IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: July 11, 2017
Judgment delivered on: July 31, 2017

\+ W.P.(C) 3705/2002

PROF. S.P. NARANG

..... Petitioner

Through: Mr. R.K. Saini, Ms. Minal Sehgal and Mr. Varun Nagrath, Advs.

Versus

UNIVESITY OF DELHI

..... Respondent

Through: Mr. Amit Bansal and Ms. Seema Dolo, Advs.

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner challenging the order dated 4th March, 2002 passed by the Executive Council of the respondent University whereby he has been disengaged from the services of the University.

2. Some of the facts are, the petitioner was appointed as Lecturer in Sanskrit in the Department of Post-graduate (Evening Studies, University of Delhi) on October 10, 1970, and thereafter as the Head of the Department in July, 1996. It is the case of the petitioner and also contended by Mr. R.K. Saini, learned counsel for the petitioner that as a Head of the Department, the petitioner was required to supervise the research work and performance of Research Scientists under the Research Fellow Scheme of the University Grants Commission. Two Research Scientists came under his supervision.

Mr. Saini states that the said Scientists were not amenable to discipline. They started making complaints to the higher authorities and other forums. They never maintained leave and other records properly during the petitioner's sabbatical leave for visit to USA. The petitioner's signatures were forged by these Scientists in connivance with the Head of the Department and Clerks. The said Scientists instead of mending their ways were bent upon creating trouble to the petitioner and wanted to get rid of him and in this regard they invented a method of taking revenge against the petitioner under the garb of sexual harassment. In November, 1997, they managed a pseudonyms complaint purported to have been written by one Dr. D.K. Pal wherein the allegations of sexual harassment were leveled against the petitioner. The petitioner submitted his observation on the said complaint. It is his submission that they also made a complaint to the Vice Chancellor, Pro-Vice-Chancellor and National Commission for Women in regard to their alleged harassment by the petitioner which was subsequently given the colour of sexual harassment. Mr. Saini states that an Enquiry Committee was constituted by the Vice-Chancellor to investigate the allegations of sexual harassment. However, the petitioner was not informed about the constitution of the same. That apart, he states that no chargesheet was issued to the petitioner nor his explanation was called for. Further, neither the list of witnesses nor list of documents were provided to the petitioner despite repeated requests by him. He states that the Committee constituted by the Vice-Chancellor was performing the dual role of a Judge and a Prosecutor. In substance, it is the submission of Mr. Saini by drawing my attention to Ordinance 11 (6) that the procedure which has been laid down for conducting enquiry has been violated. The

petitioner had asked the Enquiry Committee time again about the charges against him; the procedure to be followed by the Committee during enquiry; cross-examination of the witnesses by him; documents required by him for his defence; statement of the witnesses. Mr. Saini's submission is that the petitioner was informed by the Committee that there is no scope of cross-examination either of the complainants or of the witnesses. He was not allowed to be present when the prosecution witnesses gave their statements and deposed before the said Committee. That apart it is his submission that the Executive Council has also without giving him a copy of the report of the Enquiry Committee had considered the same and passed the impugned order. That apart the impugned order is an unreasoned order. In other words, the submission of Mr. Saini is that the impugned order has been passed in flagrant violation of the principles of natural justice which resulted in the petitioner getting disengaged prematurely, which has put a stigma on the character of the petitioner. In this regard, he also states that the Supreme Court in its landmark judgment of ***Vishaka & Ors. v. State of Rajasthan & Ors., 1997 (6) SCC 241*** has nowhere held that enquiry should not be conducted or that no procedure should be followed by the Committee; i.e., the Committee should not follow the principles of natural justice. He has drawn my attention to the Enquiry Committee report to contend that the conclusion therein is perverse and the Committee on its own concluded that the complaints made by the two Researchers did not explicitly name the harassment as sexual harassment, as they wanted to use decent words in their complaints. In other words, it is his submission that the said Researchers had improved their case while giving statements before the Committee which otherwise they had not

pleaded in their complaints. He reiterates that these statements were never given to the petitioner nor these statements were recorded during his presence apart from denying the right of cross-examination. He relies upon the definition of *"harassment"* to contend that every harassment need not be a sexual harassment. He, in this regard relied upon the definition in the Black's Law Dictionary to contend that sexual harassment is a type of employment discrimination including sexual advances, request for sexual favours and other verbal or physical conduct of a sexual nature, which have not been alleged against the petitioner by the said Researchers in their complaints. He would rely upon the judgment of this court in the case of ***Balvir Singh v. Union of India and Ors. W.P.(C) 8321/2015*** decided on 31st August, 2015 to contend that this Court has held that even in case of sexual harassment, the enquiry has to be conducted in good faith after giving fair opportunity to both the sides.

3. On other hand, Mr. Amit Bansal, learned counsel appearing for the respondent would justify the impugned action. He states that all procedures have been followed as per rules and principles of natural justice. According to him, the petitioner was duly informed about the appointment of the Enquiry Committee to investigate the complaints of sexual harassment against him which was in accordance with the judgment of the Supreme Court in ***Visakha's case (supra).*** The petitioner did not question the constitution of the committee. The Committee had provided to the petitioner the copies of the complaints made by the two Researchers, (Annexure P-3). He also states that the allegations made in those complaints are the charges against the petitioner enquired by the Enquiry Committee. According to him, during the course of the enquiry, the

statements of both the complainants and the petitioner were recorded and tape recorded statements of the complainants reduced to writing were made available to the petitioner. He appeared before the Enquiry Committee on 23rd May, 2001 and 25th May, 2001 and made statements in defence which was also tape recorded. The tape recorded statement was transcribed and sent to him for correction and his signatures. The Enquiry Committee submitted its report to the Vice- Chancellor on December 3, 2001 wherein it had found the petitioner guilty of administrative and sexual harassment of the two Research Scientists. Since the Enquiry Committee clearly established the sexual nature of harassment, the Executive Council came to an unanimous conclusion that the services of the petitioner be disengaged on the ground of misconduct. He also states since the services of the petitioner were terminated on the ground of misconduct, there was no requirement for giving any notice or three month's pay in lieu thereof. He states a sympathetic view has been taken and the petitioner has been given his retirement benefits. He would rely upon the following judgments, which are reported as:

1. **(1999) 1 SCC 759, Apparel Export Promotion Council v. A.K. Chopra.**

2. **(1996) 3 SCC 364 State Bank of Patiala and Ors. V. S.K. Sharma**

3. **AIR 1973 SC 1260 Hira Nath Mishra and Ors. V. the Principal, Rajendra Medical College, Ranchi and Anr.**

He also placed before me the judgment of this Court reported as ***2009 VI AD (Delhi) 1 Bidyut Chakraborty (Prof.) V. Delhi University and Ors.*** to state this Court has laid down the parameters and has interpreted the provisions of Ordinance 15 of the

Delhi University Ordinance.

4. I may state here, Mr. Bansal, during his submissions did concede to the fact that the cross-examination of the complainants by the petitioner was not allowed nor the copy of the Enquiry Committee report was given to him. He also states that if this court finally is of the view that principles of natural justice have been violated, then the respondent be given an opportunity, by remanding the matter back to the Enquiry Committee for fresh enquiry from the stage the infirmity has occurred. He also concedes to the fact that the University has framed the rules in conformity with the directions of the Supreme Court in ***Visakha's case (supra)*** for conducting enquiry on the allegations of sexual harassment only on 30th September, 2003. He also concedes to the fact that when the enquiry was conducted by the Enquiry Committee, it is the Ordinance 11(6) which was in place.

5. Having heard the learned counsel for the parties, it is a conceded position that during the time when the enquiry was conducted by the Enquiry Committee, there were no rules framed by the University for enquiring into the allegations of sexual harassment. Ordinance 11 (6) and 11 (7) on which heavy reliance has been placed by Mr. Saini stipulates as under:

> *"6. (1) Notwithstanding anything hereinbefore contained, the Executive Council of the University shall be entitled summarily to determine the engagement of the teacher on the ground of misconduct in accordance with the provisions hereinafter set forth.*
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> *(2) The Vice-Chancellor may, when he deems it necessary, suspended the teacher on the ground of misconduct. When he suspends the teacher, he shall report it to the next meeting of the*

Executive Council.

(3) The Executive Council shall investigate all matters reported to it by the Vice-Chancellor about the misconduct of the teacher whether he has been suspended or not. The Executive Council may appoint a Committee for the purpose. The teacher shall be notified in writing of the charges against him and shall be given not less than three weeks' time to submit his explanation in writing.

The Executive Council or the Committee may hear the teacher and take such evidence as it may consider necessary. The Executive Council may determine the engagement of the teacher where it deems that the misconduct of the teacher deserves to be dealt within that manner, after it has considered the explanation and the evidence, if any, and / or the report of the Committee, if one has been appointed.

(4) Where the termination of the service on the ground of misconduct is after suspension by the Vice-Chancellor as aforesaid, the termination of service may be from the date of suspension, if the Executive Council so directs.

7. The engagement under these provisions, shall not, save as aforesaid be determined by the Executive Council except by a resolution passed by a vote of not less than a two-thirds majority of the members present at the meeting, provided that the two thirds majority is not less than half the total number of members of the Executive Council. The resolution shall state the reasons for the termination. Before a resolution, under this clause is passed the Executive Council shall give notice to the teacher of the proposal to determine the engagement and not less than three weeks' time to make such representation as the teacher may like to make. Every resolution terminating the service under this clause shall be passed only after consideration of the representation, if any, of the teacher. The teacher whose services are terminated under this clause shall be given not less than three months' notice from the date on which he is notified of the resolution of the termination of service or not less than three months' salary in lieu of notice.

Perusal of the provisions of Ordinance 11(6), which were in force on the date of

Enquiry, does stipulate, a teacher shall be notified in writing of the charges against him. No doubt, copies of the complaints made by the two Researchers, were given to the petitioner but that would not take the place definite charges to be notified to a Teacher, in view of the Rule position noted above. That apart, the submission of Mr. Saini that the petitioner was not given the right of cross-examination is also appealing. That apart non-supply of the copy of the report of the Enquiry Committee to enable the petitioner make representation is also an infirmity which surely reflects the denial of reasonable opportunity to the petitioner, which vitiate the conclusion of the Enquiry Committee and the impugned order herein. In this regard, I may only point out the judgment of this Court in the case of ***Balvir Singh (supra)*** wherein this Court in Para 19 has held as under:

> *"19. In the cases of sexual harassment, in our view, while conducting enquiry, no strait jacket formula can be applied and what has to be kept in mind is that the enquiry is conducted in good faith and after giving fair opportunity to both the sides as in the facts of Hira Nath Mishra and Others (supra), a case which relate to a girl of a hostel, the parameters to be applied for and the safeguards would be completely different to a case, as the present case, where the victim also belongs to a disciplined force that is the Delhi Armed Police, Fourth Battalion."*

6. I may state here the reliance placed by Mr. Bansal on the judgment of the Supreme Court in ***Hira Nath Mishra and Ors. (supra)*** has also been considered and dealt with by the Division Bench of this Court in ***Balvir Singh (supra)*** by holding in that case the requirement of principles of natural justice were fulfilled. The infirmities as pointed out by Mr. Saini does not require a deeper analysis in view of the judgment of this Court in the case of ***Bidyut Chakraborty (Supra),*** which according to me is

conclusive. In the said case this court was concerned with the provisions of Ordinance XV(D) which had been notified by the University by that time. This Court in Para 8 to 17 has held as under:

> *"8. Admittedly, annexures/appendices to the inquiry report were not supplied to the petitioner, by the committee. Supplying copy of the inquiry report, without supplying copies of all its annexures/appendices does not serve the desired purposes and does not fulfil the legal obligation of the Disciplinary Authority in this regard. The annexures/appendices constitute an integral part of the Enquiry Report and cannot be separated from it. Supply of enquiry report without supplying all its annexures / appendices would therefore amount to not supplying the copy of the Enquiry Report itself.*
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> *9. Mere supply of the report is meaningless unless the delinquent is given an opportunity to make representation against it and if made, such a representation is considered by the Disciplinary Authority before recording its findings. Had the Disciplinary Authority given such an opportunity to the petitioner, he had a right to represent that he was not guilty of the charges and that the findings recorded against him were wrong. The object is to enable the employee to satisfy the Disciplinary Authority that he is innocent of the charges framed against him. (Emphasis supplied)*
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> *10. It is true that Ordinance XV-D does not contain any provision identical to sub rule (2) and (2-A) of Rule 15 of CCS/CCA Rules, but, in keeping with the requirements of principles of natural justice, this court has to necessarily read such an obligation on the part of the Disciplinary Authority. If such an obligation is not read into the Ordinance, it may be liable to be struck down, being violative of the principles of natural justice.*
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> *11. As held by Hon'ble Supreme Court in* ***A.K.Kraipak & Others Vs. UOI & Ors; AIR 1970 SC 150****; through rules of natural justice are not embodied rules, their aim is to secure justice and prevent miscarriage of justice and therefore, there was no reason why they should not be made applicable to administrative proceedings. It was also noted that an unjust decision in an administrative inquiry may have a far more reaching effect than*

a decision in a quasi judicial inquiry.

12. The findings recorded by the Enquiry Officer forms an important material before the Disciplinary Authority which along with the evidence recorded during the inquiry is taken into consideration by it to come to its conclusion. In a given case the Enquiry Officer may have recorded its findings without considering the relevant evidence on record or by mis construing it or the findings may not be supported by any evidence available on record. The principles of natural justice, therefore, require that the delinquent should get a fair opportunity to meet, explain and controvert the findings recorded by the Enquiry Officer.

13. The Hon'ble Supreme Court in ***Managing Director, ECIL Vs. B. Karunakar case; AIR 1994 SC 1074*** *inter alia observed as under : "It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it."*

……Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it……..

……The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings……

…….Since the penalty is to be proposed after the Inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the Inquiry Officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the Inquiry Officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry…….

Therefore right to make representation to the Disciplinary Authority against the findings recorded by the Enquiry Officer is an integral part of the opportunity to defend against the charges and if such an opportunity is denied, it will amount to breach of

principles of natural justice.

14. As noted earlier, no opportunity was given to the petitioner for verbal cross examination of the complainant. A perusal of the inquiry report shows that the committee informed the petitioner that he could cross examine the complainant by giving written questions to the committee. In our opinion, mere permission to give written questions to the committee for cross examination of the complainant does not fulfil the legal requirement on the part of the Inquiring Authority, to give opportunity to the delinquent to cross examine her. Cross examination by giving written questions to the inquiring authority can never be as effective as verbal cross examination and cannot be its proper substitute. While putting questions to a witness the examiner does not know what answer the witness would give to the questions put to him/her. It is, therefore, not possible for him to formulate the next question without taking into consideration the answer given by the witness. The answer given by the witness to one question may lead to further questions from the examiner on the same line, in order to elicit truth from the witness and to impeach his/her trustworthiness. Moreover, asking the petitioner to give written questions for cross examination was confined in respect of the complainant alone. No opportunity was given to the petitioner even to give written questions for cross examination of other witnesses examined by the committee. It was imperative on the part of the Inquiring Authority to give opportunity to the petitioner for her cross examination not only of the complainant but also of the other witnesses examined by it. Denial of opportunity to cross examine the complainant and other witnesses examined by the committee constitutes gross violation of principles of natural justice. (Emphasis supplied)

15. Rule 14 (16) of CCS/ CCA rules mandates the Disciplinary Authority to ask the delinquent to state his defence which is to be recorded unless it is a written statement. Clause 17 of this rule requires the Inquiring Authority to then call upon the delinquent to produce his evidence. He may, if he chooses so, examine himself in his defence. In the present case, though at the time of serving charge sheet upon the petitioner, the committee asked him to give list of witnesses whom he wanted to be examined by the committee, no such opportunity was given to him after the committee had examined the complainant and other witnesses in support of the complaint. The committee was required not only to give an opportunity to the petitioner to produce his witnesses but those witnesses were to be cross examined by the petitioner and

not by the committee, though, it would have been open to the committee to examine them after they had been examined by the petitioner and had also been subjected to cross examination.

16. It is true that Ordinance XV-D which prescribes the procedure for inquiry does not contain provisions identical to Clause (16) & (17) of Rule 14 of CCS/CCA Rules. But, since the Hon'ble Supreme Court has held in the case of Megha Kotwal Lele and Ors. Vs. UOI and Ors ***(Supra)*** *that the Complaints committee envisaged by it in its judgement in Vishaka's case will be deemed to be an Inquiry Authority for the purposes of CCS/CCA Rules, 1964 and the report of the complaints committee shall be deemed to be an inquiry report under the CCS rules. We feel, that it was obligatory on the part of the Apex Committee, which inquired into the matter, to at least follow the fundamental norms for conducting inquiry. If we do not read such a requirement to be implicit in Ordinance XV-D, it may not be possible for us to sustain the validity of the inquiry procedure prescribed therein. The inquiry conducted without giving an opportunity to the delinquent to cross examine the witnesses and without giving him an opportunity to produce witnesses in his defence, would not confirm to the basic principles of natural justice and a procedure which does not contain even these minimum safeguards for the delinquent cannot be said to be a fair and reasonable procedure for conducting an inquiry.*

17. For the reasons given in the preceding paragraphs, we are of the view that the inquiry against the petitioner was conducted in gross violation of the principles of natural justice as neither the petitioner was given an opportunity to cross examine the complainant and other witnesses nor was he asked to state his defence and produce witnesses in his defence. The findings recorded by the Apex Committee, therefore, got vitiated on this account alone. Disciplinary action taken against the petitioner on the basis of the findings recorded in an inquiry which was conducted in gross violation of principles of natural justice cannot be sustained. Yet, another reason why the disciplinary action taken against the petitioner cannot be maintained is that neither annexures /appendices to the inquiry report were supplied to him nor was he given an opportunity to make representation against the findings recorded by the Apex Committee.(Emphasis supplied)

7. The aforesaid judgment of this Court covers the issue(s) which has / have been raised by Mr. Saini in this petition inasmuch as non-supply of enquiry report and denial of opportunity to the petitioner for verbal cross-examination of the complainants. This Court had set aside the enquiry conducted against the petitioner in that case. Similar result must follow in this case also. The impugned order dated 4th March, 2002 is set aside.

8. The question, now, would arise is whether in view of my conclusion above, the matter needs to be remanded back to the enquiry committee for holding enquiry from the stage the infirmity has occurred as was contended by Mr. Bansal. This plea of Mr. Bansal was opposed by Mr. Saini stating that the proceedings relates back to the year 2001; 16 years have elapsed thereafter; the petitioner is of 75 years of age and the petition was filed by the petitioner only to remove the stigma attached because of the impugned order; and he would not press for the monetary relief for two years, till his normal superannuation which he may get if the impugned order is quashed; this Court on a consideration of these submissions, is of the view noting the age of the petitioner, who is said to be of 75 years, the Researchers also have equally aged, a remand for fresh enquiry from the stage of framing of charges; allowing cross examination of the witnesses would be an embarrassment for the parties at this stage of their life, that apart, the process to complete the enquiry may take some time and if an order is passed against the petitioner, the same can be subject matter of a challenge which may take further time for a decision; it shall be appropriate, if the matter is put at rest, but with

limited relief to the petitioner. I accordingly set aside the impugned order dated 4th March, 2002 by holding that the petitioner who was 60 years of age at the relevant time and would have retired at 62 years, shall not be entitled to any arrears for the period of two years except that the two years shall be treated as period spent on duty and the retiral benefits shall be computed afresh and arrears thereof shall be released to the petitioner within three months from the date of receipt of the copy of this order without any interest.

The petition stands disposed of. No costs.

CM. NO. 6355/2002 (for Stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 31, 2017
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