

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.9727 of 2020

Dr.Debashis Chakroborty,
Associate professor - Dept. of Chemistry,
Building No.C2-6-5A,
Delhi Avenue, IIT Madras,
Chennai 600 036.

...Petitioner

-Vs-

The Director,
Member of Board of Governors,
Disciplinary Authority of the Board,
Indian Institute of Technology-Madras,
Chennai 600 036.

...Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned order passed by the respondent No.F.DIR/01/2020 dated 27.02.2020, quash the same.

For Petitioner : Mr.M.V.Swaroop

For Respondent : Mr.Karthik Rajan

ORDER

This writ petition has been filed to issue a Writ of Certiorari, to call for the impugned order passed by the respondent No.F.DIR/01/2020 dated 27.02.2020, quash the same.

2. The case of the petitioner is that he is an Associate Professor of Indian Institute of Technology, Madras. There were sexual harassment complaints made against him by some Research Scholars and Project Assistants. A detailed enquiry appears to have been conducted by the Internal Complaints Committee. After due opportunities were afforded to the petitioner by the Committee, a final report was filed on 12.09.2019, holding that the sexual harassment allegation against the petitioner proved. The committee therefore recommended to take departmental action against the petitioner. The disciplinary authority, on acceptance of the report, authorized the Director to issue show

cause notice to the petitioner and call for his explanation. Thereafter, the show cause notice/charge memo dated 07.11.2019 was issued, directing the petitioner to submit his explanation to the show cause notice. Though the petitioner submitted his explanation on 18.11.2019, denying his involvement in the sexual harassment and the explanation being unsatisfactory, the Board, in its meeting held on 29.11.2019, decided to proceed further with the disciplinary action.

3. After deliberation, the Board, considering the nature of misconduct and the documents on record, concluded that the charges were established against the petitioner and the official had violated Rule 3(c) of the Central Civil Services (Conduct) Rules, 1964 and thereby violated Schedule B of conduct rules of statutes applicable in terms of the IIT amendment Act, 1963. On the basis of the resolution passed in the meeting, a punishment was imposed on the petitioner withholding of increment without cumulative effect for a period of two years with effect from the date of issue of the penalty advice dated 27.02.2020.

4. In the penalty advice itself, it was stated in the last paragraph that in case the charged official was aggrieved by the order of the disciplinary authority, he may prefer an appeal to the Visitor against the order within a period of three months. As against the penalty advice dated 27.02.2020, the petitioner has chosen to approach this Court directly without taking a recourse to the appellate remedy provided under the statute. The appellate authority Visitor is none other than his excellency, the Hon'ble President of India.

5. Although initially notice was issued to the respondent, yet this court on the subsequent scrutiny of the papers found that the appellate remedy as provided in the statute and also as stated in the penalty advice itself, has not been availed by the petitioner.

6. In response to the notice, Mr. Karthik Rajan, learned counsel entered appearance on behalf of the respondent. When the matter is taken up for hearing today, the learned counsel appearing for the respondent would also object to the maintainability of the writ petition without exhausting the effective appellate remedy available in the statute read with the regulations.

7. At this, the learned counsel for the petitioner would contend that there were serious violations of principles of natural justice. As according to the petitioner, even the copies of the complaint were not furnished to him. The learned counsel also pointed out certain other infraction in the observation of the procedure not in tune with the established principles of

natural justice and would submit that there are decisions of the Hon'ble Supreme Court of India, holding that alternative remedy is not a bar for invoking the writ jurisdiction in case of violation of the principles of natural justice. Moreover, it is stated in the affidavit the during pandemic times, it is not possible to avail of the appellate remedy.

8. This Court considered the submissions, but however, not inclined to accept the plea of the petitioner that the writ petition ought to be entertained directly when the fact of the matter is that the petitioner has not chosen to exhaust an effective alternative remedy of filing an appeal before the Hon'ble appellate authority. In fact, the affidavit contains plethora of facts in regard to the complaints and also the manner in which the enquiry was conducted by the Internal Complaints Committee. The petitioner in fact is inviting this Court to appreciate his case on the basis of the factual averments which are in the nature of his explanation to the allegation made against him. Although the learned counsel contended about the violation of principles of natural justice, however, the nature of violation of principles of natural justice is premised on the factual realm which cannot be a matter of adjudication by this Court under Article 226 of the Constitution of India.

9. Even otherwise, in every case of disciplinary action culminating in imposition of penalty, there will always be an allegation of violation of principles of natural justice. Every allegation of violation of principles of natural justice cannot be a ground for entertaining the writ petitions directly by this Court. In which event, availability of appellate remedy in the service regulations would become inane and meaningless. The decisions of the Hon'ble Supreme Court on the subject matter, cannot be applied unmindful of the what is the nature of violation of the principles of natural justice that was canvassed before this Court, with reference to the contextual facts and circumstances. सत्यमेव जयते

10. As far as the case on hand is concerned, this Court does not find any compelling reason to entertain the plea of violation of the principles of natural justice in order to entertain this writ petition, at this stage. In fact, on the other hand, this Court is of the view that in the teeth of averments of the petitioner, approaching the Hon'ble appellate authority can be a more effective remedy for the petitioner to pursue, as the Hon'ble appellate authority while dealing with the appeal, can also appreciate the factual explanation of the petitioner and can further appreciate any procedural infraction which vitiated the inquiry proceedings as claimed by the petitioner. When such effective alternative remedy is available,

this Court is unable to appreciate as to why the writ petition is to be entertained by rendering the appellate remedy otiose. Every complaint of violation of natural justice can never be the acceptable legal ground for this Court to entertain the writ petition without the petitioner having recourse to the appellate remedy, unless such violation is appalling and monstrous, compelling this Court to entertain this writ petition. It is an exception to the rule and such exception is not found in this case and that view of the matter, this Court does not think that the writ petition can held to be maintainable.

11. For the above said reasons, this Court is constrained to hold that the writ petition is not maintainable and hence dismissed. It is always open to the petitioner to workout his remedy by approaching the Hon'ble appellate authority, if he is so advised. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Director,
Member of Board of Governors,
Disciplinary Authority of the Board,
Indian Institute of Technology-Madras,
Chennai 600 036.

+1cc to Mr.M.Swaroop, Advocate in SR.NO..30583

सत्यमेव जयते

W.P.No.9727 of 2020

SR(CO)
RV(19/10/2020)

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