

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.443/2014

DISTRICT - PUNE

Shri Hiralal Rama Jadhav,)
Principal, Jail Officer's Training College,)
(Now under suspension),)
Yerwada, Pune-6.)**)...APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through Principal Secretary,)
(Appeal and Security), Home Department,)
Having Office at Mantralaya,)
Mumbai - 400 032.)
2. Mrs. Meera Borvankar,)
Ex. ADG, C/o. ADG Office,)
Central Building, Pune-1.)
3. Mr. Rajendra Dhamne,)
Ex. DIG, C/o. ADG Office,)
Central Building, Pune-1.)
4. Mrs. Swoti Sathe,)
DIG, WR Yerwada, Pune.)
5. Mr. Harshad Ahirrao,)
Deputy Superintendent,)
Mumbai Central Jail.)
6. Mr. Bhaedas Dhole,)
Suspended Deputy Superintendent,)
Chandrapur Dist. Jail.)
7. Mr. Nagnath Savant,)
Deputy Superintendent,)
Ahmednagar Dist. Jail.)
8. Mr. Vaibhav Aage,)
Deputy Superintendent,)

- Dhule Dist. Jail.)
9. Mr. Anup Kumar Kumre,)
Deputy Superintendent,)
Bhandara Dist. Jail.)
10. Mrs. Rani Bhosle,)
Deputy Superintendent,)
Nagpur Central Jail, Nagpur.)
11. Mrs. Swoti Jogdand,)
Deputy Superintendent,)
JOTC, Yerwada, Pune.)
12. Mrs. Kirti Dhale,)
Deputy Superintendent,)
Yavatmal Dist. Jail.)
13. Mrs. Mukta Tadake,)
Jailar, Kolhapur Central Jail.)
14. Mrs. Neha Gujrathi,)
Jailar, Nashik Central Jail.)
15. Mrs. Ashvini Mandpe,)
Jailar, Sangli Dist. Jail, Sangli.)
16. Mrs. Ratan Khilari,)
Jailar, Thane Central Jail.)
17. Mrs. Sushma Chohan,)
Jailar, JOTC. Yerawad, Pune.)
18. Mrs. Nirmala Bandal,)
Jailar, Bhaykhla Dist. Jail.)
19. Mrs. Aasha Sonvane,)
Jailar, Taloja Central Jail.)
20. Mrs. Maya Dhature,)
Jailar, Amravati Central Jail.)
21. Mrs. Suvarna Shinde,)
Jailar, JOTC, Yerawada, Pune.)
22. Mrs. Vaishali Markad,)
Jailar, ADG, Office Pune.)
23. Mrs. Manisha Valkoli,)
Jailar, Yerwada Central Jail.)

24. Mrs. Sima Kamble,)
 Jailar, Talaja Central Jail.)
 25. Mr. N.N. Chonde,)
 Ex. Jailar Gr. I, JOTC, Yerwada Pune.)
 26. Mr. R.M. Nigde,)
 Sr. Clerk, ADG Office, Pune.)
 27. Mr. R.N. Kolte,)
 Sr. Clerk, ADG Office, Pune.)...**RESPONDENTS**

Shri Hiralal Rama Jadhav applicant in person.

Ms. Savita Suryavanshi learned Chief Presenting Officer for respondent no.1.

None appeared for other respondents.

CORAM : **Shri Justice A.H.Joshi, Chairman**
Shri P.N.Dixit, Member (A)

Reserved on : **19th December, 2018.**

Pronounced on : **4th January, 2019.**

Per : **Shri Justice A.H. Joshi, Chairman**

J U D G M E N T

1. Heard Mr. Hiralal Rama Jadhav applicant in person at length as well as Ms. Savita Suryavanshi Presenting Officer for respondent no.1. Other respondents have failed to appear though served.

2. Applicant has prayed in this O.A. the following reliefs:

“9.a] By a suitable order, this Hon’ble Tribunal may be pleased to set aside the order dated 06.12.2013 passed by the Respondent (EXHIBIT-A) under which he has issued the D.E. charge sheet to the Petitioner for certain alleged misconduct as mentioned therein and accordingly the Petitioner be granted all the consequential service benefits, as if the impugned order had not been passed.

b) By a suitable order, this Hon'ble Tribunal may be pleased to grant service benefits and compensation for the period of which he was suspended i.e. 15.03.2013 to 06.12.2015.

c) By a suitable order, this Hon'ble Authority may be pleased to impose a penalty as per section 26 of the Act on the Respondents for not strictly following the guidelines and provisions as per The Sexual Harassment at Work Place (Prevention, Prohibition, Redressal) Act, 2013 and Vishakha Case."

(Quoted from paper book page 11A & 11B.)

3. Applicant was suspended in contemplation of the disciplinary proceedings. In due course, suspension has been reviewed and revoked. In view of pendency of departmental enquiry, the period of suspension is yet undecided.

4. By memo dated 6th December, 2013 (Exhibit-A) applicant has been served with notice of show cause towards charges narrated in Annexure-1 thereto and statement of imputation supporting the charges contained in Annexure A-2 thereto.

5. Admittedly, the charges are divided in two heads:-

(a) Misconduct relating to sexual harassment to subordinate women employees. These are charge nos.1 to 5.

(b) Misconduct relating to financial indiscipline, which is charge no.6.

6. Applicant's first prayer i.e. prayer 9[a] relates to quashing of charge sheet.

7. Foundation of prayer for quashing the impugned order is seen in various averments contained in the O.A. which are scattered in page nos.7-A to 7-N & 8-A to 8-Z.

8. It would be convenient to deal with the challenge to the charge sheet in so far as it relates to charge no.1 to 5, first in order of discussion.

9. Record shows that at the initial stages of hearing, this Tribunal expressed its desire through order passed on 27th March, 2017 expressing that the Government should apply mind and find out whether the charge nos.1 to 5 are being enquired by keeping in mind the guidelines as contained in Vishakha judgment and the statute following thereof.

10. After considering the matter at length and spending considerable time thereon, the Government has come out with a Government decision dated 22nd May, 2018. Text whereof reads as follows:

“प्रस्तावना :

The Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 आणि महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ च्या नियम ८ (२) खालील परंतु (शासन अधिसूचना, दि.०१.०४.२०१०) मधील तरतुदीनुसार श्री. हिरालाल जाधव, प्राचार्य (निलंबित), दौलतराव जाधव प्रशिक्षण महाविद्यालय येरवाडा, पुणे यांच्याविरुद्ध दि.०६.१२.२०१३ च्या ज्ञापनाव्ये बजावलेल्या दोषारोपांमधील दोषारोप क्रमांक १ ते ५ ची चौकशी करण्यासाठी विशाखा केस मधील मार्गदर्शक तत्वानुसार ष्कामाच्या ठिकाणी महिलांची लैंगिक छळवणूक होण्यापासून संरक्षण आणि लैंगिक छळवणूकीच्या तक्रारीना प्रतिबंध करण्यासाठी व त्याचे निवारण करण्यासाठी अधिनियम २०१३ अनुसार श्रीमती अश्वती दोरजे अपर पोलीस आयुक्त, नायगांव यांच्या अध्यक्षतेखाली समिती गठीत करण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय :

श्री हिरालाल जाधव, प्राचार्य (निलंबित), दौलतराव जाधव प्रशिक्षण महाविद्यालय येरवाडा, पुणे यांच्या विरुद्ध दि. ०६.१२.२०१३ च्या ज्ञापनाव्ये बजावलेल्या दोषारोपांमधील दोषारोप क्रमांक १ ते ५ ची चौकशी करण्यासाठी विशाखा केस मधील मार्गदर्शक तत्वानुसार श्रीमती अश्वती शेरींग दोरजे, अतिरिक्त पोलीस आयुक्त (महिला), मुंबई यांच्या अध्यक्षतेखाली खालील समिती स्थापना करण्यात येत आहे.

- १) श्रीमती अश्वती शेरींग दोरजे, अतिरिक्त पोलीस आयुक्त
(महिला), मुंबई - अध्यक्ष

- २) श्री. अरविंद सावंत, सहाय्यक पोलीस आयुक्त दर्जाचे अधिकारी/सामाजिक सुरक्षा विभाग, मुंबई - सदस्य
- ३) अॅड. श्रीमती अनुपमा पवार, महिला विधिज्ञ/सामाजिक क्षेत्रामध्ये काम करणारी महिला - सदस्य
- ४) श्रीमती फरिदा लांबे, मुंबई विभागामध्ये स्त्रियांवरील अत्याचाराच्या विरोधात काम करणा-या नोंदणीकृत अशासकीय संस्थामधील महिला - सदस्य
- ५) श्रीमती अरुणा अर्जुनराव मुगुटवार, उपअधीक्षक, येरवडा मध्यवर्ती कारागृह, पुणे - सदस्य सचिव

२. समितीच्या सदस्य सचिवांनी समितीला आवश्यक ती माहिती व कागदपत्रे उपलब्ध करून देण्यात यावी.

३. उपरोक्त समितीने श्री. हिरालाल जाधव, निलंबित प्राचार्य, दौलतराव जाधव प्रशिक्षण महाविद्यालय येरवाडा, पुणे यांच्या संदर्भातील दोषारोपात नमूद केलेल्या बाबींची सविस्तर चौकशी करून त्याबाबतचा अहवाल सदर आदेश निर्गमित झाल्याच्या दिनांकापासून दोन महिन्यात शासनास सादर करावा.

४. सदर समिती मधील शासकीय आणि अशासकिय सदस्यांना दैनिक भत्ता व प्रवास भत्ता देय राहिल. हा भत्ता शासकीय अधिकारी/कर्मचारी यांना वित्त विभागाच्या प्रचलित नियमानुसार तसेच अशासकीय सदस्यांचा दैनिक भत्त्याचा खर्च हा महिला व बाल कल्याण विभागाच्या दिनांक १९.०६.२०१४ च्या शासन निर्णयामधील तरतुदीप्रमाणे करावा. या बाबींवरील शासकीय अधिकारी/कर्मचारी यांचा खर्च लेखाशिर्ष २०५५००३५ मधून नियमित उद्दिष्टातून करण्यात यावा व अशासकीय सदस्यांचा खर्च फ्लेखाशिर्ष २०५५०३५ मधील ५० - इतर खर्च या बाबीमधून करून तो सन २०१७-१८ च्या मंजूर अर्थसंकल्पिय तरतुदीमधून भागविण्यात यावा.६

(Quoted from paper book page 235-236)

11. In the intervening period, Chairperson of the Enquiry Committee (Vishakha Committee) appointed through Government decision dated 22-05-2018 was transferred and the said Chairperson has been substituted by appointing one Smt. Ambike I.P.S. in her place.

12. By virtue of act of the Government in issuing the Government decision dated 22-05-2018, the charge sheet dated 06-12-2013 gets split up and charge Nos. 1 to 5 get merge into enquiry of complaints made by the women as regards sexual harassment.

13. Thus, charge sheet dated 06-12-2013 gets split up and part by is superseded. Now the enquiry to be conducted by the departmental enquiry officer shall continue only to the extent of charge no.6, while the enquiry by Vishakha Committee will be in relation to the complaint/s of sexual harassment by women employees/officers which were foundation of charge nos.1 to 5. This enquiry being an enquiry under Vishakha purpose and procedure ought to be into the complaints which have led to formulation of charge nos.1 to 5, and not on charge Nos. 1 to 5 contained in the charge sheet dated 6.12.2013.

14. In this view of the matter, it is not necessary to formally quash and set aside the charge sheet and it shall suffice to hold that the charge sheet dated 06-12-2013 become otiose in so far it relates to charge Nos. 1 to 5, has since what is to be enquired by the Vishakha Committee is the complaints of the women employees/officers which would have a far different compass and complexion and not the text of the charges and rather it has to be in terms of the text of the complaints.

15. In so far as the prayer clause 9[b] is concerned, it needs to be dealt with independently and is done hereinafter.

16. Prayer 9[b] pertains to applicant's claim for compensation for the period for which he was under suspension i.e. from 15-03-2013 to 06-12-2015.

17. Applicant has not pleaded or narrated in details in the O.A., however, he has averred in written notes of arguments that he wants compensation of Rs.10,0000000/- (Rs. Ten Crores only) on the ground that his image is tarnished, his family life is ruined, the proposals for his marriageable daughters got repealed, he lost chance of promotions etc. due to the malicious charge sheet.

18. Whether the period of suspension undergone by applicant for around 25 months be treated as duty, has to be decided first by the employer/competent authority after conclusion of departmental enquiry as well as the proceedings of Vishakha Committee.

19. At this stage a possibility that a decision favorable to the applicant may be reached by the competent authority as and when the enquiry is concluded and eventuality of applicant being fully exonerated cannot be ruled out. Opportunity to take a decision as to whether said suspension was unjust and that period be treated as duty would arise before this Tribunal after a decision adverse to applicant is eventually taken by the competent authority.

20. Question as to whether the charge sheet is malicious will be decided only after the enquiry is concluded and the applicant is exonerated either at the level of competent authority or at the level of any judicial proceeding.

21. Therefore, the cause of action for raising the issue of compensation has not accrued and ground for adjudication is not arisen. Therefore, this Tribunal leaves prayer clause 9[b] unadjudicated and open for being dealt with as per law in future.

22. As regards applicant's prayer 9[c] as regards the claim for a direction for ordering penalty u/s.26 of the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Act of 2013" for short) is concerned, this Tribunal has to have a look at S.26 and S.27 together. Both these sections are quoted below for ready reference.

"26. Penalty for non-compliance with provisions of Act.- (1) *Where the employer fails to-*

(a) constitute an Internal Committee under sub-section (1) of section 4;

(b) take action under sections 13, 14 and 22; and

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder, he shall be punishable with fine which may extend to fifty thousand rupees.

(2) If any employer, after having been previously convicted of an offence punishable under this Act

subsequently commits and is convicted of the same offence, he shall be liable to-

(i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

(ii) cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

27. Cognizance of offence by Courts.- *(1) No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the aggrieved woman or any person authorized by the internal Committee or Local Committee in this behalf.*

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Every offence under this Act shall be non-cognizable.”

23. It shall be vivid on perusal of contents of S.26 and S.27 of the Act of 2013 that ordering penalty presupposes a trial by Court of competent Magistrate upon complaint by Committee.

24. In present case, local committee who is entrusted with the task of enquiry into complaints may upon conclusion of its enquiry decide to lodge a complaint, and award of penalty, opportunity of trial at the end may arise before the Magistrate.

25. Depending on the facts of the case and in the event a challenge comes up before this Tribunal and any order in the nature of costs or compensation is to be ordered, this Tribunal may have to consider the aspect of costs &/or penalty on facts of the case. This Tribunal does not rule out possibility of ordering such costs or compensation. However, penalty with reference to S.26 and S.27 of the Act of 2013 is definitely

not capable of recourse in the proceedings of present nature where enquiry in relation to sexual harassment which is being conducted by local committee is yet to reach at final conclusion.

26. Therefore, this Tribunal holds that applicant's claim for ordering penalty cannot be considered at this stage.

27. Therefore, except declaration relating to charge nos.1 to 5 granted in paragraph no.12 to 14, applicant is not entitled to any relief.

28. We have to record few more matters. During course of hearing, applicant had stated and we record it that he desires to challenge the very inquiry into the complaints/charges of sexual harassment. In case any challenge is raised, it shall be dealt with on its own merits, particularly because the Government decision splitting charges is not under challenge in present O.A.

29. We had called upon learned P.O. to secure instructions and make a statement as to timeframe within which enquiry into charge no. 6 would be completed. Learned P.O has not made any statement till the pronouncement of this judgment.

30. The enquiry to be completed on day to day basis.

31. We further direct that the enquiry in relation to charge No. 6 be completed including final action thereon on or before 31.3.2019. We declare that if everything including final action is not completed before 31.3.2019, it shall be deemed for all purposes that applicant shall stand exonerated from charge No. 6. The Principal Secretary, (Appeals) is directed to serve this order on the Enquiry Officer within seven days from today.

32. In aforesaid background following order is passed:-

(A) Declaration in relation to prayer clause 9[a] is granted in terms of para 12 to 14 of this judgment and order.

(B) Prayers 9[b] and 9[c] are left unadjudicated.

33. O.A. is accordingly disposed. Parties are directed to bear own costs.

Sd/-
(P.N. Dixit)
Member (A)

Sd/-
(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 04.01.2019
Dictation taken by : A.K. Nair.