

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 914 of 2019
and
C.M.P. No. 6920 of 2019

Dr. M. Balamurugan ... Appellant/Petitioner
-vs-

1. The Hon'ble Vice-Chancellor,
Dr. B.R. Ambedkar Administrative Block,
Pondicherry University,
Pondicherry - 605 014.
2. Pondicherry University,
Rep. by its Registrar,
Pondicherry - 605 014.
3. Dr. P.K. Subramaniam,
Dean i/c.,
Pondicherry University,
Pondicherry - 605 014.
4. Dr. R. Chithra Sivasubramanian,
Professor & Head,
Department of Management Studies,
Pondicherry University,
Pondicherry - 605 014.
5. Ms. XXXX, (Name of R-5 not mentioned and mentioned
as "XXXX" as per Section 16 of the Sexual Harassment Act),
Trainee Teacher Education, M.Ed.,
School of Education,
Pondicherry University. ... Respondents/Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order dated 07.03.2019 in W.P. No. 15639 of 2018 filed under Article 226 of the Constitution of India praying issue a Writ of Mandamus Forbearing the respondents 1 to 4 or their representative from conducting enquiry with regard to the complaint dt.14.12.2017 for which the enquiry was already conducted on 15.02.2018 as per the Pondicherry University Womens Cell notice dt.30.01.2018.

For Appellant : Mr. N.G.R. Prasad
for Row and Reddy

For Respondents: Mrs. A.V. Bharathi,
Standing Counsel (for R1 to R4),

Ms. R. Vaigai, Senior Counsel
for Ms. S. Meenakshi (for R5)

J U D G M E N T

The intra-Court Appeal arises out of the order dated 07.03.2019 in W.P. No. 15639 of 2018 passed by the Learned Judge of this Court.

2. The Appellant had filed W.P. No. 15639 of 2018 seeking to forbear the First to Fourth Respondents from conducting enquiry with regard to the complaint dated 14.12.2017 for which enquiry was conducted on 15.02.2018 as per the notice dated 30.01.2018 issued by the Women's Cell of the Pondicherry University. The said complaint dated 14.12.2017 made against the Appellant was given by the Fifth Respondent herein, who was not initially a party to the Writ Petition.

3. At the time of admission of the Writ Petition on 26.06.2018, the Learned Standing Counsel for the Pondicherry University took notice on behalf of the First to Fourth Respondents and an interim order was passed in W.M.P. No. 18579 of 2018 that the Women's Cell of the Pondicherry University shall not proceed with the aforesaid complaint dated 14.12.2017 without the leave of the Court till 06.07.2018, which was subsequently extended on the hearings on 06.07.2018, 23.07.2018, 28.08.2018, 24.09.2018, 23.11.2018, 20.12.2018 and 01.02.2019. In the meanwhile, the First to Fourth Respondents had filed a Counter Affidavit on 08.10.2018. During the hearing on 18.02.2019, the Writ Court suo motu impleaded Ms. I. Pratima Sahu as the Fifth Respondent in that Writ Petition.

4. Since the Fifth Respondent had not appeared before the Writ Court on the hearing on 28.02.2019 despite being served with the copies of the affidavit and typed-set in the Writ Petition by the Learned Standing Counsel for the Pondicherry University, the Learned Judge of the Writ Court requested a Learned Senior Counsel of this Court to contact the Fifth Respondent over phone to ascertain the position and posted the matter in the following week.

5. Aggrieved by that direction, the Appellant filed an intra-Court Appeal in W.A. No. 728 of 2019 before this Court, which came up for the admission on 06.03.2019. The Learned Standing

Counsel for the Pondicherry University, who took notice, was requested to take instructions on the stage of the enquiry and report before this Court on 12.03.2019.

6. In the meanwhile, when the Writ Petition was taken up before the Writ Court on 07.03.2019, the Learned Counsel for the Appellant had filed a memo, which reads as follows:-

"The Writ Petitioner was instructed us to withdraw the above Writ Petition reserving his right to raise all objections including those raised in the above Writ Petition in the appropriate proceedings.

It is humbly prayed that this Hon'ble Court may be pleased to permit the Writ Petitioner to withdraw the above Writ Petition reserving his right to raise all objections including those raised in the above Writ Petition in the appropriate proceedings."

The Writ Petition was accordingly dismissed as withdrawn by the Writ Court by order dated 07.03.2019 with certain observations.

7. When W.A. No. 728 of 2019 thereafter came up for hearing before this Court on 12.03.2019, the same was permitted to be dismissed as withdrawn with liberty to challenge the final order dated 07.03.2019 in W.P. No. 15639 of 2018 as per the endorsement made by the Learned Counsel for the Appellant in that regard.

8. The Appellant has now preferred the present appeal aggrieved by certain observations made by the Learned Judge of the Writ Court in the final order dated 07.03.2019 while dismissing the Writ Petition as withdrawn. The crux of the grievance of the Appellant is that the Sexual Harassment Committee had been requested in that order to conclude the enquiry and initiate all further proceedings in accordance with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which gives the impression that it is a direction to take action against the Appellant despite the outcome of the objections raised by him in the enquiry.

9. We have heard Mr. N.G.R. Prasad, Learned Counsel appearing for the Appellant, Mrs. A.V. Bharathi, Learned Standing Counsel appearing on behalf of the First to Fourth Respondents, Ms. R. Vaigai, Learned Senior Counsel appearing for the Fifth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

10. After hearing the rival submissions, we make it clear that it is open to the Appellant to raise all his objections before the Statutory Committee. It is for the Statutory Committee to decide those objections (as well as incidental questions regarding their relevance to the complaint) in the light of the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. We also make

it clear that the findings on each of the objections raised by the Appellant before the Statutory Committee shall be given in a comprehensive manner in the final report of the enquiry. The direction given by the Learned Judge to initiate all further proceedings should, therefore, be construed to be dependent upon the ultimate outcome of the enquiry.

11. In the upshot, the Writ Appeal is disposed of with the aforesaid clarification of the order dated 07.03.2019 in W.P. No. 15639 of 2018 passed by the Writ Court. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vjt
To

1. The Hon'ble Vice-Chancellor,
Dr. B.R. Ambedkar Administrative Block,
Pondicherry University,
Pondicherry - 605 014.
2. The Registrar,
Pondicherry University,
Pondicherry - 605 014.
3. The Dean i/c.,
Pondicherry University,
Pondicherry - 605 014.
4. The Professor & Head,
Department of Management Studies,
Pondicherry University,
Pondicherry - 605 014.

+1cc to Mrs. A.V. Bharathi, , Advocate SR.No. 25788

+1cc to M/s. Row and Reddy, Advocate SR.No. 26058

W.A. No. 914 of 2019

A.SK(20/03/2019)