

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.7631 of 2014

Josephine Jeyashanthi

...Petitioner

- Vs -

1.Government of Tamilnadu,
Rep. By its Chief Secretary,
Chennai.

2.The Loyola College,
Rep.by its Secretary and Correspondent,
Rev. Dr.M.Albert William, S.J.,
Chennai 600 034.

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order Ref. No.L.C-2014/140, dated 28.02.2014 issued by the 2nd respondent, quash the same and consequently direct the respondent to ensure proper implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 including to reinstatement of the petitioner with all attendant benefits, within the time frame that may be fixed by this Court.

For Petitioner : Mr.P.Vijay

For Respondents: Mr.A.N.Thambidurai, Spl.G.P for R1
: Mr. P.Godson Swaminathan for R2

सत्यमेव जयते
ORDER

The petitioner has filed this writ petition, to call for the records pertaining to the impugned order Ref. No.L.C-2014/140, dated 28.02.2014 issued by the 2nd respondent, quash the same and consequently direct the respondent to ensure proper implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 including to reinstatement of the petitioner with all attendant benefits, within the time frame that may be fixed by this Court.

2. The case of the petitioner is that she was appointed as Lecturer in the 2nd respondent college in the department of Media Arts for a period of two years by the Secretary of the College

Management Committee by order dated 14.06.2006. Thereafter, again on 13.06.2007, she was appointed in the capacity of Lecturer in the Department of Tamil in the same College and the same was confirmed on 01.08.2009. As per the appointment order dated 14.06.2008, after completion of two years of service the contract of her service would be renewed for a further period of 5 years until the age of her retirement as specified by the Government and the College Management Committee shall have the right to discharge her without assigning any reasons after a month's notice or a month's salary in lieu thereof. However, the management, being satisfied with her performance, confirmed her service with effect from 01.08.2009 by order dated 01.08.2009. It is the averment of the petitioner that she got separated from her husband and is living alone with her son. While she has been discharging her service peacefully, in the year 2008, one S.A.Rajarajan was appointed as Head of the Department of Tamil, in which he was working as Lecturer and after being posted as Head of Department, the said person started harassing her mentally with malafide intention of receiving sexual favour from her. Due to unbearable harassment, she made a complaint against the said S.A.Rajarajan to the 2nd respondent management. On receipt of the complaint, the 2nd respondent college conducted an enquiry as against the said Rajarajan and imposed a punishment of censure as against the HOD and, thereafter, without assigning any reason, the service of the petitioner was terminated by invoking clause 7 of the appointment order. Challenging the same the present writ petition is filed.

3. Learned counsel for the petitioner submitted that admittedly the petitioner was subjected to sexual harassment caused by the HOD viz., Rajarajan, and after detailed enquiry, the charge against the said HOD having been established, the said Rajarajan and imposed a punishment of censure. For the same charges, the petitioner has also made a complaint before the law enforcing agency and in that regard, the Secretary of the College Management Committee appeared before the law enforcing agency and had deposed that the said Rajarajan had not committed any harassment and had given a clean chit to the said Rajarajan, which shows the mala-fide intention of the Management in safeguarding the institution to the detriment of the petitioner. It is the further submission of the learned counsel for the petitioner that the termination of the petitioner has been shown to be termination simpliciter by invoking clause 7 of the appointment order though the reasons for the termination are clear and explicit and with the mala-fide motive, the college is also trying to tarnish the image of the petitioner, which is wholly unsustainable. The act of the respondents in censuring the said Rajarajan and at the same time giving a clean chit to the said Rajarajan in the complaint given before the law enforcing agency clear shows the devious mind of the Management

and this vitiates the order of termination, which is liable to be set aside.

3.1. In support of his contention, he relied upon the judgement rendered by the Division Bench of this Court, reported in SRM University, Rep. by its Registrar & Another v. Dr. Janet Jeyapaul (2016 6 MLJ 332 in W.A.No.932 of 2013) and the relevant paragraphs are extracted hereunder:

"11. After the finding given by the disciplinary committee against the allegations levelled against the respondent, the appellant invoked the terms in the appointment letter and terminated the respondent with one month notice.

12. The respondent cited our Supreme Court ruling, Gujarat Steel Tubes Ltd., v. Mazdoor Sabha, reported in (1980) 2 SCC 593, and contended that issuance of termination order, after conducting enquiry is nothing but dismissal. The Hon'ble Supreme Court has held as follows :

"53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinized, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a G punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged

misconduct and a live nexus between it and the termination of service the conclusion is dismissal. even if full benefits as on simple termination, are given and non-injurious terminology is used.

54. On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found..."

13. In this case on hand, the appellant after being satisfied of the guilt, abandoned the enquiry and proceeded to terminate, by invoking the terms in the appointment letter. Therefore, it amounts to dismissal and not termination simpliciter.

14. Even assuming that the termination is as per the terms of the appointment order, it is also hit by the principle of unconscionable contract. The Supreme Court has held that the appellant comes under the definition of Authority under Article 12 of the Constitution of India and therefore, it is amenable to the writ jurisdiction.

* * * * *

16. Here in this case on hand, the appellant is the employer and the respondent is the employee. There is no doubt that inequality of bargaining power exists. The respondent has no choice but to give her assent to the terms, while fetching her appointment as Lecturer.

* * * * *

20. It is appropriate to rely upon the decision in O.P.Bhandari v. Indian Tourism Development Corpn., Ltd., and others, reported in (1986) 4 SCC 337, wherein the Hon'ble Supreme Court held as follows :

"7. It is in public interest that such undertakings or their Boards of Directors are not compelled and obliged to entrust their managements to personnel in whom, on reasonable grounds, they have no trust or

faith and with whom they are in a bona fide manner unable to function harmoniously as a team working arm-in-arm with success in the aforesaid three-dimensional sense as their common goal. These factors have to be taken into account by the court at the time of passing the consequential order, for the court has full discretion in the matter of granting relief, and the court can sculpture the relief to suit the needs of the matter at hand. The court, if satisfied that ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate provided the employer pays reasonable compensation as indicated by the court."

8...What is more, reinstatement is perhaps not even in the interest of the appellant as he cannot give his best in the less-than-cordial atmosphere and it will also result in misery to him, let alone the other side. Neither the undertaking nor the appellant can improve their image or performance, or, achieve success. In fact it appears to us that both sides will be unhappy and miserable. These are valid reasons for concluding that compensation in lieu of reinstatement, and not reinstatement, is warranted in the circumstances of the present case.

* * * * *

10. In our considered opinion, compensation equivalent to 3.33 yearssalary (including allowances as admissible) on the basis of the last pay and allowances drawn by the appellant would be a reasonable amount to award in lieu of reinstatement taking into account the following factors viz.:

(1) The corpus if invested at the prevailing rate of interest (15 per cent) will yield 50 per cent of the annual salary and allowances. In other words every year he will get 50 per cent of what he would have earned by way of salary and allowances with four additional advantages:

(i) He will be getting this amount without working.

(ii) He can work somewhere else and can earn annually whatever he is worth over and above, getting 50 per cent of the salary he

would have earned.

(iii) If he had been reinstated he would have earned the salary only up to the date of superannuation (up to 55, 58 or 60 as the case may be) unless he died earlier. As against this 50 per cent he would be getting annually he would get not only beyond the date of superannuation, for his lifetime (if he lives longer), but even his heirs would get it in perpetuity after his demise.

(iv) The corpus of lump sum compensation would remain intact, in any event.

* * * * *

22. The respondent is aged 52 years at the time, when she was out of employment as per the affidavit filed in the writ petition. She was appointed as Lecturer in 2008 and then promoted as Senior Lecturer in 2010. She is holding M.Sc., and Ph.D., in Applied Biology. The respondent in her additional affidavit filed to amend the prayer for reinstatement and payment of Rs.15 lakhs as backwages or a lumpsum of Rs.20 lakhs, averred that she was getting salary of Rs.25,000/- p.m at the time of dismissal and in case of upgradation, as requested by the respondent, she would get minimum Rs.50,000/- p.m. The factum of monthly salary at the time of dismissal has not been denied by the appellant/management."

3.2. It is the further submission of the learned counsel for the petitioner that since the petitioner has reached the age of superannuation, no fruitful purpose would be served in setting aside the impugned order of termination by reinstating her and considering the mental trauma and agony suffered by the petitioner and also taking into consideration her age, this Court may direct the respondents to pay a just and fair compensation in lieu of reinstatement.

4. Per contra, learned standing counsel appearing for the respondent Management submitted that the appointment of the petitioner is purely on temporary and contractual basis as Lecturer for a period of two years. Initially the petitioner entered into service in the year 2006 and, thereafter, on satisfaction, it was periodically extended. However, learned counsel for the respondents fairly conceded that on the basis of the complaint by the petitioner against the said Rajarajan, enquiry was conducted which resulted in the imposition of

punishment of censure on the said Rajarajan. The respondents, thereafter, came to a conclusion that the service of the petitioner was no longer required and, therefore, in terms of clause 7 of the contract, terminated her service with effect from 28.02.2014 and a sum of Rs. 31,153/- was paid to her in lieu of one month notice. Hence, the mala fide intention attributed to the respondents does not have legs to stand in view of the fact that the termination of the petitioner has been in accordance with law and no ill-will or motive, as attributed by the petitioner against the respondent has been made out.

4.1. Further learned standing counsel for the Respondent vehemently disputed the contention of the petitioner that on the basis of the police complaint, the Secretary of the College Management Committee appeared before the law enforcing agency and supported the said Rajarajan and further submitted that the said submission of the petitioner is without any material and it is only with an intention to appeal to the sympathies of this Court. It is the further submission of the learned counsel that the respondent college and its authorities have the highest respect for women and that insofar as the criminal complaint is concerned, the college has fully co-operated with the investigating agency.

4.2. In support of his contention, he relied upon the judgement of this court made in J.Varghese Riju Vs. The Director of Collegiate Education & Ors. (WP.No.12391 of 2012, dated 17.09.2012), wherein this Court has held as follows:

"4. In paragraph No.12 of the counter, it is stated that the petitioner was appointed on contractual basis as Lecturer in the year 2007 and later, it was extended by two years from 16.06.2008 by order dated 16.06.2008. The appointment on contractual basis was confirmed by order dated 16.06.2008. The appointment on contractual basis was confirmed by order dated 16.06.2010. It is however stated in the counter that the petitioner's service was found no longer required, the College terminated the contract of the petitioner and discontinued him from service as per the impugned order dated 12.04.2012. It is also stated that since the employment of the petitioner was on contractual basis in a self financing college, the writ petition is not maintainable and the nature of employment falls within the contractual basis.

5. In my considered opinion, a contract of the personal service cannot be enforced in a writ proceeding. From the record, it is clear

that the petitioner was only a contractual employee and it is based on a personal contract of service. The same cannot be enforced in a writ proceeding. Therefore, the relief sought for in this writ petition cannot be granted to the petitioner. It is open to the petitioner to work out his remedy in the manner known to law. The writ petition is dismissed. No costs. The connected miscellaneous petition is also dismissed."

4.3 He also relied upon the decision rendered by the Division Bench of this Court in *R.Keerthivarman Vs. The District Education Officer & Ors.* (2014 (1) CWC 841 in W.A.No.762 of 2013), wherein this Court has held as follows:

"7. Similar issue was considered by the Division Bench of this Court in the decision reported in *The Correspondent, M.M.Higher Secondary School, Bethelpuram, Kanyakumari District and others V.K.Mathu Kumar and others*, 2007 (1) CTC 649, with regard to the claim of the salary of a Teacher appointed in an unsanctioned Post. In Paragraph (9) of the said decision, the Division Bench held thus:

9. It is settled law that if a person has been appointed against a post not sanctioned by the State Government, he cannot claim salary against such unsanctioned post. There is nothing on record to suggest that the post of PG Assistant (Economics) was required to be sanctioned for the school, in absence of which the teaching in the school would have been affected. In absence of such averment and other details, according to us, no relief could have been granted in the manner granted by the learned Single Judge and in the manner as was sought for by the writ petitioner. If the petitioner was appointed against a post created by the school management, but not sanctioned by the State Government, the petitioner, at best, could claim for wages from the school management, which was paid to him at the rate of Rs. 1,000 per month for taking classes for two hours per day. In such a situation, the impugned order dated 29.9.2004 passed by the learned Single Judge in W.P. No. 18900 of 2001 cannot be upheld."

5. This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record and also perused the decisions submitted by them.

6. The facts relating to the appointment of the petitioner on contractual basis the further extension of the petitioner, the complaint made against one Rajarajan, the HOD of the Tamil Department of the respondent College relating to Sexual Harassment and the imposition of punishment on the said Rajarajan pursuant to the disciplinary enquiry are not in dispute. The grievance of the petitioner is only insofar as her termination, though in consonance with clause 7 of the appointment order, however, it is directly attributable to the sexual harassment complaint given by the petitioner against the said Rajarajan. This Court therefore has to see whether the termination of the petitioner is on the basis of the appointment order or whether the said termination is an outcome of the complaint given by the petitioner against the HOD Rajarajan.

7. A perusal of the appointment order makes it clear the petitioner has been appointed on contractual basis with a further clause for renewal further periods of 5 years until the age of retirement specified by the Government subject to the satisfactory performance. It is further evident from the said appointment order that the College Management Committee is vested with the right to discharge the petitioner without assigning any reason after a month's notice or a month's salary in lieu thereof. Therefore, the termination of the petitioner is in consonance with the clause in the appointment order.

8. Though it is the stand of the petitioner that the respondent college has supported the delinquent Rajarajan before the investigating agency on the complaint of the petitioner, however, as pointed out by the learned counsel for the respondent/college, no tenable material whatsoever has been placed before this Court by the petitioner to show the stand of the respondent/college before the investigating agency. In such a backdrop, the contention of the petitioner that the respondent/college has supported the delinquent Rajarajan in the said enquiry does not merit acceptance. However, this Court is not inclined to go any further in that aspect, as it is for the law enforcing agency to deal with the criminal complaint in accordance with law and this Court sitting under Article 226 of the Constitution, is not inclined to use its inherent jurisdiction to step out of bounds with regard to the said aspect and render any finding.

9. In the case on hand, the termination of the petitioner having been done in accordance with clause 7 of the appointment order, which termination is an off-shoot of the complaint given by the petitioner against Rajarajan, it cannot be ruled out that the termination may have had some nexus with the sexual harassment meted out to the petitioner at the work place. However, that cannot be put against the respondent/college to hold that the said act of the college in terminating the petitioner on the basis of a valid clause in the contract is per se bad. However, equally this Court should also not lose sight of the fact that the termination has been subsequent to the complaint against the said Rajarajan. In such a backdrop, the contention of the respondent/college that the termination of the petitioner is purely on the basis of clause 7 of the appointment order and there was no ill-will against the petitioner is too large a contention for this Court to accept. This Court is of the view that the termination of the petitioner definitely has a nexus with the complaint relating to sexual harassment and it cannot be said to be only in terms of clause 7 of the appointment order and, therefore, definitely the petitioner is entitled for reinstatement, as the said order of termination is not in accordance with law.

10. Be that as it may. It is fairly conceded by the learned counsel for the petitioner that the relationship between the employer and the employee in this case has become strained and further the fact that the petitioner has since attained the age of superannuation, therefore, no useful purpose would be served in ordering reinstatement, as it would be an exercise in futility. In that backdrop, the sexual harassment meted out to the petitioner at the workplace deserves to be compensated in lieu of reinstatement.

11. In this regard, a perusal of the order passed in Janet Jeyapaul's case (supra) reveals that the issue therein is similar to the issue on hand. The ratio laid down therein is squarely applicable to the case on hand. It is clear that the issue in the present case is squarely covered by the decision in S.R.M. University's case (supra), wherein, this Court observed as under:

"21. Considering the submissions made by the learned Senior counsel appearing for the appellant / management and the fact that relationship between the employer and the employee in this case has become strained, this Court feels that it is a fit case to award compensation to the respondent for loss of future employment and further if re-employment is given, it will not be beneficial to the respondent / petitioner.

22. The respondent is aged 52 years at the time, when she was out of employment as per the affidavit filed in the writ petition. She was appointed as Lecturer in 2008 and then promoted as Senior Lecturer in 2010. She is holding M.Sc., and Ph.D., in Applied Biology. The respondent in her additional affidavit filed to amend the prayer for reinstatement and payment of Rs.15 lakhs as backwages or a lumpsum of Rs.20 lakhs, averred that she was getting salary of Rs.25,000/- p.m at the time of dismissal and in case of upgradation, as requested by the respondent, she would get minimum Rs.50,000/- p.m. The factum of monthly salary at the time of dismissal has not been denied by the appellant / management.

23. Considering the last salary drawn, qualification and the nature of post held by the respondent, the ordeals meted out by the respondent from the date of termination and also loss of future employment, this Court is of the view that awarding a compensation of Rs.10,00,000/- (Rupees Ten lakhs only) would be just and proper.

In fine, this Writ Appeal is allowed in part without cost. The order, dated 08.04.2013 passed in W.P.No.12676 of 2012 by the learned single Judge in respect of reinstatement is set aside and in other aspects, the same is confirmed. As adverted to earlier, the appellants are directed to pay compensation of Rs.10,00,000/- (Rupees Ten lakhs only) to the respondent / petitioner within a period of two months from the date of receipt of a copy of this Judgment. Consequently, connected miscellaneous petitions are closed."

12. In the light of the ratio laid down above and further keeping in mind the fact that the petitioner has attained the age of superannuation, this Court is of the considered view that this petition could be disposed of by directing the respondent/college to pay compensation in lieu of reinstatement.

13. Accordingly, this petition is allowed with a direction to the respondent/college to ensure proper implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and with a further direction to the respondent/college to pay a compensation to the tune of

Rs.6,00,000/- in lieu of reinstatement of the petitioner which shall be paid to the petitioner within a period of six weeks from the date of receipt of copy of this order.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jrs/GLN

To

1. The Chief Secretary
Government of Tamil Nadu
Chennai.

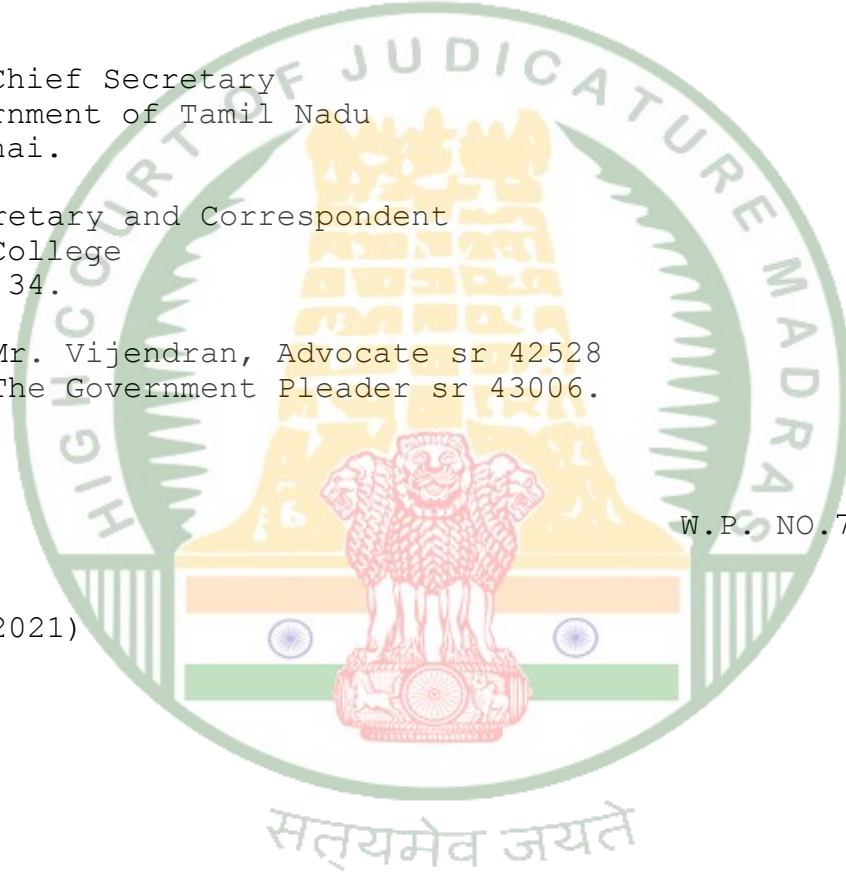
2.The Secretary and Correspondent
Loyola College
Chennai 34.

+1 CC to Mr. Vijendran, Advocate sr 42528

+1 CC to The Government Pleader sr 43006.

W.P. NO.7631 of 2014

MG(CO)
SP(25/02/2021)



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