary and criminal action against the delinquent Complaint Committee

Members and other competent authorities, Deputy General Manager/Competent authority and transfer the petitioner to the place of her choice.

2. It is averred in the affidavit filed by the petitioner that one N.S.Subramanian, while serving in Indian Bank, Vadugam Branch, Rasipuram Taluk, Namakkal District alleged to have misbehaved with the petitioner on her way to Bank on 11.10.2007, for which, on 12.10.2007, a representation was made by the petitioner's husband to the Commissioner of Police, Salem, But the petitioner's husband was directed to approach the concerned Police Station in the matter, who also asked the petitioner to give a complaint as they have not received the said representation of her husband. Therefore, the petitioner lodged a complaint on 14.10.2007 before B-4, Annathanapatti Police Station and the same was registered in Crime No.1288/2007 under Section 4 of Tamil Nadu Prohibition of Eve Teasing Act 1998. Thereafter, a charge sheet has been filed against the said N.S.Subramanian for offence under Section 4 of Tamilnadu Prohibition of Eve-teasing Act and the case was in progress. Later on, the petitioner's husband submitted a representation dated 17.10.2007 to the Bank authorities complaining sexual harassment attempted by the said N.S.Subramanian. The petitioner was directed by the Bank authorities on 10.11.2007, to file a complaint. Accordingly, the petitioner filed a written complaint before her Superior Officer concerned alleging Eve-teasing committed by the said Subramanian on 11.10.2007 and the petitioner has also requested for a temporary transfer to Pollachi, her parental home for safety and security reasons. Thereafter, by a letter dated 13.12.2007, the petitioner was directed to appear before the Complaint (Woman) Redressal Committee, for personal hearing on 20.12.2007. But, a farce enquiry was conducted and the petitioner did not know that a parallel proceedings should not go as per the Sastry Award and bi-party settlement reached between Indian Banks Association (IBA) and Trade Union. In the meanwhile, after appearing before the Committee, the petitioner came to know that the Constitution of the Complaint Committee itself was wrong because the Complaint Committee was not represented by the Schedule Caste Officer. Therefore, the petitioner made a representation dated 24.11.2008 regarding the sexually coloured remarks about the petitioner and her family, made by the Complaint Committee and their mala fide and perverse decision before the first respondent. Later on, the second respondent made a reply dated 02.02.2009 stating that the petitioner's allegations against the Chairpersons, Members of the Committee and Circle Head/General Manager appears to be incorrect and the alleged incident had happened outside the Bank. On this basis, they advised the petitioner to inform the out-come of the criminal case filed by her against the said

Subramanian. When sexual harassment not at the work place, but outside the work place, the second respondent ought not to have sent a reply dated 02.02.2009, stating her allegations against the said against the Chairpersons, Members of the Committee and Circle Head/General Manager appears to be incorrect and the alleged incident had happened outside the Bank.

3. The learned counsel for the respondents draw the attention of this Court to the decision of Hon'ble Supreme Court reported in (1997) 6 SCC 241, in the case of Vishaka and Others Vs. State of Rajasthan and Others in W.P.Nos.666-70 of 1992 dated 13.8.1997, to highlight that as per the dictum of the Hon'ble Supreme Court, the Complaint Committee was not headed by a Lady Officer from Senior Level, but it was headed by a third party who is a Managing Director of H.S.Hospital and in such circumstances, since the Complaint Committee has been wrongly constituted contrary to the guidelines of the Hon'ble Supreme Court in the above referred decision, the petitioner has been advised to challenge the impugned letter dated 5.9.2009 issued by the second respondent, intimating that the allegations made by the petitioner are baseless and the action against the delinquent would be taken based on the outcome of the criminal case filed by the petitioner. Hence, in the said circumstances, the learned counsel for the petitioner would submit that the petitioner was constrained to move this Court for the relief as sought for.

4. A detailed counter affidavit has been filed by the first respondent Bank, stating that the petitioner has not made out any clear case or categorical complaint against the said N.S.Subramanian as to whether the alleged sexual harassment meted out to her was either in the work place or outside the work place. However, the complaint made by the petitioner was looked into and thereafter, a Committee was also constituted even before entertaining the complaint. The Bank also issued various circulars implementing the directions of the Hon'ble Supreme Court in Vishaka's case cited supra. In this connection, as early as on 17.03.1998, the Bank issued a circular No.PRNL 96/97-98 on the 'Prevention of sexual Harassment in work place' incorporating a detailed guidelines viz., (a) Duty of the employer or other responsible persons in work places and other institutions, (b) Definition of sexual harassment (c) Preventive steps (d) Criminal Proceedings, (e) Disciplinary Action, (f) Complaint Mechanism, (g) Constitution of Complaints(Women) Redressal Committee, (h) Opportunities for Workers initiatives, (i) Action against third party harassment and (j) Directions for increasing awareness in this regard. This was followed up by instructions given to the Zonal Officers on various other dates for strict implementation and compliance of the guidelines mentioned in the circular. More over, one more

letter dated 21.09.2002 sent to Zonal Office, Salem giving instructions for the formation of the Complaints(Women) Redressal Committee. As per the Bank's Circular and policy, Complaints(Women) Redressal Committee were constituted in all Zones as well as the Central Office Level and these Committees are headed by an eminent lady of a reputed social organization, who would agree to take up the post on honorary basis, with the other members mostly being from the Bank itself. The Committee comprising of minimum three members of whom majority are women, provides support services, counselling to the women employees/officers and deals with any specific complaint of confidential nature and the women members of staff are encouraged to approach the Committee in times of need. The committee has to ensure that congenial working conditions are provided to women employees in respect of work, leisure, health, hygiene and no hostile environment towards women at work places is prevalent. In this regard, various circulars have been issued and steps have been taken for formulation of Complaints (Women) Redressal Committee. Therefore, the petitioner made totally an untenable and unjustified complaint alleging that the Committee formulated by the respondents, which dealt with the complaint made by the petitioner is not properly constituted. The said Committee had gone into the complaint given by the petitioner and after three hours of discussion, taken note of three vital aspects viz., (i) that the association of the delinquent and the petitioner lasted more than 10 years, (ii) that their association has been more than mere friendship, and may be intimate as well, and (iii) Recently, she wanted to withdraw from his friendship/association due to family pressures. Mr.N.S.Subramanian tried to meet her only to know the reason for the sudden change in her mind. Therefore, regarding all these aspects of the matter, the Committee concluded that both the parties are equally responsible for all the happenings and their counselling helped the said N.S.Subramanian to accept the reality and he assured us not to precipitate the matter further. But the petitioner was not convinced, and insisted for punishment on the delinquent, N.S.Subramanian.

5. The Criminal Court, which dealt with the case on consideration of both oral and documentary evidence and rendered its findings that the allegations made by the petitioner herein against the said N.S.Subramanian were not proved with that of any acceptable evidence and accordingly, dismissed the case in C.C.No.203/2007 by judgment dated 2.12.2009 holding that the prosecution has not made out the case beyond reasonable doubt. Therefore, the Committee constituted by the respondent as per the directions given by the Vishaka's case, on consideration of all these aspects, found that there was no merit in the complaint given by the petitioner. Subsequently, the trial

court acquitted the said N.S.Subramanian and without even filing an appeal against the judgment of acquittal, it was not open to the petitioner to find fault with the Committee which has given report against the petitioner. I also fully agree with the submission made by the counsel for the respondents. But when the petitioner made a complaint against the said N.S.Subramanian, alleging sexual harrasement, a Committee constituted and an enquiry was also held on the complaint made by the petitioner alleging that the said N.S.Subramanian misbehaved with the petitioner on her way to Bank on 11.10.2007 and the petitioner also lodged a complaint in this regard. Based on the complaint, a Complaints (Woman) Redressal Committee has also formulated and enquired into the matter and a report was also submitted. Accordingly, on 20.12.2007, the said Committee submitted a report wherein, they had concluded that the alleged facts in question had not taken place and both the parties are equally responsible for the happenings. The relevant portion of the report is extracted as under:

"... After three hours of discussion, and after taking note of three vital aspects namely., (i) their association lasted more than 10 years, (ii) Their association has been more than mere friendship, an may be intimate as well, (iii) Recently, she wanted to withdraw from his friendship/association due to family pressures. Mr.N.S.Subramanian tried to meet her only to know the reason for the sudden change in her mind. Therefore, regarding all these things the Committee concluded that both the parties are equally responsible for all the happenings and our counselling helped Mr.N.S.Subramanian accept the reality and he assured us not to precipitate the matter further. But the petitioner was not convinced, and requests for punishment to Mr.N.S.Subramanian."

6. When the Committee has given a report as mentioned above, and consequently, the trial Court after going through the full-fledged trial, has found that the allegations levelled against the said N.S.Subramanian were unfounded, the petitioner admittedly, till date has not filed any appeal against the report of the Committee nor against the judgment of acquittal passed by the trial Court. The petitioner has accepted the report of the Committee and also findings given by the trial Court, hence this Court finds no justification to entertain the present writ petition to proceed against the Committee since the allegations made by the petitioner were not even substantiated before this Court.

7.For all the aforesaid reasons, the Writ Petition fails and accordingly, the same is dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

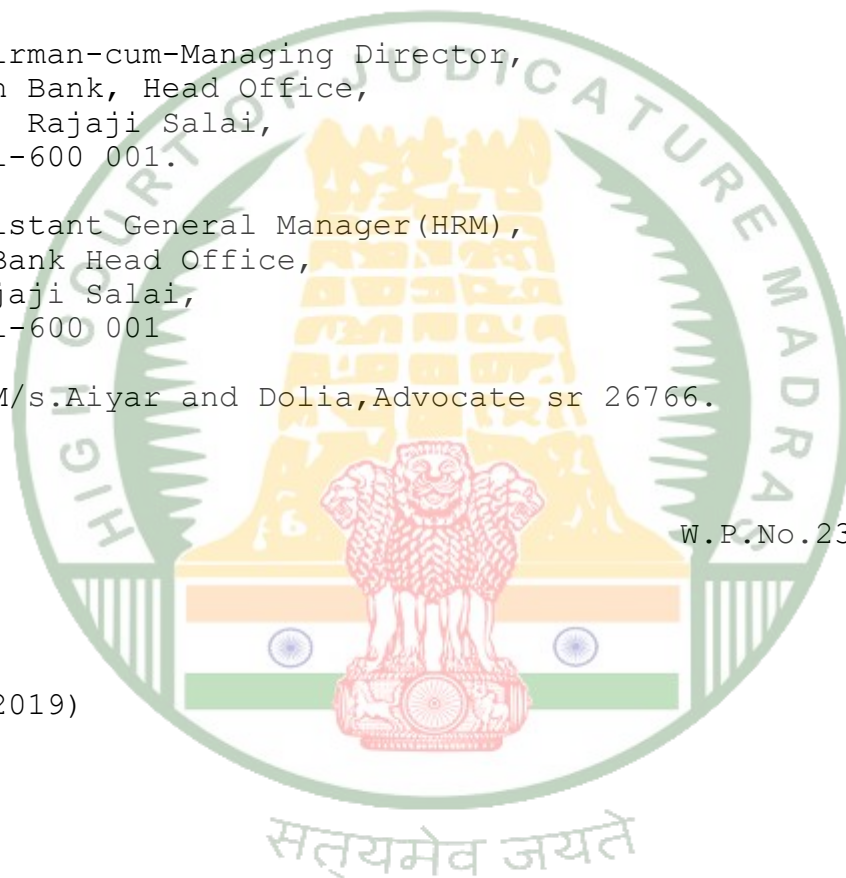
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+1 CC to M/s.Aiyar and Dolia,Advocate sr 26766.

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RK (CO)
SP (04/06/2019)



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