

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Jay Sengupta

WPA 13588 of 2024

Sarbajaya Banerjee

Vs.

The State of West Bengal and others

For the petitioners : Mr. Tapash Kumar Dey
Ms. Saswati Ghosh Sinha
.....Advocates

For the State : Mr. Sirsanya Bandopadhyay
Mr. Debopriyo Karan
.....Advocates

For the respondent No.5 : Mr. Ayan Chakraborty
Mr. Dhilon Sengupta
.....Advocates

For the respondent No.7 : Mr. Neil Basu
Mr. Sankha Biswas
.....Advocates

**For the respondent
Nos.11, 13 & 16** : Mr. Rahul Kumar Singh
.....Advocate

Heard lastly on : 26.11.2024
Judgment on : 13.02.2025

Jay Sengupta, J:

1. This is an application challenging the resolution dated 11.07.2023 passed by the Internal Complaints Committee of the Hiralal Majumdar Memorial College for Women and praying for initiation of a departmental proceeding and registration of an FIR against the respondent no. 7.

2. Learned counsel for the petitioner submitted as follows. The petitioner was a State Aided College teacher in the Department of English of Hiralal Majumdar Memorial College for Women since 2010 and she had been discharging her duty sincerely and diligently with good reputation. Due to unsocial and unethical interference in her personal life by her colleague the respondent no.7 herein at her workplace and her home that amounted to the violation of dignity and privacy of the petitioner as a woman, the petitioner was constrained to make an allegation against the respondent no.7 on 05.09.2018 to the Principal of the said College being respondent no.5 herein and lodge a complaint at the Baranagar Police Station being GD entry No.320 of 2018. The said complaint was placed before the Teachers' Council by the principal of the said college and/or 07.09.2018 and the said Teachers' Council took resolution with observation that the entire matter was a misunderstanding and miscommunication from bonafide and the matter had been forwarded to the ICC. The said Teachers' Council further adopted resolution that the aforesaid matter should be amicably settled as

soon as possible to maintain the academic ambience of the Institute. Since September, 2018 the ICC (Internal Complain Committee) did not take any steps and/or issue notice upon the petitioner in any manner whatsoever. As per the resolution adopted by the Teachers' Council an apology letter was issued by the respondent no.7. All of a sudden, a notice for defamation dated 02.04.2024 was received by the petitioner. It was revealed that the ICC had taken resolution on 11.07.2023. The said resolution was the subject matter the instant writ petition. The petitioner did not understand in what manner the impugned resolution had been adopted by the ICC without serving any notice upon the petitioner and in her absence, without given any opportunity of being heard. Then and there she made an application to the Principal of the said college for supply the paper and document as well as the copy of the said impugned resolution. On the basis of the said letter the respondent no.5 supplied some of the document as well as the copy of the impugned resolution. Thereafter, she made representations before the respondent no.3 and 4, but the said authorities did nothing. Finding no other alternative, the petitioner filed the instant writ application challenging the said resolution dated 11.07.2023. The respondent nos. 5, 7, 11, 13 and 16 filed their respective affidavits in opposition trying to impress that the cause of action arose outside the college premises and the acts and activities of the petitioner and respondent no.7 was presumed to be amicably settled and the ICC took resolution with presumption that the matter had been amicably settled and no further allegation was raised on the respondent no.7. The respondent no.16 stated in his Affidavit-in-Opposition that in the

complaint there was no prima facie case established by the petitioner in her complain of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. He also expressed his view that everything happened outside the college premises on 05.08.2018. The respondent no.11 stated in her opposition that the Convener did not have any role whatsoever. She also stated that the issue was settled between the parties due to intervention of the other teachers of the College as admitted by the petitioner. The respondent no.7 stated in his Opposition that the complaints made by the petitioner did not have any merit whatsoever and thus, the same was not even pursued by the petitioner over half a decade. The respondent no.5 in her Opposition stated that the petitioner was not an Assistant Professor. She was actually a State Aided College Teacher in the Department of English at the said College and that by the conduct of the parties it was deemed the matter was amicably settled. But, neither of the respondents said why the said resolution was adopted without serving any notice upon the petitioner and in her absence whereas the respondent no.7 was present at the said meeting. The petitioner used Affidavit-in-Reply against those Affidavits-in-Opposition and denied and disputed each and every allegations and contention of the said allegations made in the Affidavit-in-Opposition. Without giving opportunity of being heard to the original complainant, the ICC had taken resolution behind her back. This was violation of Natural Justice and totally bad in law and liable to be set aside. Here was a strong prima facie case according to the definition of Section 2(n) of the aforesaid Act and therefore, the said complaint would

prove that the respondent no.7 had committed offence under the said Act. Therefore, the ICC without investigation and proper consideration of the matter and on the basis of presumption had taken resolution that the dispute between the parties deemed to be settled. This was error apparent on the face of the record and was liable to be set aside. The petitioner specifically indicated in here complaint dated 05.09.2018 that she had been continuously emotionally harassed by one of her colleagues at the work place for the last two weeks. Therefore, the cause of action started from the said college and subsequent events were done outside the college premises. It was a continuous process. Accordingly, the respondent no.7 committed offence under the aforesaid Act and the cause of action commenced from the Hiralal Majumder Memorial College for Women. The complaint was lodged complaint on 05.09.2018. On 07.09.2018 the Teachers' Council adopted a Resolution regarding Amicable Settlement, on 10.09.2018 an 'Apology Letter' had been issued by the respondent no.7 and on the same day the proposed Apology had not been accepted by the petitioner. On 10.09.2018 another letter had been written by the petitioner to the respondent no.5, on 13.09.2018 a mass petition had been submitted to the respondent no.5, on 18.09.2018 another letter was written by the petitioner to the Principal of the said college. On 01.10.2018 the petitioner again wrote a letter to the respondent no.5. Thereafter, no answer was given by the college authority. Even no steps had been taken by the police authority on the basis of the complaint made by the petitioner on 05.09.2018. Therefore, from March, 2020 to November, 2021 in the pandemic period, neither the ICC nor the

respondent no.5 and/or the college authority took any steps on the basis of the complaint made by the petitioner. All on a sudden in the month of July, 2023 a resolution had been adopted without serving any notice upon the petitioner where from multiplicity of proceeding was born. Therefore, the issue regarding dropping of the said criminal proceeding due to lapse of time was not sustainable in the eye of law. The impugned resolution adopted on the basis of the presumption, totally behind the back of the petitioner was absolutely illegal. As such, the said resolution dated 11.07.2023 was liable to be set aside. Unfortunately, the said wrong and illegal resolution created multiplicity of proceeding including 'Defamatory Suit' filed by the respondent no.7 being Money Suit No. 516 of 2024 pending before the Learned Civil Judge Senior Division 3rd Court, Barasat.

3. Learned counsel for the respondent no. 7 submitted as follows. The petitioner filed a false complaint against the respondent No.7 on 05.09.2018 before the respondent no.5 herein alleging inappropriate conduct by the respondent no.7. On 05.09.2018, respondent No. 7 visited the residence of petitioner, on her invitation and upon reaching there he found that petitioner was responding erratically and violently. So he left the residence of petitioner. The respondent No. 7 tried to communicate with the petitioner over the phone in order to clarify things, but to no avail. However, the petitioner blew this incident out of proportion and branded the conduct of the respondent No. 7 as inappropriate. The respondent No. 7 upon learning about the nature of the complaint of the petitioner tried to clarify the misunderstanding with the petitioner during the meeting of the Teachers'

Council. In conformity with the resolution taken by the Teachers' Council, the respondent No. 7 also issued a written letter to the petitioner through the respondent No. 5 wherein he sought the petitioner's apology out of his respect towards the petitioner as she was a senior colleague of the respondent No. 7. However, the petitioner was not satisfied. The incidents alleged in the said complaint dated 05.09.2018 were retold with aggravated charges and different versions by the petitioner in the subsequent complaints on multiple occasions with the sole intention of tarnishing the reputation of the petitioner at his workplace. The Internal Complaints Committee of the respondent College awoke from its half-a-decade-long deep slumber on 11.07.2023 and was pleased to close the matter. The Internal Complaints Committee resolved not to take any further action on the complaint of the petitioner. The Resolution of the Internal Committee dated 11.07.2023 was served upon the respondent No. 7 and the petitioner on 11.09.2023. The respondent No. 7 did not have all the papers pertaining to the complaint of the petitioner and hence, he made several requests before the respondent No. 5 to hand him all the relevant documents. Upon receiving the subsequent complaints made by the petitioner against him on the basis of the same incident, on 17.10.2023, the respondent No. 7 was able to learn about the evolving nature of the complaints of the petitioner in their true sense and the respondent No. 7 issued a notice of defamation upon the petitioner on 02.04.2024. The petitioner filed this Writ Petition merely as a counterblast to the respondent No. 7's notice dated 02.04.2024 and the instant Writ Petition did not have any semblance of public law

element involved in it. The petitioner's complaint dated 05.09.2018 did not contain any allegation of sexual harassment against the respondent no.7. Admittedly, the alleged incident happened outside the flat of the petitioner and not at the workplace of the parties and hence the complaint of the petitioner could not be maintained under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Despite the fact that all the allegations made against respondent No. 7 were false and baseless, the respondent No. 7 suffered huge indignation amongst his colleagues and acquaintances due to the nature of the allegations levelled against him by the petitioner. The petitioner concocted the entire narrative around a minor misunderstanding in order to cause severe prejudice and indignation to the respondent No. 7. The respondent No. 7 was able to learn about the evolving nature of the complaints of the petitioner in their true sense only upon receiving all the documents on 17.10.2023 and hence, filed a suit for defamation against the respondent No. 7. The said complaint did not have any merit whatsoever and thus, the same was not even pursued by the petitioner for over half a decade. The petitioner, in effect, had abandoned her meritless and inflammatory allegations. The officials of the respondent College closed the complaint of the petitioner after taking into consideration all the relevant factors and hence, reopening and re-discussing the contents of the said complaint would cause severe prejudice to respondent no.7. No new incident happened in the recent past which would warrant re-discussion on the complaint filed by the petitioner in 2018.

4. Learned counsel for the respondent nos. 11, 13 and 16 submitted as follows. In the meeting of the Teachers' Council dated 7th September 2018, the complaint of the petitioner was discussed. The Complaint *prima facie* did not disclose any allegations of Sexual Harassment. However, for the sake of maintaining a cordial relationship amongst the Teachers of the college, it was resolved that the petitioner and the respondent No. 7 should amicably reconcile their differences. The complaint of the petitioner was also referred to the Internal Complaint Committee of the College which tried to resolve the issue between the parties. The alleged incident, which was complained of by the petitioner, did not even occur at the workplace. By the efforts of the ICC and other senior teachers, the issue between the parties seemed to be resolved. The petitioner did not take any further complaints against the respondent No. 7 after September- October 2018 till 2023. Upon receipt of the representation dated 26.05.2023 from the respondent No. 7, a meeting of the Core Committee of ICC of the said college was called upon by the respondent No. 5 on 11.07.2023. In the meeting of the Core Committee ICC, it was *inter alia*, resolved that since the petitioner's complaint against the respondent No. 7 had long been pending before the ICC and neither the petitioner nor the respondent No. 7 had any further issues against each other since 2018, the dispute between them could be considered as concluded. Thus, the Core Committee of the ICC resolved to close the Complaint of the petitioner against respondent No. 7 and further resolved not to investigate the said complaint of the petitioner any further. It was pertinent to mention here that the respondent No. 5 was the Presiding

Officer of the ICC of the said College. All the decisions of the ICC were taken by the respondent No. 5 and the other respondents had little or no say in the affairs of the ICC whatsoever. However, after receiving a notice of defamation from the respondent No. 7 in 2024, the petitioner tried to re-agitate the issue of sexual harassment before this court after more than five years. The said act of the petitioner to bring a civil dispute before this court under the garb of violation of her statutory right was malafide and deprecable. None of the respondents was holding any portfolio in the Internal Complaint Committee as on the date of filing of the written notes and hence, the respondents should not be roped into the private disputes between the petitioner and respondent No. 7. The petitioner selectively arrayed only certain signatories of the resolution dated 11.07.2023 as party respondents in the instant Writ Petition and chose to exclude several signatories for the reasons best known to her. The petitioner was not affected by any of the actions of the respondent nos. 11, 13 and 16 and thus, these respondents were neither necessary nor proper party for adjudication of the instant Writ Petition.

5. I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

6. The relevant facts of the case can be briefly summarised as follows. In 2018 the petitioner made a complaint against the respondent no. 7 under provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The College referred the matter to the Internal Complaints Committee as per the Act. Sometime later, the

respondent no. 7 issued an apology letter. This was not accepted by the petitioner. Suddenly, in 2023, the college authorities adopted a resolution that in view of the amicable settlement between the parties, the case was closed. Soon thereafter, the respondent no. 7 issued a letter of defamation against the petitioner. Thereafter, the petitioner wrote a letter to the College Authorities demanding cancellation of the earlier resolution about closure of the case and praying for necessary action. She also prayed for registration of an FIR by the police.

7. Once a complaint was made under the Sexual Harassment of Women at Workplace (Prevention and Redressal) Act, 2013, the College was duty bound to take steps. It is surprising that although the matter was referred to the Internal Complaints Committee (ICC), hardly any subsequent steps were taken by them to decide the issue on merits. Such laxity on the part of the College Authorities and the ICC would render the whole purpose of the Act nugatory.

8. The petitioner alleged that the unfortunate incident had taken place during their employment with the College, both in the campus and outside, even at her residence. On the other hand, the respondent no. 7's contention is that the alleged misunderstanding actually took place at the petitioner's residence. Thus, it is absolutely a question of fact about whether the incident took place in or about the College premises. It is also for the Authorities to decide whether such alleged indiscretions would be covered by the said Special Act. However, not deciding the issues on merits does not serve any purpose.

9. It would be too naive for the respondent no. 7, who is accused of such grievous wrong doings and who has even decided to issue a letter of defamation to the petitioner in this regard, to now simply say that he had issued the apology letter to the petitioner out of respect as the latter was his senior. This apology clearly indicates that there was something that needed to be looked into. Pertinently, the petitioner appended her disapproval on the apology letter.

10. It is a different thing and a matter to be decided by the appropriate Court whether an action for defamation would lie in view of the law of limitation.

11. Moreover, it is found that a compromise or settlement was indeed attempted behind the petitioner's back and the said respondent apparently accepted the settlement. These were preceded by the apology letter of the said respondent. Thus, a subsequent action of trying to initiate a proceeding for defamation would be fraught with deceit, especially after the ICC had closed the proceeding upon such alleged settlement. One cannot have the cake and eat it too.

12. From a bare reading of the resolution arrived at by the College Authorities, it does not, even prima facie, appear that a notice was served on the petitioner in this regard or that she was examined on the question of settlement, especially when she had earlier appended her disapproval on the apology letter. The resolution to drop the proceeding is, thus, bad also for violation of principles of natural justice.

13. In view of the above discussions, the resolution dated 11.07.2023 passed by the ICC of the respondent College is quashed and set aside. The College and the Committee are directed to proceed with the matter in terms of the Special Act in accordance with law and as expeditiously as possible and conclude the proceeding upon hearing all the interested parties at the earliest, preferably within twelve weeks from the date of communication of this order.

14. On the question of registration of an FIR, the petitioner shall be at liberty to act in accordance with law and in terms of the ratio laid down in Aleque Padmasee, reported at (2007) 6 SCC 171.

15. With these observations, the writ petition is disposed of.

16. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)