

04.03.2024
SL No. 6 & 7
Court No.8
(Sayandeep)

**MAT 1414 of 2022
with
CAN 01 of 2022, CAN 2 of 2022**

**Satyajit Ray Film and Television Institute & ors.
Vs.
Subhadro Choudhury @ Suvadro Chowdhury & ors.
With
MAT 1416 of 2022
With
CAN 01 of 2022, CAN 2 of 2022
Satyajit Ray Film and Television Institute & ors.
Vs.
Shyamal Sengupta & ors.**

Ms. Susmita Saha Dutta
.... for the appellants
Mr. Mainak Ganguly
... for the respondents
Mr. Debashis Banerjee
Mr. Subrata Saha
Mr. Abhik Biswas
.... For the private respondents

**In Re: CAN 1 of 2022 in MAT 1414 of 2022
and CAN 1 of 2022 in MAT 1416 of 2022**

Both the applications for condonation of delay
are appearing by mistake as they have been
disposed of by the order dated 23.08.2023.

**In Re: MAT 1414 of 2022 and MAT 1416 of
2022.**

1. The supplementary affidavit filed today is
taken on record.
2. Both the appeals are heard together and
disposed of by this common Judgment as
the involved identical questions of law and
facts.

3. The appellants in both the matter are aggrieved by the order dated 29th June, 2022 passed by the learned Single Judge in two writ petitions preferred by the private respondent against the decision of the Governing Council of Satyajit Ray Film and Television Institute (SRFTI). Whereby the Governing Council decided to impose punishment of compulsory retirement against the writ petitioners.
4. Briefly stated on the basis of the complaints made by the private respondent before the Internal Complaint Committee (ICC) alleging sexual harassment at work place ICC enquired into the matter and submitted their recommendation to the employer for necessary action. However, in the recommendation, ICC had suggested major punishment by way of dismissal. ICC appears to have conducted a preliminary enquiry and a final enquiry and for all purposes acted as an enquiry officer before submitting its recommendation to the employer along with the proposed punishment.
5. The learned counsel for the parties have taken us through the relevant provisions of the Sexual Harassment of Women at

Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the By laws of SRFTI. While the appellants being supported by the private respondent contended that on proper consideration of the materials on record, the punishment of compulsory retirement was given and there was no necessity to hold a *de novo* enquiry.

6. The learned counsel for the writ petition has submitted that the ICC had relied upon materials that were never made available to the writ petitioners in as much as they have no jurisdiction to propose punishment in their recommendation.
7. Without elaborating on the procedure adopted and the Rules made applicable to the instant case, it would suffice to mention that the ICC in the recommendation has proposed a punishment which is beyond the jurisdiction of the ICC as they can recommend as an enquiry officer whether the charge has been proved. The recommendation is limited to “take action for sexual harassment as a misconduct” in accordance with the provisions of the service rules applicable to the respondent as is discernable from a reading of Section

13 sub-Section(3)(i) of the 2013 Act. It is only upon the employer accepting the recommendation and treating such sexual harassment as misconduct can proceed against the delinquent in accordance with the service rules. It is almost akin to a second show-cause notice to decide on the findings and recommendation and decide on the quantum of punishment if no satisfactory reply is received from the delinquent.

8. It is now necessary to consider the deliberation before the Governing Council. The Governing Council is the authority to decide on the representation following the recommendation of the ICC. In the deliberation of the Governing Council, held on 10th June, 2016 it can be seen that it has referred to a “note-sheet” prepared by the Chairman recommending a *de novo* enquiry by an outside expert as the authority had obtained legal opinion that the ICCSH reports were defective. The Chairman has placed legal opinion from three legal experts one of whom was a Retired Judge of this Court but surprisingly we do not find any discussion or deliberation on the said legal opinion or

the note-sheet of the Chairman for *de novo* enquiry. If the note sheet or the legal opinions are in favour of the writ petitioners then that should have been deliberated upon as it forms part of the decision making process. The learned counsel for appellants does not dispute the contents of the resolution of the meeting dated 10th June, 2016. Although compulsory retirement may not carry any stigma however it causes a severance of relationship of employer and employee and is virtually dismissal from service. On such consideration, we are of the opinion that the writ petitioner was able at least to make out a strong case for reconsideration by the Governing Council of the proposed punishment in the form of compulsory retirement.

9. Under such circumstances, the order impugned is modified to the extent that that the Governing Council shall re-visit the decision taken after giving a reasonable opportunity of hearing to all the parties who were present at the time of consideration of the recommendation of ICC by the Governing Council. In view of the fact that the recommendation of the

Chairman in the note-sheet and the three legal opinions were considered without giving any opportunity to the same should be available to the writ petitioners also to the private respondent in order to enable them to make suitable representation and submission at the time of reconsideration of the decision by the Governing Council. We are not deciding on the *de novo* enquiry at this stage as it depends upon the final outcome of the decision to be taken by the Governing Council in terms of this order. The entire exercise shall be completed within a period of eight weeks from the date of communication of this order. It would be open for the writ petitioners to make suitable submissions on the recommendation of the ICCSH.

10. Accordingly, both the appeals and applications are disposed of with the aforesaid modification.

(Uday Kumar, J.)

(Soumen Sen, J.)