

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/767/2019

Reserved on: 30.08.2019

Pronounced on: 03.09.2019

Between:

Thirukkovela Vijaya Kumar,
S/o. T. Venkata Narayana,
Aged 51 years, Occ: Associate Professor & Head I/c., CESD,
National Institute of Rural Development and
Panchayat Raj, at Rajendranagar,
R/o. Quarter No. D-18, NIRD Campus,
Rajendra Nagar, Hyderabad.

... Applicant

And

1. The Union of India,
Through its Ministry of Rural Development,
Krishi Bhavan, Dr. Rajendra Prasad Road,
New Delhi – 110 001, Represented by its
Secretary, (Rural Development).
2. National Institute of Rural Development and
Panchayat Raj, rep. by its Registrar &
Director (Administration), Rajendra Nagar,
Hyderabad – 500 030.
3. The Director General,
National Institute of Rural Development and
Panchayat Raj, Rajendra Nagar,
Hyderabad – 500 030.

... Respondents

Counsel for the Applicant ... Mr. K. Shiva Reddy

Counsel for the Respondents ... Mr. J. Sudheer, SC for NIRD

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER (on Interim Relief)
{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed challenging the order of transfer of the applicant from Hyderabad to Guwahati in the wake of a complaint lodged against him for alleged sexual harassment by a lady Colleague. Applicant has sought interim relief of suspending the Impugned order dt. 23.8.2019 transferring him to Guwahati, along with other penal measures.

3. Heard both the counsel and perused the pleadings on record.

4. Succinctly, a complaint against the applicant and one another by name V. Suresh Babu, both working as Associate Professors in the respondents' organization, has been lodged by a lady Colleague functioning as Assistant Professor in the same Organization, alleging sexual harassment. Respondents constituted an Internal Complaints Committee under "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013". The Committee after inquiry has held that the allegations are proved and recommended certain penal measures. One among them is curtailing the presence of the applicant in the present work place. A show cause notice was accordingly issued on 5.8.2015 which was replied, denying the charges levied, on 31.8.2015. Thereafter, when respondents transferred the applicant to Guwahati vide orders dt. 20.10.2015 and 26.10.2015, he filed OA 260/2016 before this Tribunal wherein, an interim order of status quo was passed on 17.03.2016. Later, OA 260/2016 was dismissed for default on 10.7.2019. Applicant filed MA 630/2019 for restoring OA 260/2016 which is pending. Consequent to the dismissal of the OA 260/2016,

respondents called the applicant for a personal hearing on 22.8.2019 in regard to the issue and after considering the submissions, issued the Impugned order dated 23.8.2019 declaring that the applicant is deemed to have been relieved of his duties with immediate effect and to report at Guwahati before 3.9.2019.

4. The contentions of the Learned counsel of the applicant are that the Impugned order lacks reasoning, services of the Complainant were terminated for frequent complaints against colleagues under Sexual Harassment Act/ Prevention of SC & ST Atrocities Act and in particular, with reference to the case of Dr. Satyaranjan Mahkul, Transfer has been ordered as a penal measure, Hon'ble High Court of A.P in WP 35307/2015 temporarily suspended the transfer order and remitted the matter to the Tribunal wherein interim stay of transfer was ordered in OA 260/2016, improper to issue impugned order dated 23.8.2019 when MA 630/2019 filed to restore OA 260/2016 is pending, Internal Complaints Committee (for short "ICC") did not conduct inquiry at two levels as prescribed, applicant's wife is working at Shamsabad and son in College plus aged parents to be taken care of, call for an interim relief to be granted.

5. Resisting the above contentions Ld. counsel for respondents has submitted that: Internal Complaints Committee has found the applicant was not only sexually harassing the complainant, but several other women employees of the respondents organisation, is continuing in Hyderabad on the basis of interim order in OA 260/2016 for nearly 4

years since the complaint was lodged, Tribunal on the same set of findings of the ICC against another co-employee V.Suresh Babu in OA 242/2016 has disposed of the OA directing the respondents to pass fresh orders, terminating services of the complainant will not disprove the findings of the ICC against the applicant, Hon'ble High Court remitted the matter to be considered by the Tribunal and did not clear the applicant of allegation of sexual harassment, continuing the applicant in the present work place is not in public interest and hence no interim order need to be granted.

6. I) Based on the above submissions and material papers on record, it is evident that the ICC has held that not only the complainant has been the victim in the hands of the applicant and his Colleague Mr V.Suresh Babu but several other women fell prey to the amorous and lascivious behavior of the applicant, his lewd remarks, disparaging and condescending remarks laced with sexual innuendos. Committee recommended transfer, censure, extension of probationary period, entry in CR and wide publicity amongst employees about ICC findings so that it acts as a deterrent and creates a safe and secure environment for women to work. Thus the complaint against the applicant and his colleague has been found to be true by the ICC. Admittedly, applicant has come up for adverse notice during the probationary period itself. Usually, this period is of critical importance since it decides the future career of the applicant in the respondent's organization. During probationary period employees coming up for adverse notice is generally

a rarity. That apart, applicant has violated Rule 3-C of CCS (Conduct) Rules, 1964 which prohibits sexual harassment of any women at her workplace. In the present case applicant has harassed not only the complainant but many other women as per ICC report. The ICC met on 6 occasions by contacting many witnesses through different means in 2 months and came to the conclusion stated. Indeed, before issuing the Impugned order dated 23.8.2019, applicant was given personal hearing, which goes to prove that the respondents were fair in dealing with the issue on hand.

II) Further, the contention of the Ld. Counsel for the applicant that services of the complainant were terminated by the respondents will in no way clear the applicant of the charge of indulging in sexual harassment which was held to be proved by the ICC. On the contrary, it depicts the fairness of the respondents in dealing with the issue. Moreover, Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, while dealing with the matter, initially granted stay of further action in pursuance of the proceedings dt. 20.10.2015 and 26.10.2015, vide order dt. 29.10.2015 in WP 35307/2015, but when WVMP/4402 of 2015 was filed, the matter was remitted on 26.2.2016 to this Tribunal on grounds of jurisdiction while granting a temporary stay of 4 weeks or till the matter was considered by the Tribunal. Therefore, Hon'ble High Court has remitted the matter for further adjudication and did not absolve the applicant of the allegations of sexual harassment, as was painstakingly attempted to be projected by the Ld. Counsel for the applicant.

III) Accordingly, when OA 260/2016 was filed, an interim order of status quo was granted on 17.03.2016. Applicant continued on interim stay from 2016 onwards till the OA was dismissed for default on 10.07.2019 i.e. for nearly 4 years since the complaint was lodged in 2015. A reasonably long period in the context of the DOPT Office Memorandum in F. No. 11013/2/2014-Estt(A-III), dated 16.7.2015 prescribing initial relief of transferring the victim or the charged employee to any other work place or even grant special leave for 3 months to the victim which is not to be debited to regular leave account. Respondents have exercised restraint in not invoking this clause against the applicant at the initial stage. One another example of being fair.

IV) In fact, Learned Counsel for the respondents has aptly submitted suiting the circumstances, the findings of the Tribunal in OA 242/2016, dealing with the complaint of the very same complainant by the same ICC against the colleague of the applicant, Mr. V. Suresh Babu, wherein it was held at para 6 that when sexual harassment against women employee at work place is the charge, transfer of the employee facing the allegations cannot be treated as illegal or arbitrary. The same observation holds good for the applicant as well, since the complaint of sexual harassment was against both the applicant and Mr. V. Suresh Babu, which was gone into by one and the same ICC. Learned counsel for the respondents did draw attention to the fact that this Tribunal took cognizance of the adjudication of a similar issue in OA 242/2016, while dismissing OA 260/2016 for default. Therefore, the Learned Counsel for the applicant contending that but for the OA 260/2016 being dismissed for default, the interim order would

have continued does not hold water in view of the observation in OA 242/2016 by a bench of this Tribunal. Hence pendency of MA to restore 260/2016 is no ground to seek interim relief, with the changed circumstances that arose with the disposal of OA 242/2016.

V) It is also not out place to adduce that the applicant referred to the case of Dr Satyaranjan Mahakul, wherein complaint lodged by the very same complainant for sexual harassment, was set aside by this Tribunal in OA 862/2018, which implies that complaints made by the complainant about sexual harassment lack credence. However, it is not so, since the Tribunal observed in OA 862/2018 that the ICC found the complaint made against Dr. Satyaranjan Mahakul was false whereas in respect of the applicant it held that the complaint had meat in it.

VI) Not relenting, Learned counsel for the applicant has contended that the transfer has been effected as a penal measure, which is thus irregular. Unlike an Inquiry Officer nominated in disciplinary cases, who is prohibited to recommend penalties, the ICC has been empowered as per clause 26 of DOPT Office Memorandum dated 16.7.2015 to recommend transfer. Hence, it cannot be construed as a penal measure since it is provided for under the Act and associated Rules thereof. The Tribunal has also held in OA 242/2016 if the charge is about sexual harassment, then transfer consequent to such a charge is not to be construed as penal. Tribunal intervenes in transfer cases, only if they are issued with a malafide intention, against Rules and by an incompetent authority. There has been no infringement of any of the elements of the trio referred to.

VII) Doggedly, learned counsel for the applicant tried to resurrect his defence by stating that imposition of multiple penalties for a single offence is unfair. Ld. counsel for the respondents rebutted that it was not raised in the OA and hence untenable. More than the non submission of such a ground, Tribunal makes it axiomatic that Section 9 of the Sexual Harassment Act, 2013, permits the ICC to recommend any action to be taken, including written apology, warning, censure, withholding of promotion & increments, terminating services etc. Therefore, this defence too does not hold the fort.

VIII) Pursuing the cause of the applicant to the hilt, learned counsel for the applicant argued that the ICC inquiry has to be at two levels, namely preliminary and a final inquiry. However, this scenario has changed with the observation of the Hon'ble Supreme Court in *Medha Kotwal Lele & Ors v U.O.I. & Ors*, in Writ Petition (Crl.) Nos.173-177 of 1999, wherein it was held that the ICC report shall be considered as inquiry report under CCS rule. Concomitantly, DOPT vide OM No.11013/3/2009-Estt. (A) dated 21.07.2009 has clarified that ICC report shall not be treated as a preliminary report but as an inquiry report under CCS (CCA) Rules. Therefore, objection raised has no sting in it.

IX) Thereon, Ld. counsel for the applicant took the plea that respondents refused to furnish statements and recordings of witnesses to mount his defence. Respondents action is in consonance with para 27 of DOPT OM dated 16.7.2015 which clarifies that Section 16 of the Sexual

Harassment Act, 2013 makes it explicit that certain disclosures to be kept confidential to safeguard the witnesses.

X) Lastly, after exhausting the plausible grounds to seek interim relief, Ld. applicant counsel has banked upon the customary and conventional grounds of spouse working, College going child and aged ailing parents to seek interim relief sought. True to speak, transfer ordered by the respondents was the own making of the applicant. But for his involvement in the sexual harassment case, the cause for transfer would not have arisen. During probationary period itself, applicant has harassed the applicant and several other women as per the ICC report. Respondents Organization is a Nationally reputed organization and its image, respect and honour should not be compromised by exhibiting a conduct which is not conducive to the security and safety of the fairer sex. Women have to be respected. It is sad to note that when some women after a great struggle on different fronts find employment to take care of their families, they become victims of sexual harassment. Applicant did what he should not, as per ICC. Therefore, the unpleasant outcome from the applicant's perspective. Other averments made by the applicant can be gone into when the OA is finally heard.

XI) Hence in view of the aforementioned elaborate discussions, this tribunal is disinclined to grant the interim relief sought for. Elaboration was necessary to ensure that the applicant is not put to any irreparable loss by any unintended glossing over of the relevant grounds.

XII) The issue pertains to transfer and hence case be listed before a Division Bench. Respondents to file their reply in 4 weeks. List the case after four weeks on 03.10.2019. Before parting, it is necessary to scribe that the Tribunal would have appreciated, had the respondents and the Ld. Respondents' counsel, as assured, submitted the DOPT OMs referred to by the Bench while hearing the case. Alacrity in submissions of documents adds finesse to a judicial finding. Albeit promised they were not furnished. Tribunal trusts and hopes that it would not recur in future to uphold the canons of Justice.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 3rd day of September, 2019

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