

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA-707-2022 (O&M)
Date of decision : 31.01.2023

Dharambir Singh SiwachAppellant
Versus
State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. R.K. Malik, Senior Advocate, with
Mr. Sunil Hooda, Advocate, for the appellant.
Mr. Deepak Balyan, Addl. Advocate General, Haryana.

RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

CM-1661-LPA-2022

For the reasons set out in the application, which is duly supported by an affidavit, delay of 32 days in filing the appeal is condoned.

Application is, accordingly, allowed.

LPA-707-2022 (O&M)

This appeal has been filed by the appellant being aggrieved by the order dated 16.03.2022 passed by the learned Single Judge, whereby CWP No. 5113 of 2022 filed by the appellant against the order dated 25.02.2015 (P-12) issued by the Registrar of respondent No.3 University, compulsorily retiring him, has been dismissed. The appellant had also sought for a direction to respondent No.3 University to re-instate him in service, in view of the orders/communications dated 14.08.2021 (P-19) and 22.11.2021 (P-19-A) issued by the Committee, constituted by the Executive Council of respondent No.3 University, on the ground that vide the said orders/communications, the order of his compulsory

retirement had been stayed, as the Vice-Chancellor of the University was not competent to take any action in the matter.

The brief facts, leading to the filing of the writ petition, are that the appellant was working as an Accountant in the establishment of the University. On 20.02.2013, a complaint (P-3) was filed against him by Ms. Aarzoo, a student of Class XI, alleging sexual harassment. On the basis of the said complaint, a Preliminary Enquiry Committee, consisting of three members, examined the matter on 28.02.2013 and, finding the matter to be very serious, recommended the complaint to be enquired into by the Sexual Harassment Committee of the University.

As per the undisputed facts on record, the Sexual Harassment Committee examined the appellant as well as the complainant and her father and other witnesses produced by the parties. The Committee, vide its report dated 29.05.2013 (P-6), after recording a finding against the appellant, recommended that the matter be referred to the competent authority for taking a disciplinary action against him. Thereafter, show cause notice dated 17.12.2013 (P-7) was issued to the appellant, to which he filed reply dated 28.01.2014 (P-8). Accordingly, the Executive Council of the University, vide resolution No. 46 dated 20.02.2015, proposed to retire the appellant compulsorily, whereupon an order in compliance thereof was issued on 25.02.2015 (P-12).

The appellant, in the writ petition, alleged that the complainant and her father gave their affidavits dated 11.01.2014 (P-9) stating therein that no incident of sexual harassment had occurred and they did not want any action to be taken against the appellant. The same were annexed by the appellant with his reply dated 28.01.2014 (P-8) to the show cause notice dated 17.12.2013 (P-7). On the strength of these

affidavits, it was contended by the appellant before the learned Single Judge that as the complaint had been withdrawn by the complainant and the complainant as well as her father had stated that no such incident had occurred, the impugned order be set aside and the appellant be re-instated in service. It was further submitted that subsequent to passing of the order of his compulsory retirement, the appellant, on the advice of the respondent – authorities, had filed an appeal under Section 10, Clause 14 of the University Act, before the Governor/Chancellor of the University. On the said appeal, the Assistant Registrar, vide his communication dated 14.08.2021 (P-19), commented that the Vice-Chancellor has ordered to file the case and the inquiry, which was ordered by the earlier Vice-Chancellor to be kept in abeyance, as the University was not competent to take any further action in light of the provisions contained in the University Act.

Learned Senior counsel for the appellant submits that the comments dated 14.08.2021 (P-19) made by the Assistant Registrar on the statutory appeal filed by the appellant as well as the further comments dated 22.11.2021 (P-19-A) on an application filed by the appellant for his re-instatement make it abundantly clear that the authorities have themselves stayed further proceedings and in such circumstances, the impugned order of compulsory retirement be set aside and the appellant be directed to be re-instated in service. It is further submitted that though all these facts and issues were raised by the appellant before the learned Single Judge, however, without adverting to the same, the writ petition has been dismissed. Hence, this appeal.

We have heard learned Senior counsel for the appellant at length.

We have carefully perused the record as well as the impugned order passed by the learned Single Judge. From a perusal thereof, it is evident that the learned Single Judge has dismissed the petition taking into account the fact that the complaint dated 20.02.2013 against the appellant regarding molestation and sexual harassment was serious; that the matter was duly enquired into by the Enquiry Committee, comprising of three members, which submitted its report finding the appellant guilty, where-after, he was served with a show cause notice on 17.12.2013, reply to which was filed by him on 28.01.2014; and that the University, after taking all aspects into consideration, compulsorily retired the appellant from service, as he had attained the age of 60 years. Record further indicates that the appellant had filed an application seeking review of the impugned order, whereupon vide order dated 11.05.2022, the learned Single Judge has made a correction in its order dated 16.03.2022 by recording that the appellant had in fact been compulsorily retired at the age of 53 years.

From a perusal of the record, it is further evident that the incident occurred when the appellant was performing his duties as an Accountant with the respondent University, which was duly inquired into on the complaint filed by Ms. Aarzoo, a student of Class XI, on 20.02.2013. On the said complaint, a Committee was constituted by the University to conduct a preliminary enquiry. A meeting of the Committee, consisting of three members, was held on 28.02.2013, during which the Committee personally examined the appellant and the complainant. All the relevant documents were shown to the appellant. A perusal of the minutes of the meeting, which has been annexed with the petition as Annexure P-4, indicates that while all the charges were denied

by the appellant, he however agreed that the girl visited his office on 18.01.2013. The Committee took note of the fact that the complaint of the victim was confirmed and re-affirmed by her father, who made very serious allegations against the appellant. Thereafter, the Committee recommended that the matter be inquired into by a Committee constituted by the University on the basis of the guidelines issued by the Supreme Court of India for prevention of sexual harassment against women at work place. The Committee further recommended to suspend the appellant during pendency of the inquiry and to ban his entry in the University premises. On the basis of the preliminary enquiry by the Preliminary Enquiry Committee, which, *prima facie*, recorded its finding against the appellant, vide an order of the Vice-Chancellor of the University, the matter was referred to the Sexual Harassment Committee. The Committee held its meetings on 15.04.2013, 10.05.2013, 21.05.2013 and 28.05.2013. During its proceedings, the Committee examined the preliminary inquiry report, statements of both the parties recorded by the Preliminary Enquiry Committee as well as the video recording of the statement of the victim. The Committee, apart from considering the same, also recorded the statements of both the parties and permitted their cross-examination. The report submitted by the Committee, which has been annexed with the petition as Annexure P-6, indicates that the complainant confirmed her allegations made by her in the complaint against the appellant, and that in spite of rigorous cross-examination by the appellant, she did not deviate from her statement. It is evident that father of the victim, during the proceedings of the meeting, informed the Committee that the appellant was pressurizing them to withdraw the complaint by using social pressure, but the victim refused to withdraw

her complaint. On the basis of the enquiry conducted by the Sexual Harassment Committee, it recorded a finding to the following effect :

“The Committee unanimously is of the opinion that it is proved beyond doubt that Mr. D.V. Siwach tried to outrage the modesty of the minor girl of 16 years of age studying in XI standard in Kanya Gurukul Sr. Sec. School (KGSSS) and also forced her to establish sexual relation with him by treat and force using a knife.”

The Committee recommended in the following terms :

“The Committee confirms the findings of preliminary committee and recommends to refer the matter to university authorities to take up disciplinary action under the Punishment and Appeal Rules, under Rule 18 (i) of BPSMV Rules for Prevention, Prohibition and Punishment for Sexual Harassment of Women at the University.”

On the basis of the above recommendation of the Sexual Harassment Committee, a show cause notice was issued to the appellant on 17.12.2013, to which he duly filed his reply on 28.01.2014, which was considered by the Executive Council in its meeting held on 20.02.2015. The appellant was proposed to be compulsorily retired, pursuant to which order of his compulsory retirement was issued on 25.02.2015. It is pertinent to note that after his compulsory retirement, the appellant filed several applications before the authorities, all of which were filed. Evidently, since issuance of the order of his compulsory retirement on 25.02.2015, no proceedings were taken up by the appellant before any court of law assailing the same, till filing of the writ petition in the year 2022.

The appellant, before the learned Single Judge, relied upon the affidavits dated 11.01.2014 (P-9) procured by him from the complainant and her father. Evidently, these were subsequent to the submission of reports by the Preliminary Enquiry Committee as well as the Sexual Harassment Committee and issuance of show cause notice to the appellant.

It is contended by learned Senior counsel for the appellant that the appellant had placed the affidavits of the complainant and her father before the authorities. However, none of the documents annexed by him with the writ petition indicates that any such affidavit was either filed or placed by him before the Executive Council or before the Vice-Chancellor seeking withdrawal of the order of his compulsory retirement. Such affidavits do not find any mention in the orders/communications dated 14.08.2021 (P-19) and 22.11.2021 (P-19-A), on which heavy reliance has been placed by the appellant. We have also carefully examined these orders/communications. These were issued much after the order of compulsory retirement of the appellant was issued by the competent authority in the year 2015. A perusal of these documents further makes it clear that the same do not stay the order of compulsory retirement of the appellant, as contended by him. These orders/communications also do not make any mention of re-instatement of the appellant in service, as contended before this Court. These are simple communications, that have been issued by the University on a statutory appeal and an application filed by him before the Governor/Chancellor of the University for his re-instatement in service. Facts on record also indicate that several applications, filed by the appellant subsequent to the issuance of order of his compulsory

retirement, were duly filed by the Vice-Chancellor after considering the same. In such circumstances, the prayer made by the appellant for his re-instatement in service on the strength of the orders/communications dated 14.08.2021 and 22.11.2021 is absolutely mis-conceived for the reasons stated above. Evidently, as the entire proceedings of conducting enquiry and awarding punishment were already over, the question of staying the same did not arise.

Quite apart from the above, as observed by the learned Single Judge, the action by the authorities was taken after following the procedure prescribed by law and in such circumstances, no fault can be found with the same.

In view of the aforesaid facts and circumstances, which have emerged from the record and are duly established, we do not find any perversity or manifest illegality in the findings recorded by the learned Single Judge to the effect that the Enquiry Committee found the appellant guilty, served him a show cause notice, to which reply was filed by him, and thereafter took a decision to compulsory retire him. In these circumstances, we do not find any illegality in the appeal filed by the appellant and the same is, accordingly, dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

January 31, 2023
ndj

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No