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Sherla

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11393 OF 2016

Madhav K. Jagtap
V/s.

...Petitioner

The Commissioner,
Pune Municipal Corporation and ors.

...Respondents.

Mr. T. D. Deshmukh for the Petitioner.

Mr. A.M. Kulkarni for Respondent No.1- Corporation.

Ms Rupali Shinde, AGP for the Respondent – State.

Mr. M.U. Rajput a/w. Mr. Taherkhan Pathan for Respondent No.3.

CORAM : K.K.TATED &
N.R. BORKAR, JJ.
DATE : 17th DECEMBER, 2020.

P.C. :

1. By this petition, the petitioner seeks to quash and set aside the report (annexed at page 59 to the petition) prepared by Internal Complaints Committee of Pune Municipal Corporation (respondent No.1) constituted under Section 4 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (for short “the Act”).

2. The petitioner during the relevant period was working as Assistant Municipal Commissioner at Ghole Road Ward Office. Respondent No.3, the original complainant, was also serving in the same office as Health Inspector.

3. On 16.3.2016, respondent No.3 submitted a written complaint to the respondent No.1 against the petitioner. The said

complaint was, then forwarded to the Internal Complaints Committee (for short 'ICC'). The ICC then recorded the statement of respondent No.3 and the petitioner. The ICC then submitted its report to the respondent No.1 and its copy was served upon the petitioner by covering letter dated 30.9.2016. The ICC in its report recommended reversion of the petitioner to the post of Junior Engineer.

4. We have heard learned counsel for the petitioner as well as learned counsel for respondent Nos.1 and 3.

5. Learned counsel for the petitioner submits that the allegations in the complaint dated 16.3.2016 even if accepted to be true do not constitute sexual harassment as defined under Section 2(n) of the Act. It is submitted that even otherwise the complaint dated 16.3.2016 was immediately withdrawn by the respondent No.3 on 17.3.2016. It is submitted that the ICC therefore, ought not to have initiated enquiry against the petitioner.

6. It is further submitted that even during the course of enquiry, the respondent No.3 submitted an application for withdrawal of the complaint. It is submitted that before this court also, the respondent No.3 has filed affidavit dated 15.2.2020 and stated that she wants to withdraw the complaint filed by her on 16.3.2016 against the petitioner. It is submitted that considering all these facts and circumstances, the impugned report needs to be quashed and set aside.

7. Learned counsel for respondent No.1- Corporation submits that pursuant to the complaint of respondent No.3 and at her request the ICC conducted the enquiry in accordance with Sections 12 and 13 of the Act and submitted its report to the respondent No.1 with its recommendation. He submits that considering the facts and circumstances, appropriate order may be passed.

8. Learned counsel for the respondent No.3 submits that considering the facts and circumstances the report prepared by the ICC may be quashed.

9. We have perused the complaint dated 16.3.2016. The only allegation in the said complaint is of humiliation in the meeting dated 15.3.2016. The fact that on the very next date, the said complaint was withdrawn is not disputed before us.

10. It, however, appears that the respondent No.3 again by her letter dated 28.3.2016 requested the ICC to take action against the petitioner pursuant to her complaint dated 16.3.2016. It appears that then her statement was recorded by the ICC wherein she alleged sexual harassment by the petitioner.

11. We do not wish to record any finding in respect of the allegations made by the respondent No.3 during the course of enquiry as she again by letter at Exhibit-M, annexed to the petition at page 44 and by another letter at Exhibit-N, annexed to the petition at page 45 requested the ICC that she does not have

any complaint against the petitioner and requested to stop the enquiry. In the facts and circumstances, the ICC ought to have taken steps to settle the matter through conciliation in terms of Section 10 of the Act.

12. Be that as it may, considering the over all facts and circumstances and in view of the affidavit dated 15.2.2020 of the respondent No.3 that she does not want to prosecute her complaint dated 16.3.2016 against the petitioner, we are inclined to quash the report of ICC annexed at page 59 to the petition. In the result following order is passed.

- a. Writ Petition is allowed.
- b. The impugned report of the ICC annexed at page 59 to the petition is hereby quashed and set aside.
- c. No order as to costs.

[N.R.BORKAR, J]

[K.K.TATED, J]