

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.07.2019	Delivered on: 28.08.2019
----------------------------	-----------------------------

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No. 13850 & 10267 of 2018 &
W.M.P.Nos. 12196, 16367, 9104 of 2018
& 11187 of 2019

Dr.P.Padmanaban ... Petitioner in both
Writ Petitions

versus

1. The Chief Secretary to Government,
Government of Puducherry,
Chief Secretariat,
Puducherry.

2. The Secretary to Government,
Animal Husbandry and Animal Welfare Department,
Chief Secretariat,
Puducherry.

... Respondents 1 & 2
in both Writ Petitions

3. The District Collector cum District Officer,
Collectorate of Puducherry,
Puducherry.

4.Dr.Vidya Ramkumar ... Respondents 3 & 4
in W.P.13850 of 2018

5. Dr.Rani

6. The Chairperson,
The District Local Complaint Committee,
Government of Puducherry,
Office of Collectorate,
Puducherry-605001

... Respondents 3 & 4
in W.P.10267 of 2018

PRAYER in W.P.13850 of 2018: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the respondents to pass orders on the representation submitted by the petitioner dated 30.5.2018 by taking appropriate legal action against the 4th respondent in the capacity as Chairperson of District Local Complaint Committee, Puducherry as per Section 7(3) & Section 17 of Sexual Harassment

of Women at Work Place (Prevention, Prohibition and Redressal Act) 2013 for having violated Section 16 of Act forthwith and consequently nullify the enquiry proceedings conducted by 4th respondent against the petitioner under the provisions of the Act.

PRAYER in W.P.10267 of 2018: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the impugned proceedings issued by the 4th respondent in No.3/DLCC/2018 dated 19.04.2018 and quash the same.

For Petitioner : Mr.R.Krishnamoorthi, Senior Counsel
for M/s.G.Sankaran

For Respondents : Mr.Stalin Abhimanyu, GA (P)
for R1 to 3 in W.P.13850/2018.
And R1,2 & R4 in W.P.10267/2018.

COMMON ORDER

Writ Petition in W.P.No.13850 has been filed, praying for issuance of Writ of Mandamus, to direct the respondents to pass orders on the representation submitted by the petitioner dated 30.5.2018 by taking appropriate legal action against the 4th respondent in the capacity as Chairperson of District Local Complaint Committee, Puducherry as per Section 7(3) & Section 17 of Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal Act) 2013 for having violated Section 16 of Act forthwith and consequently nullify the enquiry proceedings conducted by 4th respondent against the petitioner under the provisions of the Act.

2. Writ Petition in W.P.No.10267 of 2018 has been filed, praying for issuance of Writ of Certiorari, to call for the records relating to the impugned proceedings issued by 4th respondent in No.3/DLCC/2018 dated 19.04.2018 and quash the same.

3. Although the prayers are different in both the Writ Petitions, however in view of the similar facts and issues involved in both Writ Petition filed by same petitioner, these Writ Petitions are taken up together and being disposed vide this common order.

4. At first instance, it would be appropriate to deal with W.P.10267 of 2019, wherein, the petitioner challenged the notice issued by 4th respondent/District Local Complaint Committee, Government of Puducherry, dated 19.04.2018, summoning the petitioner to appear for enquiry on 24.4.2018 under Section 11 (3) of Sexual Harassment of Women at Work Place (Prevention,

Prohibition and Redressal) Act, 2013 (hereinafter referred to 'the Act').

5. The above said notice was necessitated in view of the complaint dated 31.03.2018 filed by one Dr.R.Rani, Veterinary Assistant Surgeon, who was working under the petitioner, wherein, she alleged sexual harassment was meted out at the hands of the petitioner. Even on earlier occasions, she had complained about sexual harassment of the petitioner. According to said Rani, she has a genuine apprehension of the impartiality of the internal Committee constituted in view of the position held by the petitioner, she, therefore, approached 4th respondent to enquire into the matter.

6. The petitioner has come forward with the present Writ Petition, to challenge the impugned notice issued to him by the 4th respondent, directing him to appear for enquiry, on the ground that the impugned notice being violative of several provisions of the Act. According to him, the person, i.e. 3rd respondent, who made a complaint against him has an axe to grind against him in view of certain decisions taken by the petitioner in transferring the 3rd respondent, the complainant. According to the petitioner, in view of the notice being violative of the provisions of the Act, the same is liable to be set aside.

7. By order, dated 24.04.2018, this Court, while ordering notice to the respondents, granted interim stay. Pursuant to the same, enquiry was not proceeded with.

8. Shri R.Krishnamoorthi, learned Senior Counsel appearing for the petitioner would lay emphasis on Section 9 of the Act, which reads as under:

"9. Complaint of sexual harassment.-(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local

Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section. "

9. According to the learned Senior Counsel, the complaint of sexual harassment was in relation to the period prior to 2016 and therefore, there is a clear bar for entertaining the same as the harassment was not complained of within a period of three months from the date of the incident. Therefore, on this ground alone, the impugned notice issued under Section 11 (3) of the Act is liable to be set aside. Moreover, the learned Senior Counsel would submit that the impugned notice is also violative of Section 13 of the Act since no report has been prepared as per said provision. He would also lay great emphasis on the 4th respondent conducting a preliminary enquiry, which according to him, is not provided for in the scheme of the Act. The learned Senior Counsel would further submit that the Committee has overreached its power and violated Section 16 of the Act as the Committee was not supposed to make known contents of complaint and enquiry proceedings as there is a prohibition of publication or making known the contents of the complaint and enquiry proceedings in terms of Section 17 of the Act. According to the learned Senior Counsel, the complaint was made public and therefore, it necessitated the petitioner to file other Writ Petition, viz., W.P.No.13850 of 2018, to take appropriate legal action against 4th respondent under Section 17 of the Act for violating Section 16 of the Act.

10. The learned Senior Counsel would submit that the complaint is concerned, the act of alleged sexual harassment was not within three months and therefore, notice itself is without jurisdiction and illegal per se and hence 4th respondent ought not to be allowed to proceed with the enquiry.

11. Per contra, the learned counsel appearing for 4th respondent would submit that the contentions raised on behalf of the Senior Counsel have no merit for the reason that the complaint given by the complainant, Dr.R.Rani, 3rd respondent speaks about continuous sexual harassment at the hands of the petitioner in the recent past which falls within three months prescribed under Section 9(1) of the Act. He would draw the

attention of this Court to the complaint filed by the petitioner. Some of the contents of the complaint would establish the fact that the 3rd respondent was allegedly facing sexual harassment at the hands of the petitioner just prior to the complaint. In fact, in the counter affidavit, in paragraph 7, it is averred as under:

"7. It is pertinent to note that the Respondent No.4 is competent under Section 11 of the said Act, 2013 to make an enquiry on the complaints of respondent No.3 herein to find out the truth and veracity of the sexual harassment complaint and to proceed against the Writ Petitioner. Number of witnesses were examined in the month of April, 2018 along with the respondent No.3. During the enquiry it was found that the sexual harassment of the Respondent No.3 was continuing one from the year 2012 until the complaint was made. The Writ Petitioner's inappropriate approaches and physical gestures, overt acts and filthy languages, outraged the modesty of the respondent No.3 herein. The statements of the respondent No.3 and the other witnesses would reveal that the Writ Petitioner was habitually guilty of harassing of his subordinate women officers sexually. The respondent No.3 had only referred two major incidents in her complaint on 31.3.2018 but when she was subsequently examined in the month of April, 2018 along with other witnesses she gave a detailed statement of subsequent events and it appears that the Writ Petitioner was habitually guilty of sexual advances and inappropriate touches till February, 2018 whenever he had an opportunity of moving with the respondent No.3 together on official Committee (DLCC) to give an opportunity to the Writ Petitioner to appear before the Committee and give his explanation. Hence the Respondent No.4 issued summons to appear before the District Local Level complaint Committee for an enquiry."

12. The learned counsel would submit that 4th respondent conducted a preliminary enquiry and it was prima facie found that the petitioner was habitually guilty of sexual advances and inappropriate touches till February, 2018 whenever he had an opportunity of moving with 3rd respondent, he would therefore submit that it was always open to the petitioner to proceed against any violation in case such contention has any basis at all. However, under the guise of making such objection, the petitioner cannot derail the enquiry proceedings initiated against him at the very threshold. Therefore, he would submit

that the entire Writ Petition lacks merit and the same is liable to be dismissed.

13. Considered the submissions of the learned Senior Counsel appearing for the petitioner and the submissions of the learned counsel appearing for the respondents. Perused the entire materials placed on record.

14. The first and foremost objection raised by the learned Senior Counsel appearing for the petitioner is about the limitation prescribed in Section 9 of the Act, i.e. three months, cannot be countenanced on facts since 3rd respondent who was aggrieved by the harassment committed by the petitioner, in her complaint, has stated that she suffered harassment at the hands of the petitioner very recently up to February, 2018 and the complaint was given only in March, 2018. Therefore, the objection raised by the learned Senior Counsel, did come to the rescue of the petitioner and the same was not supported by the factual material. Although the complaint refers to earlier harassment prior to 2016, yet it appears from the complaint that the petitioner was in the habit of continuously harassing the 3rd respondent wherever there was an opportunity for exhibiting such harassment. Therefore, in the guise of raising technical objection of bar as provided for under Section 9 of the Act, the petitioner cannot be allowed to escape from being enquired into when series of complaints were made against him by the affected individual. After all, 4th respondent has only issued the impugned notice to the petitioner, summoning him to appear for enquiry and it is always open to the petitioner to appear and explain his position vis-a-vis the complaint and establish his innocence as per his claim and can come out unscathed. Instead of facing the enquiry, he has chosen to approach this Court at the very threshold of enquiry proceedings being initiated against him and the petitioner by approaching this Court has clearly thwarted the attempt of 4th respondent to enquire into the allegations. As regards the objection regarding the 4th respondent being approached for enquiry instead of internal committee, the complainant has legitimate reasons for approaching 4th respondent in view of the position of the petitioner in the hierarchy of administration. Therefore, there is nothing amiss for the complainant to approach the independent Committee like 4th respondent herein to enquire into the allegations of the sexual harassment against the petitioner. In any case, no prejudice would be caused to the petitioner if 4th respondent Committee engages itself in enquiry in terms of the scheme of the Act since reasonable opportunity would be afforded to the petitioner to put forth his counter claim against 3rd respondent. As regards the objection regarding the conduct of the preliminary enquiry, the objections raised by the learned Senior Counsel do not merit any serious consideration. It is

always open to the 4th respondent device a procedure in order to ascertain the truth into the complaint/allegations. Such procedure should not run contrary to the scheme of the Act. In this case, there is no bar in conducting a preliminary enquiry in order to ascertain the falsity of the allegations of the complaint or otherwise and in fact, such procedure adopted by the Committee appears to be fair and proper, since it can avoid issuing notice to the persons against whom complaint is pending and such complaint is found to be frivolous or motivated. Therefore, the objections towards conduct of preliminary enquiry by the learned Senior Counsel cannot be either countenanced in law and on facts and therefore, the same is hereby rejected outright.

15. The other objection regarding violation of Section 16 of the Act by the 4th respondent, it all depends on what is going to be the outcome ultimately if the enquiry is conducted by the 4th respondent. After all, in any event, no impeachable material has been produced in order to sustain the second writ petition in W.P.No.13850 of 2018 for issuing such direction. In any case, it is always open to the petitioner to proceed against the 4th respondent in case 4th respondent is willfully violated the provisions of the Act. Further, such course of action cannot be thrown open to the petitioner at this stage as that would help him to stymie the further process of enquiry which is set in motion rightly by the 4th respondent. In the opinion of this Court that the second Writ Petition, i.e. W.P.No.13850 of 2018 was filed by the petitioner only as a counter blast to the complaint filed by the 3rd respondent which is the subject matter of the other writ petition.

16. This Court, therefore, on prima facie consideration is of the view that the second Writ Petition lacks bona fide and the same cannot be entertained. Ultimately, this Court has to see that any action by the State authority has to be decided on the touch stone of prejudice and when the 4th respondent being an independent Committee which is conducting the enquiry into the allegations made against the petitioner, this Court does not think that the petitioner can complain of any prejudicial effect on his right by conduct of such enquiry by the 4th respondent. On the whole, this Court is of the view that the writ petitioner, in order to avoid being enquired into, has approached this Court with fragile objections so that his conduct towards the complainant is not looked into by the impartial Committee, i.e. 4th respondent herein. Therefore, this Court is of the considered view that the writ petitions lacks bona fide and the so-called legal objections raised on behalf the petitioner have no merit and substance and are liable to be rejected outright.

17. In the light of the above discussion, both the Writ Petitions are dismissed. The interim order of stay granted by this Court dated 24.4.2018 is hereby vacated. It is made clear that 4th respondent Committee shall proceed with the enquiry in pursuance of the impugned notice dated 19.04.2018 and complete the process of the enquiry as expeditiously as possible within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected WMPs are closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

Suk

To

1. The Chief Secretary to Government,
Government of Puducherry,
Chief Secretariat,
Puducherry.

2. The Secretary to Government,
Animal Husbandry and Animal Welfare Department,
Chief Secretariat,
Puducherry.

3. The District Collector cum District Officer,
Collectorate of Puducherry,
Puducherry.

4. The Chairperson,
The District Local Complaint Committee,
Government of Puducherry,
Office of Collectorate,
Puducherry-605001

+2 CCS to Mr.G. Sankaran, Advocate sr 74226.

+1 CC to Govt. Pleader sr 74164.

+2 CCS to Mr.T.R. Udayakumar, Advocate sr 73929.

WP.Nos.13850 & 10267 of 2018

SJ(CO)

SP(30/08/2019)