

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.2994 of 2019
and C.M.P.No.19346 of 2019

Dr.P.Padmanaban

..Appellant

Vs

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.Dr.Rani,
Veterinary Assistant Surgeon,
Veterinary Dispensary,
Sivaranthagam, Puducherry.

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

..Respondents

Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed by this Court in W.P.No.10267 of 2018, dated 28.08.2018.

Prayer in WP No.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 Appellant : Mr.V.Ajayakumar

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR,J.)

The instant Writ Appeal is filed against the order made in W.P.No.10267 of 2018 dated 28.08.2019, by which the writ court declined to grant the relief sought for by the writ petitioner. Having regard to the nature of order passed in this Writ Appeal, notice to the respondents is dispensed with.

2. The short facts leading to the appeal are that the writ petitioner/appellant challenged the notice issued by the 4th respondent/District Local Complaint Committee, Government of Puducherry, dated 19.04.2018, summoning the petitioner to appear for enquiry on 24.04.2018 under Section 11 (3) of Sexual Harassment of Women at Work Place (Prevention Prohibition and Redressal) Act, 2013. The 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 appellant, wherein, she alleged sexual harassment was meted out at the hands of the appellant. 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 appellant and therefore, approached 4th respondent to enquire into the matter.

3. Before the writ court, it was argued by the appellant/writ petitioner that 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 a complaint of within a period of three months from the date of the incident. It was argued that impugned notice is violative of Section 13 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal Act) 2013 [hereinafter in short called as "Act"], since no report has been prepared as per said provision.

4. Before the writ court, the 4th respondent-The District Local Complaint Committee, contended that the contentions raised by the petitioner have no merit; that the complaint given by the complainant/ Dr.R.Rani, speaks about continuous sexual harassment at the hands of the writ petition. 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."

5. The 4th respondent-The District Local Complaint Committee, also put forth their contention before the writ court that they conducted a preliminary enquiry and it was prima facie found that the writ petitioner was habitually causing harassment of sexual advances and inappropriate touches till February, 2019 and as such, the writ petitioner cannot derail the enquiry proceedings initiated against him at the very threshold.

6. Learned Single Judge, by order dated 28.08.2019 in W.P.10267 of 2018 along with another W.P.No.13850 of 2018 filed by the appellant herein for a direction to the respondents to pass orders on his representation dated 30.05.2018, observed that the contention of the writ petitioner about the Limitation prescribed in Section 9 of the Act, i.e., three months, cannot be countenanced on facts since complainant/R.Rani was aggrieved by the harassment committed by the writ petitioner and in her complaint, she has stated that she suffered harassment at the hands of the writ petitioner very recently upto February, 2018 and the complaint was given only in March, 2018; therefore, the

objection raised by the learned senior counsel was not supported by factual material. Learned Single Judge further pointed out that 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. Further, the learned Single Judge also pointed out that when the 4th respondent-Committee being an independent Committee which is conducting the enquiry into the allegations made against the petitioner, he can complain of any prejudicial effect on his right by conduct of such enquiry by the 4th respondent.

7. Adverting into rival submissions and going through the material record, the writ court, vide order dated 28.08.2019 in W.P.Nos.13850 and 10267 of 2018, dismissed the writ petitions by observing that the 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 the said order. Learned Single Judge, in paragraphs 14 to 17 observed as under:-

"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 to devise 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."

8. Though Mr.V.Ajayakumar, learned counsel for the appellant, challenged the order of the writ court, by raising several grounds inter alia contending that partiality is shown by the 4th respondent-Committee, by setting out dates and events and also by submitting that the third respondent-R.Rani has submitted complaint before the Hon'ble Lieutenant Governor and the complaint was not filed before the District Local Complaint Committee or the Internal Complaint Committee which was already in existence, we are of the considered view that on facts and law, we do not find any justifiable reason to admit the Writ

Appeal and to interfere with the order of the learned Single Judge. Consequently, the Writ Appeal stands dismissed. No costs. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

nvsri

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 Chairperson,The District Local Complaint Committee,
Government of Puducherry,Office of the Collectorate,Puducherry.

+1cc to Mr.V.Ajayakumar , Advocate SR.No.76838

W.A.No.2994 of 2019

SS(CO)
GMY(06/11/2019)

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