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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 291/2024 & CM APPL. 21611-12/2024**

XYZ

..... Appellant

Through: Dr. Amit George, Advocate for
DHCLSC with Mr. Arkaneil
Bhaumik, Mr. Rayadurgam Bharat,
Mr. Adhishwar Suri, Mr. Shashwat
Kabi, Mr. Piyo Harold Jaimon, Ms.
Suparna Jain, Advocates alongwith
Appellant in person

versus

UNION O FINDIA THROUGH ITS SECRETARY & ORS.

..... Respondents

Through: Ms. Nidhi Raman, CGSC with Mr.
Rudra Paliwal, GP and Mr. Zubin
Singh, Advocate for R-1 & R-2/VOI

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Date of Decision: 10th April, 2024

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

CM APPL. 21613/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

LPA 291/2024 and CM APPL. 21611/2024

1. The present appeal filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the High



Court of Delhi, impugns the judgment dated 24th November, 2022 ('impugned judgment') passed in W.P.(C) No. 8694 of 2020 whereby the learned Single Judge has dismissed the writ petition of the Appellant and declined to set aside the order dated 23rd July, 2020 revoking the suspension of Respondent No. 3.

2. The facts of the case to the extent relevant for the present appeal are that Appellant on 24th April, 2018 filed a criminal complaint against Respondent No. 3, which culminated in F.I.R. No. 47/2018 (1st F.I.R.) and led to the immediate arrest of Respondent No. 3.

3. The Appellant has alleged sexual harassment by Respondent No. 3 and therefore, reported the registration of the aforesaid F.I.R. to the employer i.e., Respondent No. 2, Department of Telecommunication ('DoT') on 27th April, 2018 and requested for his suspension.

4. Respondent No. 3 was released from judicial custody on 03rd May, 2018.

5. In light of the complaint filed by the Appellant, Respondent No. 3 was suspended from service on 24th April, 2018 in terms of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules ('CCSR'). The complaint of the Appellant was referred to Internal Complaints Committee for Sexual Harassment ('ICCSH') of Respondent No. 2 for preliminary enquiry.

6. It appears from record that another F.I.R. No. 130/2018 (2nd F.I.R.) was registered on the complaint of the Appellant against Respondent No. 3 and his family members. The Respondent No. 3 was granted anticipatory bail in the said complaint on 26th May, 2018.



7. Thereafter, the suspension of Respondent No. 3 was revoked *vide* order dated 23rd July, 2020 ('revocation order') by the competent authority in exercise of powers conferred under clause (c) of sub-rule (5) of Rule 10 of CCSR.

8. Aggrieved by the said revocation order, the Appellant herein filed writ petition seeking directions to direct the Respondent No. 2, Department of Telecommunication to withdraw the order of revocation of suspension of Respondent No. 3 and continue the suspension of the said Respondent till the pendency of the criminal trial is pending against him.

9. It is stated that Appellant herein apprehends that in view of the fact that criminal trial is still pending against Respondent No. 3 in Patiala House Courts in FIR no. 47/2018, therefore, his re-joining will lead to tampering with evidence and manipulation of witnesses and consequently, hampering criminal trial. Accordingly, on this count challenge to the order of revocation of suspension was made before the learned Single Judge.

10. The ICCSH after completing to record the deposition of all witnesses submitted its report to Respondent No. 2 on 27th October, 2020. The matter was referred back to ICCSH for clear recommendation and in response ICCSH *vide* letter dated 22nd January, 2021 has stated that the committee is in majority view that the incident dated 23rd March, 2018 is *prima facie* sexual harassment at work place and warrants formal enquiry.

11. In view of the aforesaid recommendation of ICCSH, Respondent No. 2 has served a chargesheet dated 18th March, 2021 on Respondent No. 3. It is the stand of Respondent No. 2 that the departmental major penalty proceedings have been started against Respondent No. 3.



12. The Petitioner filed the writ petition on 29th October, 2020 impugning the revocation of the suspension by Respondent No. 2 vide order dated 23rd July, 2020. The Respondent No. 2 filed a detailed affidavit and placed on record before the learned Single Judge the factum of the completion of enquiry and recommendation of ICCSH as well as the initiation of the Departmental Proceedings against Respondent No. 3 in pursuance to the chargesheet dated 18th March, 2021.

13. In view of the fact that the statements of the witnesses had been recorded and inquiry by ICCSH stood complete, the learned Single Judge vide impugned judgment dated 24th November, 2022 declined to interfere in the revocation of the suspension order dated 23rd July, 2020 ('revocation order').

14. The present appeal has been filed after a delay of 247 days impugning the said order of the learned Single Judge on the grounds mentioned in the application.

15. Learned counsel for the Appellant states that in view of the fact that a chargesheet for major disciplinary proceedings has been served on the Respondent No. 3 on 18th March, 2021, it was a sufficient ground for setting aside the revocation order dated 23rd July, 2020. He states that trial in the two separate F.I.Rs filed against Respondent No. 3 are also pending. He states therefore, the rejoining of services by Respondent No. 3 at the same office has created an apprehension in the mind of the Appellant with respect to tampering of witnesses. He relies upon the judgment of Supreme Court in *Union of India and another v. Ashok Kumar Aggarwal*¹ to contend that in

¹ (2013) 16 SCC 147; Paras 21 and 22



view of the nature of allegations in the present matter, the order of suspension ought not to have been revoked.

15.1. He states that the initial delay in inquiry between 25th June, 2019 to 20th June, 2020 before the ICCSH at the behest of the complainant was due to the reasons beyond her control; though the said delay is admitted.

16. In reply, learned counsel for Respondent Nos. 1 and 2 states that the Departmental Proceedings against Respondent No. 3 have been put on hold at the behest of the Appellant herein who has expressed lack of confidence in the said proceedings. She states that the Appellant has separately filed W.P.(C) 8693/2020 challenging the constitution of ICCSH. She states that though the Appellant has been seeking adjournments in the W.P.(C) 8693/2020, Respondent Nos. 1 and 2 have not proceeded with the Departmental Proceedings due to the pendency of the said writ.

16.1. She states that depositions of all witnesses serving in Respondent No. 2 was completed in the year 2019 by ICCSH. She states that Respondent Nos. 1 and 2 are willing to proceed with the Departmental Proceedings if the Appellant herein consents to the same.

16.2. She states that the Appellant is posted in NITI Aayog and Respondent No. 3 is posted with Respondent No. 2 and therefore, there is no likelihood of their interaction at work place. She states that even as per the conditions of the bail granted to Respondent No. 3 vide order dated 26th May, 2018, he has been directed not to influence witnesses or visit the area of work of the Appellant.

16.3. She states that the revocation order was passed on 23rd July, 2020, the impugned judgment was passed by learned Single Judge on 24th November, 2022 and the present appeal is filed now in the year, 2024; however, there is



no allegation that in these four years, the Respondent No. 3 has tried to influence the witnesses in any manner.

17. In view of the submissions of learned counsel for Respondent Nos. 1 and 2, it was put to the learned counsel for the Appellant, if the Appellant is willing to proceed with the Departmental Proceedings. Learned counsel for the Appellant, on instructions, states that the Appellant does not want the Departmental Proceedings to proceed and would like to await the outcome of W.P.(C) 8693/2020.

18. As per order dated 23rd December, 2020 shown to us during the hearing, the Appellant in W.P.(C) 8693/2020 has sought quashing of the enquiry report submitted on 28th October, 2020 by ICCSH and reconstitution of the Committee. The said writ petition was filed in the year, 2020. However, in the detailed affidavit dated 08th October, 2021 filed by Respondent Nos. 1 and 2 in the underlying writ, it is stated that ICCSH has on 22nd January, 2021 given its finding of prima facie sexual harassment at work place on preponderance of probabilities basis and opined that it warrants formal inquiry. In fact, basis the said recommendation Respondent No. 2 has served chargesheet dated 18th March, 2021 on Respondent No. 3 and initiated departmental major penalty proceedings.

19. The Appellant, during the course of the arguments before us and in the memorandum of appeal, relied upon the said chargesheet dated 18th March, 2021.

20. The Respondent Nos. 1 and 2 in the detailed affidavit have clarified at paragraph 9.1 that the two members of ICCSH named by the complainant for alleged bias [in W.P.(C) 8693/2020] have ceased to be members and the final report did not include these members in its composition. In our



opinion, in view of the last report dated 22nd January, 2021 of ICCSH and the consequent initiation of Departmental Proceedings, the grievance of the Appellant in W.P.(C) 8693/2020 stood addressed; and it would be in the interest of all the parties that Departmental Proceedings are carried on and completed expeditiously. However, since the Appellant has specifically opposed continuation of Departmental Proceedings, we are refraining from issuing the same. Though the effect of the Appellant's opposition is that the Departmental Proceedings are stayed indefinitely.

21. Thus, in the aforementioned facts considering that the (i) revocation order has been in operation for four years since 23rd July, 2020, (ii) the Appellant and Respondent No. 3 are working in separate departments, (iii) the depositions of the witnesses working at Respondent No. 2, DoT already stand recorded by ICCSH, (iv) the ICCSH has completed its inquiry and given its recommendation dated 22nd January, 2021, (v) there are directions of the criminal Court imposing stringent conditions on Respondent No. 3 against contacting the Appellant or influencing the witnesses and (vi) there is no circumstance showing that the said conditions have been breached by Respondent No. 3, therefore, we find no grounds for entertaining the present appeal; especially, since the Appellant is opposed to continuation of the Departmental Proceedings at this stage, until the decision in W.P.(C) 8693/2020.

22. We, accordingly, find no infirmity in the order of the learned Single Judge and the present appeal is dismissed both on merits and on account of delay. Pending applications stand disposed of.

23. However, in order to break the stalemate in the adjudicatory process, we direct that Appellant herein shall not seek any adjournment in W.P.(C)



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8693/2020 and proceed with arguments in the said writ petition on the next date of hearing i.e., 23rd July, 2024. Learned Single Judge is directed to not grant any adjournment to either party and dispose of the said matter as expeditiously as possible.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 10, 2024/hp/ms