

08.08.2023
Item No. 150
Ct. No. 238
AKG

WPA 15776 of 2018
Ganesh Dutta
Versus
The State of West Bengal & Ors.

Mr. Subir Sanyal,
Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Abhirup Halder,
Mr. Anirban Saha Ray

...for the Petitioner

Ms. Nandini Mitra

...for the University

Mr. Amitava Chaudhuri,
Mr. Moniruzzaman,
Mr. N. Roy

...for the College

In this writ petition, the petitioner has, inter alia, challenged a memorandum dated August 10, 2018, whereby the respondent college sought to initiate a proceeding against the petitioner under West Bengal College Teachers (Security of Service) Rule, 1997. Article of Charge framed against the petitioner runs as follows :

“Articles of Charge I – That Sri Ganesh Dutta while performing his duties as Teacher in the Dept of Statistics Basanti Devi College misbehaved with the girl students and used to give extra ordinary benefit to the students who take private Tuition from him and victimized those who can’t attend private Tuition to Ganesh Dutta.

That several complaints were received from the students alleging that Sri Dutta physically and

mentally harassed them and outrage their modesty by touching them physically and invited them in candle light dinner outside college.

That it reveals willful misconduct, misbehaviour, negligence of duties and lack of efficiency in performance of duties and commission of offence involving moral turpitude (As per disciplinary action vide rule 113 (b) (g) as per Calcutta University First Statute 1979)."

It has been submitted by Mr. Subir Sanyal, learned advocate appearing for the petitioner that initially, the college decided to enquire into the allegations made against the petitioner by a committee known as Naari Samsad. The enquiry report filed by Naari Samsad served as the basis of the disciplinary proceedings.

The petitioner was show-caused by a letter dated January 15, 2018. Mr. Sanyal contends that though in the said letter, it was indicated the intention of the college to proceed in terms of Visaka Guidelines as per direction of the Hon'ble Supreme Court, the college ultimately did not take recourse to the provision of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (in short, 'the said Act of 2013).

Mr. Sanyal submits that having regard to the nature of allegations made against the petitioner that it was imperative upon the college to proceed against the petitioner under the provision of the said Act of

2013. The proceeding against the petitioner departmentally bypassing the Act of 2013, renders the memorandum dated August 10, 2018 issued against the petitioner untenable.

In support of his submission, Mr. Sanyal has relied upon a judgment passed by a Co-ordinate Bench of this Court in **W.P. 24993 (W) of 2017 (Anjan Bhattacharjee Vs. The Registrar General, High Court Calcutta & Ors.)**.

Mr. Amitava Chaudhuri, learned advocate appearing for the college, on the other hand, submits that the petitioner on earlier round of writ petition challenged the show-cause notice dated January 15, 2018, alleging violation of the principle of natural justice.

This Court directed the college to proceed with the show-cause notice and take a decision after due compliance of natural justice. The said order dated April 24, 2018 has never been challenged by the petitioner. Therefore, the petitioner is estopped from challenging the present proceeding which has its genesis in the show-cause notice dated January 15, 2018.

There cannot be any doubt that the nature of allegations leveled against the petitioner fall within the purview of the said Act, 2013. A Co-ordinate

Bench of this Court in W.P. 24993 (W) of 2017, the following questions were framed for answer.

“1. Whether the respondents can proceed on the basis of its own Service Rules in relation to a Complaint, which is specifically covered by Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013?

2. Whether any authority apart from the Internal Complaints Committee constituted in terms of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 can enquire into the complaint of sexual harassment made by an alleged victim against a respondent at a workplace?

3. Whether the impugned action of the respondents including suspending the writ petitioners, suffers from inherent lack of jurisdiction, and is void ab-initio?”

It was held by the Co-ordinate Bench that the expression ‘*in addition to*’ and, ‘*not in derogation of*’, has the necessary legal authority to be contextually construed as not to mean ‘*in lieu of*’. The Bench set aside the departmental proceeding initiated against the petitioner therein.

In the present case also, we are faced with a similar situation where the college has chosen to proceed against the petitioner departmentally without taking any action in terms of the said Act, 2013.

Mr. Amitava Chaudhuri, learned advocate appearing for the college sought to distinguish the judgment, on the ground that, in that case the

petitioner specifically challenged the jurisdiction of the High Court to initiate the departmental proceeding, but in the present case, the petitioner accepted the order dated April 24, 2018 passed in the earlier round of writ petition whereby the disciplinary proceeding initiated against the petitioner was allowed to be continued.

I am not inclined to accept the submission made on behalf of the college. The memorandum dated August 10, 2018, was not the subject matter of challenge in the earlier round of writ petition. The memorandum was issued after the said order dated April 14, 2018. It was open for the petitioner to challenge the propriety of the said memorandum on any valid legal grounds.

Judicial propriety demands that a Co-ordinate Bench should follow the decision rendered by another Bench in similar circumstances. Therefore, the view taken in **Anjan Bhattacharjee (supra)** should be applied in this case also.

Accordingly, this writ petition is allowed by setting aside the departmental proceeding initiated against the petitioner following the order dated August 10, 2018, granting liberty upon the college to initiate the proceeding under the provision of the said Act of 2013.

Mr. Chaudhuri has informed that the college currently maintains an Internal Complaints Committee under the said Act of 2013.

In that view of the matter, the college should make an endeavour to conclude the proceeding under the said Act of 2013 as early as possible, preferably within a period of three months from the date of communication of this order.

Since the memorandum dated August 10, 2018 has been set aside, as a consequence thereof, the suspension order as contained in the said memorandum also goes and the petitioner will be reinstated in service within seven days from the date of communication of this order. This, however, shall not prevent the college from taking action against the petitioner in terms of Regulation 9 of University Grants Commission (Prevention, Prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015 to ensure a smooth enquiry against the petitioner.

WPA 15776 of 2018 is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Kausik Chanda, J.)

