

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 218

Civil Writ Petition No.24073 of 2019

Date of Decision: September 06, 2023

Dr. Manoj Kumar

..... PETITIONER(S)

VERSUS

State of Haryana and others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Mr. Bhupinder Malik, Advocate for the petitioner

Ms. Tanushree Gupta, DAG, Haryana

Mr. Anil Kumar Sharma, Advocate for respondents No.5,
7, 8 and 9

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Tribhuvan Dahiya, J. (Oral)

This petition has been filed seeking a writ of *certiorari* quashing the inquiry report, dated 06.03.2019 (Annexure P-18), by the Internal Complaints Committee being in violation of the procedure; and the termination order, dated 05.08.2019 (Annexure P-20), removing the petitioner from service on that basis. Further, a direction has been sought to reinstate him on the post of Extension Lecturer (Economics) with all consequential benefits.

2. Briefly, facts of the case are, the petitioner after retirement from the Indian Air Force, was appointed as Extension Lecturer (Economics) in Government Girls College, Kharkhara, Rewari, on 01.08.2014. Later, he was served a relieving order, dated 11.01.2019, on

account of decreased workload of the subject.

2.1 The relieving order was challenged by the petitioner before this Court by filing CWP-1443-2019, and the same was stayed vide order dated 21.01.2019.

2.2 On 16.02.2019, the petitioner was served a show cause notice, Annexure P-5, regarding complaints by girl students and a staff member alleging misbehavior and wrongful conduct. He was informed that the complaints have been marked for inquiry to the Committee against Sexual Harassment (hereinafter referred to as 'the Committee'), requiring him to explain the position within three days.

2.3 The petitioner filed a detailed reply dated 21.02.2019, Annexure P-12, denying all the allegations, alleging that it was a conspiracy against him by respondent No.4.

2.4 The Committee, comprising of respondents No.6 to 9 who were working as Associate Professors in different subjects in the College, inquired into the allegations levelled by the girl students as well as the staff member against the petitioner, and submitted the impugned report dated 06.03.2019. It concluded that the petitioner's conduct and behaviour with the girl students was not proper, as it vitiated the academic environment in learning institution. It was also noted that the complainant staff member/respondent No.4 did not put forward her view point before the Committee by submitting that she was not facing any problem. The complainants were advised to take recourse to legal remedies available to them as per law. None of the girls had alleged any physical assault, touch or

physical contact by the petitioner. The report was, accordingly, submitted to respondent No.3/Principal for necessary action.

2.5 The Committee's report was not served on the petitioner, nor was he afforded any opportunity to file appeal against the same before the appellate authority.

2.6 Later, he was issued a show cause notice dated 26.07.2019, Annexure P-17, as to why disciplinary action be not taken against him. The Committee's report, dated 06.03.2019, was also attached along with this notice, and that was the first time he could access it.

2.7 The petitioner submitted his reply dated 01.08.2019, Annexure P-19, to the same. An objection was taken that constitution of the Committee was not as per the rules, as no independent person belonging to a Non-Government Organisation (NGO) was its member. It was also stated that the Committee's report was not furnished to him, and was denied the opportunity to challenge its findings. On merits also, it was asserted that none of the charges was, in fact, made out against him, and the Committee did not conduct the proceedings in accordance with law. He was not afforded proper opportunity to defend himself.

2.8 After receiving the reply, respondent No.3/Principal of the College removed the petitioner from his present assignment of Extension Lecturer in Economics, vide the impugned order dated 05.08.2019. The order states, since allegations against the petitioner pertain to sexual harassment of girl students, the explanation given by him was not sufficient to exonerate him of the allegations. Thereafter, the petitioner approached

this Court and filed the instant petition.

2.9 By taking into account the aforesaid removal from service, the earlier writ petition, CWP-1443-2019, filed by the petitioner against the order, dated 11.01.2019, relieving him from service arbitrarily, was dismissed as having been rendered infructuous on 15.03.2023.

3. Learned counsel for the petitioner contends that the impugned inquiry report as well as the order of termination are illegal and arbitrary. The Committee was constituted in violation of the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 (hereinafter referred to as 'the Regulations'). Besides, the order of termination has been passed in violation of the Principles of Natural Justice. It is non-speaking and does not assign any reason for termination. The petitioner was not even furnished a copy of the inquiry report, that prevented him from challenging the same by filing appeal. Therefore, the impugned orders should be set aside and the petitioner may be reinstated in service with full back wages/salary.

4. Learned State counsel submits that the aforesaid Regulations are applicable for taking action on complaints of sexual harassment received against College teachers, including contractual employees like the petitioner. She further submits that the allegations against him are serious and have been duly inquired into by the Committee. Based upon its findings only the impugned order of termination has been passed which is in accordance with law. There is no *mala fide* alleged against the official respondents, who have taken the decision in the interests of the institution as well as the students.

5. Heard.
6. To consider the arguments raised by learned counsel for the parties, it is apposite to refer to relevant provisions of the Regulations which are as under:

2. Definitions. —

- (a) to (f) xxxx xxxx xxxx
- (g) “Executive Authority” means the chief executive authority of the HEI, by whatever name called, in which the general administration of the HEI is vested. For public funded institutions the Executive Authority means the Disciplinary Authority as indicated in Central Civil Services (Classification, Control and Appeal) Rules, 1965 or its equivalent rules;
- (h) “Higher Educational Institution” (HEI) means a university within the meaning of clause (j) of section 2, a college within the meaning of clause (b) of sub-section (1) of section 12-A and an institution deemed to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956);

4. Grievance redressal mechanism.—(1) Every Executive Authority shall constitute an Internal Complaints Committee (ICC) with an inbuilt mechanism for gender sensitization against sexual harassment. The ICC shall have the following composition:-

- (a) A Presiding Officer who shall be a woman faculty member employed at a senior level (not below a Professor in case of a university, and not below an Associate Professor or Reader in case of a college) at the educational institution, nominated by the Executive Authority:
Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section 2(o):
Provided further that in case the other offices or

- administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;
- (b) two faculty members and two non-teaching employees, preferably committed to the cause of women or who have had experience in social work or have legal knowledge, nominated by the Executive Authority;
 - (c) Three students, if the matter involves students, who shall be enrolled at the undergraduate, master’s, and research scholar levels respectively, elected through transparent democratic procedure;
 - (d) one member from amongst non-government organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, nominated by the Executive Authority.
- (2) At least one-half of the total members of the ICC shall be women.
- (3) Persons in senior administrative positions in the HEI, such as Vice-Chancellor, Pro Vice-Chancellors, Rectors, Registrar, Deans, Heads of Departments, etc., shall not be members of ICCs in order to ensure autonomy of their functioning.
- (4) The term of office of the members of the ICC shall be for a period of three years. HEIs may also employ a system whereby one –third of the members of the ICC may change every year.
- (5) The Member appointed form amongst the non-governmental organizations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the Executive Authority as may be prescribed.
- (6) xxxx xxxx xxxx

8. Process of conducting Inquiry- (1) The ICC shall, upon receipt of the complaint, send one copy of the complaint to the respondent within a period of seven days of such receipt.

(2) Upon receipt of the copy of the complaint, the respondent shall file his or her reply to the complaint along with the list of documents, and names and addresses of witnesses within a period of ten days.

(3) The inquiry has to be completed within a period of ninety days from the receipt of the complaint. The inquiry report, with recommendations, if any, has to be submitted within ten days from the completion of the inquiry to the Executive Authority of the HEI. Copy of the findings or recommendations shall also be served on both parties to the complaint.

(4) The Executive Authority of the HEI shall act on the recommendations of the committee within a period of thirty days from the receipt of the inquiry report, unless an appeal against the findings is filed within that time by either party.

(5) An appeal against the findings or /recommendations of the ICC may be filed by either party before the Executive Authority of the HEI within a period of thirty days from the date of the recommendations.

(6) If the Executive Authority of the HEI decides not to act as per the recommendations of the ICC, then it shall record written reasons for the same to be conveyed to ICC and both the parties to the proceedings. If on the other hand it is decided to act as per the recommendations of the ICC, then a show cause notice, answerable within ten days, shall be served on the party against whom action is decided to be taken. The Executive Authority of the HEI shall proceed only after considering the reply or hearing the aggrieved person.

(7) The aggrieved party may seek conciliation in order to settle the matter. No monetary settlement should be made as a basis of conciliation. The HEI shall facilitate a conciliation process through ICC, as the case may be, once it is sought. The resolution of the conflict to the full satisfaction of the aggrieved party wherever possible, is preferred to purely punitive intervention.

(8) The identities of the aggrieved party or victim or the witness or the offender shall not be made public or kept in the public domain especially during the process of the inquiry.

7. The Regulations require a Higher Education Institution (HEI) to have a permanent Committee to inquire into complaints of sexual harassment. Regulation 4 provides that the Committee is to be headed by a woman faculty member employed at a senior level, and will have two faculty members and two non-teaching employees, among others, as its members. If the matter involves students, three students, elected through transparent democratic procedure, are also to be its members. One member of the Committee must be from non-government organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, nominated by the Executive Authority. Regulation 8 prescribes the procedure for conducting inquiry by the Committee. Upon receipt of a copy of the complaint, the respondent shall file his reply along with list of documents and witnesses within ten days. Thereupon, the inquiry is to proceed and to be concluded within ninety days from receipt of the complaint. A copy of the findings or recommendations of the Committee shall be made available to both the parties. Within ten days of conclusion of the inquiry, its report with recommendations, if any, is to be submitted to the Executive Authority of the HEI, which is the Chief Executive Authority in which general administration of the institution is vested. The Authority shall act upon the recommendations of the Committee within thirty days from receiving the report, unless appeal against the findings is filed within a period of thirty days from the date of recommendations. It has to finally decide whether to act upon the report/recommendations of the Committee or not. In case, it decides to take action, a show cause notice is required to be issued to the party against whom action is to be taken. On considering reply to the show cause, the

Executive Authority shall proceed further in accordance with law.

8. As per undisputed facts on record, the Committee to inquire into the sexual harassment allegations against the petitioner was not constituted as per mandatory provisions of Regulation 4. All its members were lady Associate Professors of the College, no employee of the non-teaching staff was associated with it as member. It is not clear who of the Associate Professors headed the Committee; nor is there any indication whether it was a permanent Committee constituted under the Regulations. Further, though the complaint against the petitioner involved students, none of their representatives was associated as a member of the Committee; nor any independent member from NGOs or any other associations committed to the cause of women was so associated. Therefore, mandatory provisions of the Regulations were not followed in constituting the Committee; the fact could not be denied by learned State counsel either. It is settled law, where a power is meant to be exercised in a certain manner by a certain body consisting of the members required, it can only be exercised in the manner prescribed by the body so constituted, or not at all.

9. Since very constitution of the Committee was in violation of law, it had no competence to hold inquiry into the allegations levelled against the petitioner. Only a Committee constituted strictly in accordance with provisions of the Regulations would have the jurisdiction to do so. Therefore, proceedings of the Committee were vitiated, and none of its recommendations and/or findings could have been acted upon, as they become void *ab initio* and *non est*; nor could any action have been taken against the petitioner based thereupon. Accordingly, the order of

termination, dated 05.08.2019, becomes unsustainable in law.

9.1. A reference in this regard can be made to law laid down by the Supreme Court in *State of Uttar Pradesh v. Singhara Singh and others*, AIR 1964 SC 358, which is the consistent view ever since. Paragraph 8 of the judgment is relevant, which is as under:

8. The rule adopted in *Taylor v. Taylor* is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.

10. Further, the official respondents have committed another blatant violation of the the Regulations in not furnishing a copy of the Committee's inquiry report to the petitioner, to enable him to challenge its findings/recommendations before the Executive Authority of the HEI within a period of thirty days from the date of recommendations. In this manner, a vital right of appeal provided to the petitioner in terms of Regulation 8(5) has been frustrated. Serving a copy of the inquiry report on the petitioner with the show cause notice before taking a disciplinary action, is inconsequential, as it did not provide him any opportunity to challenge the same in appeal. Even his objection against non-furnishing a copy of the report was also not considered, nor was any reason for doing so assigned in the order of termination; the same therefore becomes unsuitable.

11. Still further, the order of termination is in violation of the Principles of Natural Justice. It is non-speaking and assigns no reason for removing the petitioner from his assignment, nor does it consider any of the objections or grounds taken by him in reply to the show cause notice. The order records, 'since the allegations against the petitioner pertain to sexual harassment of girl students, the explanation submitted by him was not sufficient to exonerate him of the allegations'. This is no reasoning at all; the allegations are not be-all and end-all in themselves. No attempt has been made even to consider the findings and/or recommendations of the Committee or the petitioner's reply to the same. To remove an employee from service in this manner is travesty of justice. On this account also, the order becomes unsustainable in law.

12. In view of the foregoing discussions, the inquiry report, dated 06.03.2019, and termination order, dated 05.08.2019, are set aside. The official respondents are directed to conduct *de novo* inquiry against the petitioner with regard to the complaint of sexual harassment against him, by following the procedure laid down in the Regulations, conclude the same within the time stipulated therein, i.e., ninety days, and submit its report within ten days thereafter. The aggrieved party in terms of the report and/or recommendations of the Committee shall be afforded thirty days' time to file appeal against the same by furnishing a copy of the inquiry report. On considering the appeal, if any, the Executive Authority shall take final decision to act or not to act on the report/recommendations of the Committee within thirty days of filing the appeal, and proceed in accordance with law.

13. The petitioner's claim for reinstatement and back wages will

be considered by the official respondents in the light of final decision taken by them on the findings/recommendations of the Committee and/or the Appellate Authority in accordance with law, within a period of four weeks from the date of final decision.

14. The petition stands disposed of in the aforementioned terms.

(Tribhuvan Dahiya)
Judge

September 06, 2023
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<u>Whether Speaking/ Reasoned:</u>	<u>Yes/ No</u>
<u>Whether Reportable:</u>	<u>Yes/ No</u>