

22.09.2023
SL No.7
Court No.8
(gc)

**RVW 120 of 2022
CAN 1 of 2022
CAN 2 of 2022
In
MAT 501 of 2021**

**Prof. (Dr.) Arnab Kumar Maiti
Vs.
University of Kalyani & Ors.**

Mr. Kallol Basu,
Mr. Suman Banerjee,
Mr. Monoranjan Jana
...for the Applicant/Petitioner.
Mr. Amitava Chaudhuri,
Mr. M. Chaudhuri,
Mr. N. Roy
...for the University.

Re: CAN 1 of 2022

1. Sufficient cause being shown for not being able to file the memorandum of review within the period of limitation.
2. The delay of 122 days in filing the memorandum of review is condoned.
3. Accordingly, the application for condonation of delay is allowed and disposed of.

**Re: RVW 120 of 2022
CAN 2 of 2022**

4. This is an application for review.
5. The applicant seeks review of the order dated 15th November, 2021 on the ground that a complaint of sexual harassment has to be taken to its logical end and regular enquiry or

departmental action is indispensable so as to enable the employee concerned to vindicate his position or prove his innocence.

6. Mr. Kallol Basu, learned Counsel appearing on behalf of the applicant submits that there is an error on the face of the order and in any event the Court can exercise the power of review *ex debito justitiae* to prevent miscarriage of justice.
7. Although, we find that the issue raised in this review has been considered and discussed by us in our impugned order and it is in effect re-arguing the appeal, we may state that the appointment of the petitioner was contractual and we have reiterated in our order that the order of termination per se does not reflect that the appellant was terminated due to the complaint made by the father of one of the prospective students. The said complaint does not appear to have formed the basis of order of termination.
8. In ***Dr. Vijayakumaran C.P.V. Vs. Central University of Kerala & Ors.*** reported at **2020 (12) SCC 426**, the issue before the Hon'ble Supreme Court was whether the order of termination is simplicitor termination or ex-facie stigmatic. The order under consideration before the Hon'ble Supreme Court is stated below:-

“On scrutiny of report by the Internal Complaints Committee, other documents and academic performance, the Executive Council held on 30/11/2017 felt that the performance of Dr. C.P.V. Vijayakumaran on probation is not suitable for continuation and confirmation in this University and had resolved to terminate the services forthwith. It is ordered accordingly.”

9. It further appears from the said decision that upon receipt of the complaints from the aggrieved woman alleging the sexual harassment at work place, a Committee was constituted and based on the findings therein, the appellant was dismissed.
10. The Hon’ble Supreme Court was considering the matter in the background of the aforesaid facts where the expression used by the University, namely, “is not suitable for continuation and confirmation in this University” was primarily based on a finding on the basis of the complaint.
11. It is trite law that if the order of termination is stigmatic, the probationer has a right to challenge the same and call for a decision as it would be a blot on his character. In instant case, the order of termination is not stigmatic. Moreover, in the instant case, it was a

contractual appointment and he was not on probation.

12. On such consideration, we do not find any reason to review our order.

13. Accordingly, the review application stands dismissed.

14. In view of dismissal of the review application, the injunction application being CAN 2 of 2022 also stands dismissed.

15. However, there shall be no order as to costs.

16. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)