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Madras High Court

Case No: Writ Petition No. 37598 of 2006 and O.A. No. 2705 of 1998

S. Chitra	APPELLANT
Vs	
The Director of Fire Services, The Deputy Director of Fire Services and The Divisional Fire Officer	RESPONDENT

Date of Decision: Sept. 30, 2009

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19(4)
- Constitution of India, 1950 - Article 141, 32
- Penal Code, 1860 (IPC) - Section 354

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: R. Singaravelan, for the Appellant; R. Neelakandan, GA, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.
Heard both sides.

2. This writ petition arose out of O.A. No. 2705 of 1998 filed by the petitioner before the Tamil Nadu Administrative Tribunal. In view of the abolition of the Tribunal, it was transferred to this Court and was renumbered as W.P. No. 37598 of 2006.

3. The petitioner sought for the issuance of a writ of certiorarified mandamus to call for the records on the file of the Director of Fire Services in his proceedings Rc. No. 2747/B2/98 dated 10.2.1998 and also on the file of the Deputy Director of Fire Services in Ku. Pa. No. 1/96, dated 1.11.1996 and to quash the same and to direct the respondents

to grant the due increments to the applicant with 18% per annum.

4. The petitioner, who was working as a Junior Assistant in the office of the second respondent Office, field OA No. 2705 of 1998 before the Tamil Nadu Administrative Tribunal, seeking to challenge the order of the second respondent dated 1.11.96 and confirmed by the order of the first respondent, dated 10.2.98. By the impugned order, the petitioner was imposed with the punishment of postponement of increment for a period of three years with cumulative effect. It was also stated that the said punishment will have the effect of affecting her pension.

5. The petitioner was appointed as a Junior Assistant on compassionate ground with effect from 1.7.1990. She was initially posted to work in the office of the Deputy Director of Fire Service, Coimbatore. Thereafter, she was transferred to Tiruchirappalli the second respondent office. Subsequently, she was transferred to the Office at Karur and once again, she was brought back to the second respondent office on 8.1.97.

6. The petitioner is an unmarried woman and having lost her father, she had to support her mother and two brothers and one younger sister. Taking advantage of her vulnerable position, there was a constant sexual harassment meted out to her while she was working in the second respondent office. The Superintendent of the office one Palanisamy constantly invited her to go with him to cinema to the cinema theater and was also misbehaving with her after the office hours. She also made complaints against the Divisional Fire Officer one Rajaram and one Assistant by name Sivasakthi. Instead of conducting an enquiry in respect of the complaint, which made allegations of sexual harassment, the second respondent framed a charge memo, dated 5.1.96 in PR.1/96. The charges levelled against the petitioner was based upon the counter complaint made by the Divisional Fire Office, Office Superintendent and the Assistant. It was made to appear that she was insulting the DFO in insolent terms and that she compelled the office Superintendent and the Assistant to take her to cinema theater. In addition to the counter complaint, it was also stated that she picked up quarrel with other women employees and adopted a goslow.

7. An enquiry was ordered to be conducted by Divisional Fire Officer, Thanjavur, the third respondent herein. The enquiry officer found that excepting the second charge, all other charges were proved. It was also stated that the petitioner had regretted for her conduct. The petitioner further gave a representation on the enquiry report and based upon the same, the second respondent by an order dated 1.11.96 imposed the punishment. Nothing was mentioned about the complaint given by the petitioner against the other office employees. It is a classic case where the complainant has become the accused and the accused became the complainants. 8.The petitioner filed an appeal, dated 20.12.96 against the punishment order. The first respondent without considering the grounds raised in the appeal, rejected her appeal by a one sentence order. The petitioner preferred OA being OA No. 4841/97 before the tribunal, challenging the said punishment. The tribunal prima facie found that the appellate authority did not deal with the grounds

raised in the appeal memo and therefore, that was a fit case for granting an interim order.

9. When once the tribunal is ceased of the matter, then by virtue of Section 19(4), the authorities are precluded from passing any order and even if any proceedings are pending before them will stand abated. But, however, the first respondent without any jurisdiction and inspite of the interim order granted by the tribunal, passed another order, dated 10.2.98 and dismissed the appeal once again by giving certain reasons. It must be noted that an administrative authority has no power to make any suo motu power of review as held by the supreme Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji reported in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, . In the present case, the respondents were statutorily barred from entertaining any such power in the light of Section 19(4) of the Administrative Tribunals Act. Therefore, the appellate order passed by the first respondent dated 10.2.98 is non-est in law and without jurisdiction.

10. The petitioner''s OA challenging the order was once again admitted in OA No. 2705 of 98. The Tribunal by its interim order dated 17.4.98 granted an interim stay of the order of punishment. The said order came to be extended until further order by the Tribunal''s subsequent order dated 30.4.98.

11. On notice from the Tribunal, the respondents have filed a reply affidavit, dated 30.6.2000. Apart from dealing with the issue raised by the petitioner, the first respondent tried to justify the illegal order dated 10.2.98. There is no where any reference to the fate of petitioner''s complaint of sexual harassment by the male colleagues in her office. This Court therefore directed the original files to be produced.

12. It was claimed by the petitioner that the files were sent to the JM Court No. 2 at Tiruchirappalli in connection with a criminal complaint pending in C.C. No. 378/98 filed u/s 354 IPC. Therefore, the learned Government Advocate circulated some loose sheets of papers which did not contain any material papers connected with the enquiry. Therefore, in the absence of such material, the court will have to deal with the case as per the existing records.

13. The Supreme Court vide judgment in Vishaka and others Vs. State of Rajasthan and Others, held in paragraphs 16 and 18 as follows:

16. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, we lay down the guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.

18. Accordingly, we direct that the above guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These writ petitions are disposed of, accordingly.

14. The said judgment came to be followed by a subsequent decision of the Supreme Court in D.S. Grewal Vs. Vimmi Joshi and Others, . The following passages found in paragraphs 19,21 and 22 may be usefully extracted below:

19. ...The legislature too has keeping in mind the above noted guidelines from Vishaka1 recently drafted the Protection of Women against Sexual Harassment at Workplace Bill, 2007. The Bill is to provide "for the prevention and redressal of sexual harassment of women at workplace and for matters connected therewith or incidental thereto". The draft law provides for consideration of a mandatory committee to hear complaints of sexual harassment. It also stipulates the procedures for setting up of these committees. If the complaint is found to be true, the draft law provides for monetary compensation. It also stipulates a time period for completing the enquiry and for employers to take action against the accused. We are aware that the Bill has not till yet been enacted by Parliament. We cite the Bill only to show that the lawmakers too have accepted the directions and guidelines which had been laid down by this Court....

21. Vishaka1 has been followed in Apparel Export Promotion Council v. A.K. Chopra wherein a Division Bench of this Court inter alia held (SCC p.776, para 27) that in a case

involving violation of human rights, the courts must forever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field.

22. Before, however, a disciplinary proceeding is initiated in a case of this nature, a prima facie finding has to be arrived at as regards the role of the delinquent.

15. Though the Vishaka"s case cited supra was rendered on 13.8.97 and the present complaint by the petitioner was given before the principles laid down in Vishaka"s case yet when the matter came up in appeal before the first respondent when he passed the second order dated 10.2.98, the Vishaka"s case was very much in force. Therefore he ought to have applied the directions issued.

16. In fact the principles laid down in Vishaka"s case came to be applied even in respect of a complaint made by the woman employee on 12.8.1988 working in Apparel Export Promotion council vide judgment in Apparel Export Promotion Council Vs. A.K. Chopra, . It is relevant to extract paragraphs 26 and 27 of the said judgment, which is as follows:

26. There is no gainsaying that each incident of sexual harassment at the place of work, results in violation of the fundamental right to gender equality and the right to life and liberty - the two most precious fundamental rights guaranteed by the Constitution of India. As early as in 1993, at the ILO Seminar held at Manila, it was recognized that sexual harassment of women at the workplace was a form of "gender discrimination against women". In our opinion, the contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate. The message of international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 ("CEDAW") and the Beijing Declaration which directs all State parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women is loud and clear. The International Covenant on Economic, Social and Cultural Rights contains several provisions particularly important for women. Article 7 recognises her right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate the working environment. These international instruments cast an obligation on the Indian State to gender-sensitise its laws and the courts are under an obligation to see that the message of the international instruments is not allowed to be drowned. This Court has in numerous cases emphasised that while discussing constitutional requirements, court and counsel must never forget the core principle embodied in the international conventions and instruments and as far as possible, give effect to the principles contained in those international instruments. The courts are under an obligation to give due regard to international conventions and norms for construing domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. (See with advantage "Prem Shankar Shukla v. Delhi Admn.; Mackinnon Mackenzie and Co. Ltd. v. Audrey D" Costa; Sheela Barse v. Secy., Children"s Aid Society SCC at p.54; Vishaka v. State of Rajasthan; People"s Union for Civil Liberties v. Union of India and D.K. Basu v. State of W.B. SCC at p.438.)

27. In cases involving violation of human rights, the courts must forever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field. In the instant case, the High Court appears to have totally ignored the intent and content of the international conventions and norms while dealing with the case.

17. Therefore, in the light of the above principles, the complaint given by the petitioner cannot be lightly brushed aside as done by the respondents. Therefore, the respondents are hereby directed to constitute a committee in the light of the Vishaka"s case cited supra and enquiry into the complaint made by the petitioner in accordance with law. Since

the respondents have perverted the procedure by making the petitioner complainant as an accused, the punishment order given to the petitioner vide the impugned orders dated 1.11.96 and 25.4.97 will stand set aside. Already this Court has held that the subsequent order passed by the first respondent dated 10.2.98 is non-est in law.

18. This writ petition is allowed and the respondents are directed to comply with the order within a period of three months from the date of receipt of copy of this order. However, there will be no order as to costs.