Before S.S. Nijjar & Kiran Anand Lall, JJ

DR. RAM NIWAS MANAV,—*Petitioner*

versus

C.R.M. POST-GRADUAGE JAT COLLEGE HISSAR & OTHERS,—*Respondents*

C.W.P. No. 4390 of 2004

12th March, 2004

Constitution of India, 1950—Arts. 14, 21 & 226—Allegations of sexual assault by a student against a Lecturer— Enquiry Officer disregarding the statement of the girl and holding the charges against petitioner not proved— Disciplinary authority differing with the findings of the Enquiry Officer and proposing punishment of dismissal from service while issuing show cause notice to petitioner directing him to submit reply to the Commissioner directly—After considering reply of the petitioner and hearing both the petitioner and the Governing body of the College, the Commissioner granting approval—Full opportunity to plead his case given to the petitioner— No prejudice caused to the petitioner in the procedure adopted by the disciplinary authority—Action of respondents terminating services of the petitioner neither arbitrary nor violates principles of natural justice—Petition liable to be dismissed.

Held, that the Court have to adopt a special protective and parental attitude when dealing with cases of violation of Fundamental Rights of the girl students guaranteed under Articles 14 & 21 of the Constitution of India. The girl students need as much protection in educational insitutions as the working women need in the work place.

(Para 11)

Further held, that the Management Committee had gone out of its way to make sure that the enquiry is conducted by a legally trained person. The Enquiry Officer, however, sadly failed to take into account the sensitive nature of the proceedings. He has based his findings on his own view point as to how a victim of sexutal assault ought to behave. He was totally oblivious of the guiding principles that have been laid down by the Supreme Court in a catena of judgments. The findings recorded by the Enquiry Officer have been rightly held to be based on conjectures and surmises. Respondent No. 4 has rightly

acceepted the tentative opinion recorded by the Management Committee, Respondent No. 2. To satisfy ourselves, that no miscarriage of justice has occurred, we have examined the findings recorded by the Enquiry Officer, the tentaitve findings recorded by the Management Committee and the final conclusions recorded by the Commissioner, Higher Education. We are satisfied that the action taken by the respondents against the petitioner cannot be termed as arbitrary or in violation of rules of natural justice.

(Paras 22 & 23)

B.M. Singh, Advocate, for the petitioner.

JUDGMENT

S.S. NIJJAR, J (ORAL)

(1) We have heard the learned counsel for the petitioner at length and perused the paper-book.

(2) This writ petition under Articles 226/227 of the Constitution of India has been filed for the issuance of a writ of Certiorari quashing the impugned suspension order (Annexure P—3) dated 8th March, 2003, the charge-sheet (Annexure P—4) dated 3rd April, 2003, show-cause notice (Annexure P—10) dated 20th August, 2003, the order of Respondent No. 4 (Annexure P—12) dated 5th February, 2004, the dismissal order (Annexure P—13) dated 27th February, 2004 and for the issuance of a writ in the nature of Mandamus directing the respondents to reinstate the petitioner with continuity of service alongwith all the consequential benefits and privileges.

(3) On 8th March, 2003, the petitioner who was working as a Lecturer in Hindi was suspended on account of serious complaints received against him. It was pointed out that the necessary charge-sheet will be issued separately. This order was passed by the President, Governing Body, C.R.M. Post Graduate Jat College, Hissar (hereinafter referred to as "the President"). On 3rd April, 2003, a charge-sheet was issued against the petitioner. He was required to give the reply within 15 days of the receipt of the articles of charge. The petitioner submitted reply to the charge-sheet on 17th April, 2003. The reply filed by the petitioner was considered by the Governing Body/Managing Committee in its meeting held on 21st April, 2003 and after thorough consideration and perusal, the same was found to be not satisfactory. Shri N.K. Jain, Retired District and Sessions Judge was appointed as

the Enquiry Officer and Shri Inder Singh Lakhlan, Principal, C.R.M. Post-Graduate Jat College, Hisar was appointed as the Presiding Officer. The petitioner thereafter pointed out by letter dated 14th May, 2003 that the proceedings of the Governing Body and the resolution passed on 21st April, 2003 had not been made available and therefore, the disciplinary enquiry cannot proceed further. By his letter dated 21st May, 2003, the President informed the petitioner that he had been given sufficient opportunity to inspect the relevant record before submission of the reply to the charge-sheet. List of witnesses and documents to be relied upon in the enquiry had already been made available to the petitioner. It was, therefore, stated that in the enquiry, the resolution dated 21st April, 2003 is neither relevant nor material. It was pointed out that the petitioner is merely trying to prolong the enquiry proceedings by creating unnecessary hurdles. The petitioner had also objected to the appointment of the Retired District and Sessions Judge as the Enquiry Officer. This plea was also rejected on the ground that an outsider and a retired District and Sessions Judge has been appointed so that fair enquiry could be conducted. The petitioner was asked to cooperate with the enquiry proceedings. The Enquiry Officer submitted the report on 8th August, 2003. In conclusion, it was held that all the three charges have not been proved. The disciplinary authority differed with the findings of the Enquiry Officer on 20th August, 2003 and issued a show-cuase notice to the petitioner proposing the punishment of dismissal. The petitioner was also informed that since the College is affiliated to Chaudhary Devi Lal University, Sirsa and governed by the Haryana Affiliated Colleges (Security of Services) Act, 1979 (hereinafter referred to as "the Act") and Haryana Affiliated Colleges (Security of Services) Rules, 1980, (hereinafter referred to as "the Rules"), the necessary representation/statement against the show-cause notice be sent directly to Commissioner, Higher Education, Haryana, Chandigarh (Respondent No. 4), within 30 days of the receipt of the notice. The petitioner submitted reply to the show-cause notice on 15th September, 2003 to Respondent No. 4.

(4) After considering the entire matter, Respondent No. 4 has expressed the view that the misconduct established against the petitioner, who is a teacher, is deplorable and if the person involved is a highly qualified Lecturer, then it is all the more detestable. Therefore, Respondent No. 4 has approved the proposed punishment of dismissal of the petitioner from service by order dated 6th January, 2004. On the basis of the approval granted by the Commissioner, Respondent No. 2 has dismissed the petitioner from service.

(5) Learned counsel for the petitioner has vehemently argued that the whole action of the respondents commencing from the suspension of the petitioner till the passing of the final order of dismissal is vitiated on the ground that the petitioner was not given an opportunity of hearing by the Governing Body before differing with the conclusion recorded by the Enquiry Officer. In support of this submission, learned counsel placed strong reliance on the judgment of the Supreme Court in the case of the **Punjab National Bank and others** *versus* **Kunj Behari Misra (1).**

(6) We have considered the submissions made by the learned counsel for the petitioner. The gravemen of the charge against the petitioner is that on 6th March, 2003 at about 12 O'Clock, the petitioner called a girl student to the Hindi Department and then finding her alone, assaulted her by touching her body and tried to outrage her modesty by use of criminal force. On the next date i.e. 7th March, 2003, parent and relatives of the girl protested to the petitioner about his misconduct. He misbehaved with them in an arrogant manner and indulged in manhandling them within the College. He has been condemned by the society and public at large. The prestige of the College has been lowered and maligned in the eyes of public. Disciplinary action was taken against the petitioner under Section 7 of the Act and the Rules. It is not disputed that a show-cause notice was issued to the petitioner stating therein that the disciplinary authority has disagreed with the finding of the Enquiry Officer. But as the disciplinary proceedings were regulated under the aforesaid Act and the Rule, the proposed action of the respondent-Managing Committee could only be taken if the same was approved by respondent No. 4. As noticed earlier, the action proposed was approved by respondent No. 4 by his order dated 6th January, 2004. The petitioner and also the College were heard before the order was passed by the Commissioner, Higher Education. Learned counsel for the petitioner has placed strong reliance on the following observations of the Supreme Court made in the case of **Punjab National Bank** *(Supra)* :—

> "19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on

(1) AIR 1998 S.C. 2713

such charge, it must record its tentative reasons for such disagreement and given to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the Officer."

(7) The aforesaid observations, in our opinion, are of no assistance to the case of the petitioner. As noticed earlier, tentatively, respondent No. 2 expressed its opinion in the show-cause notice (Annexure P-10). The petitioner was directed to send his reply directly to the Commissioner, Higher Education. The tentative opinion expressed by the Management Committee only became a finding on the same being approved by respondent No. 4. Therefore, it was necessary for the petitioner to be heard before any order was passed by the Commissioner, Higher Education. Admittedly. both the petitioner and respondent No. 2 were heard by the Commissioner before passing a final order disagreeing with the findings recorded by the Enquiry Officer. At the stage, the petitioner had the opportunity to persuade the Commissioner to accept the favourable conclusion of the Enquiry Officer. The Commissioner had the power to decline approval to the proposal made by the Governing Body of the College. Therefore, it is not possible to hold that no opportunity of hearing has been given to the petitioner before the competent authority has recorded the findings contrary to the findings recorded by the Enquiry Officer. We are of the considered opinion that no prejudice has been caused to the petitioner in the procedure adopted by the disciplinary authority.

(8) The charge levelled against petitioner are so serious, that in view of the law laid down by the Supreme Court in the case of **Vishaka and other,** *versus* **State of Rajasthan and others, (2)** the disciplinary authority had little option, but to dismiss

(2) AIR 1997 S.C. 2011

the petitioner from service. We find it appropriate to reproduce hereinbelow the observation made by the Supreme Court in the opening paragraphs of the judgment :—

> "This writ petition has been filed for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon. With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard against such violations; and the resentment towards incidents of sexual harassment is also increasing. The present petition has been brought as a class action by certain social activists and NGOs with the aim of focussing attention towards this social aberration, and assisting in finding suitable methods for realisation of the true concept of 'gender equality' ; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation.
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> 2. The immediate cause for the filing of the writ petition is an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. That incident is the subject-matter of a separate criminal action and no further mention of it, by us, is necessary. The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures. In the absence of leglislative measures, the need is to find an effective alternative mechanism to fulfil this felt and urgent social need.
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> 3. Each incident results in violation of Fundamental rights of Gender Equality and the Right to Life and Liberty. It is a clear violation of the rights under Arts. 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Art. 19(1)(g) to practice any profession or carry out any occupation, trade or business. Such violations, therefore, attract the remedy under Art. 32 for the

enforcement of these fundamental rights of women. This class action under Art. 32 of the Constitution is for this reason. A writ of mandamus in such a situation, if it is to be effective, need to be accompanied by directions for prevention; as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment, resulting in violation of fundamental rights of women workers under Arts. 14, 19 and 21 are brought before us for redress under Art. 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum."

(9) Thereafter, the Supreme Court laid down the guidelines to be followed by the employers in work places as well as other responsible persons or institutions to ensure the prevention of sexual harassment of women. The guidelines laid down thereunder provide that it is the duty of the Employer or other responsible persons in work places and other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required. "Sexual harassment" has been defined to include such unwelcome sexually determined behaviour (whether directly or by implication as :

(a) physical contact and advances;

(b) a demand or request for sexual favours;

(c) sexually coloured remarks;

(d) showing pornography;

(e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

(10) The Supreme Court further directed that if any of the aforesaid acts is committed, and it amounts to a specific offence punishable under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. It has further been directed that in particular, it should ensure that victims or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment. Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with the rules. In our opinion, the aforesaid guidelines which have the force of law by virtue of Article 141 of the Constitution of India, are fully applicable to the educational institutions as well. The Supreme Court has categorically observed that the guidelines are being laid down for work places as well as other responsible persons or institutions. "Educational Institutions" would fall under the term "Other responsible institutions".

(11) The aforesaid observations leave no manner of doubt that the courts have to adopt a special, protective and parental attitude when dealing with cases of violation of Fundamental Rights of the girl students guaranteed under Articles 14 and 21 of the Constitution of India. The girl students need as much protection in educational institution as the working women need in the work place. The observations made by the Supreme Court reproduced above, in our opinion, would be fully applicable also to cases where any student alleges sexual harassment from any person or individual who may be in a dominant position and able to adversely affect the educational career or a girl student.

(12) This apart, in the present case, the whole tenor of the defence put forward by the petitioner throughout is that a conspiracy has been hatched against him due to professional rivalry. He raised the aforesaid defence at the very initial stage when he submitted the reply to the charge-sheet. In the reply (Annexure P/5-T to the charge-sheet, he stated as follows :—

> "...However, owing to my achievements, creative attaiments and candour, a section of the teaching staff, some writers of local fame and journalists have become jealous of me and continuously devise some stratagem against me.

Therefore, controversies are raised sometimes concerning any creative writings, or lecturers, or examination results of my children, or my degrees. It is because of this that whereas I am given honour in India and abroad, in my own institution and city I am subject to mental torture and mocked at. I am always apprehensive that anything can happen to me. Therefore, I had written a letter dated 29th September, 2000 to the Principal of the College and President of Teachers Association (see Annexures 2 and 3). These very conspirators are at the back of the present alleged incident."

(13) The testimony of the victim, the girl student, has been summed up by the Enquiry Officer which is as follows :—

"The department has examined in all 7 witnesses. Km. Nitu PW-1 is the complainant. She deposed that on 6th March, 2003 at about 12.30 P.M. Dr. Manav called her to his room in Hindi Department for handing over a guide book. When she was alone with him he told her that she was late and that she would have to pay penalty for it. Thereafter, he touched her cheek and then shook hands with her. He then tried to kiss her but was pushed back. She objected to the conduct of Dr. Manav and told him that she was just like his daughter, but the latter told her that it was a common occurrence in the College and she could not talk about it to anybody. Thereafter, he kissed her on her left cheek. Nitu pushed him away, took the guide book and left for her house. She narrated the incident to her mother and also to a friend Manisha. On following day, Km. Nitu accompanied by her parents and Manisha went to the college to protest against the conduct of Dr. Manav and submitted a written complaint Ex. P-1."

(14) The Enquiry Officer disregarded the statement with the following observations :—

"...Obviously, there was no other witness present at the time of occurrence if her statement is to be accepted as correct. However, the inevitable consequence of the misbehaviour of Dr. Manav would be that she would try to shout, or call

for help or at least report the matter to the Principal immediately after the occurrence or she would cry otherwise and attract the attention of other persons present in the college. She did not do any such thing. That in my opinion raises a big question mark about the veracity of her deposition. It is unnatural on the part of a young girl who was a student of B.A. final and had every opportunity to make a loud portest against the conduct of Dr. Manav which she did not do. Her remaining quiet and leaving for home is in my opinion wholly unnatural of a young girl whose modesty has been outraged." (Emphasis supplied).

(15) This is precisely the kind of attitude which is not to be adopted by Judges when trying cases with regard to sexual offences. This kind of attitude on the part of the Judges was deprecated by the Supreme Court in the case of **State of Punjab** *versus* **Gurmit Singh and others, (3).** In the opening paragraph of the aforesaid judgment, the Supreme Court observed as follows :—

> "For what follows, the judgment impugned in this appeal, presents a rather disquietening and a disturbing feature. It demonstrates lack of sensitivity on the part of the Court by causing unjustified stigmas on a prosecutrix aged below 16 years in a rape case, by overlooking human psychology and behavioral probabilities. An intrinsically wrong approach while appreciating the testimonial potency of the evidence of the prosecutrix has resulted in miscarriage of justice."

(16) The Supreme Court considered the law with regard to sexual offences in extenso. The salient propositions of law laid down in the aforesaid case may be summed up as follows :—

1. The delay in lodging of the First Information Report, if properly explained should not matter in sexual offences.
2. The testimony of the victim in cases of sexual offences is vital and unless there are compelling circumstances which necessitate looking for corrorboration of her statement the Court should find no difficulty to act on the testimony of a victim of sexual assault alone to convict.

(3) AIR 1996 S.C. 1393

3. Seeking corrorboration of her statement before relying upon the same, as a rule, in such cases, amounts to adding insult to injury.

4. The Court while appreciating the evidence of the prosecution may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of a accused.

5. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness.

6. The evidence of a victim of sexual offence is entitled to great weight, absence of corroboration notwithstanding.

7. Corroborative evidence is not an imperative component of judicial credence in every case of rape.

8. Even in cases, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse no such inference like the victim being a girl of "loose moral character" is permissible to be drawn from that circumstances alone.

9. Even if the prosecutrix, in a given case, has been promiscuous in her sexual behavour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. No stigma, should be cast against such a witness by the Courts, for after all it is the accused and not the victim of sex crime who is no trial in Court."

(17) In paragraph 20 of the aforesaid judgment, the Supreme Court observed as follows :—

"Of late, crime against women in general and rape in particular is on the increase, it is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is sad reflection on the

attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal intergrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should, examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corrorboration of her statement in material particulars". (Emphasis supplied)."

(18) In the case of **State of Maharashtra** *versus* **Chandraprakash Kewalchand Jain (4),** the Supreme Court observed as follows :—

"16. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime.....

17. We think it proper, having regard to the increase in the number of sex-violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corrorborated in material particular as in the case of an acomplice to a crime.." (Emphasis supplied)

(4) AIR 1990 S.C. 658

(19) Again in the case of **Bharwada Bhoginbhai Hirjibhai** *versus* **State of Gurjarat, (5)** the Supreme Court observed as follows :—

> "9. In the Indian setting refusal to act on the testimony of a victim of sexual assault in the absence of corrorboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion ? To do so is to justify the charge of male chauvinism in a male dominated society...."
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> 10. Without the fear of making too wide a statement, or of overstanding the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted." (Emphasis supplied)

(20) Again it was reiterated by the Supreme Court in the case of **Visveswaran** *versus* **State Rep. by S.D.M., (6)** as follows :—

> "12. Before we notice the circumstances proving the case against the appellant and establishing his identity beyond reasonable doubt, it has to be borne in mind that approach required to be adopted by Courts in such cases, has to be different. The cases are required to be dealt with utmost sensitivity. Courts have to show greater responsibility when trying an accused on charge of rape. In such cases, the broader probabilities are required to be examined and the Courts are not to get swayed by minor contradictions or insignificant discrepancies which are not of substantial character..."

(21) Viewed in the aforesaid perspective, we are of the opinion that the Management Committee has rightly come to the conclusion as follows :—

> ". . .His act was of shocking the sense of decency of the girl. The statement of the girl in itself is sufficient to prove the charge without any corroboration although in the present

(6) 2003 AIR S.C.W. 2541

case the allegations are duly corroborated by other witnesses as well. (Emphasis supplied). It cannot be believed that on account of shortage of lecturers and for debarring from appearing in the final examinations, a girl student shall ever take a risk of making a false complaint like the present one. It is also not at all feasible and believable that a young unmarried college girl shall ever appear in witness box and falsely state on oath that her modesty was outraged in the manner as stated by Km. Nitu, knowing well that such an allegation shall be very damaging for her future life career. The statement of Km. Nitu is very reliable and convincing and is to be believed."

(22) The Management Committee had one out of its way to make sure that the enquiry is conducted by a legally trained person. The Enquiry Officer, however, sadly failed to take into account the sensitive nature of the proceedings. He has based his findings on his own view point as to how a victim of sexual assault ought to behave. He was totally oblivious of the guiding principles that have been laid down by the Supreme Court, in a catena of judgments, some of which have been noticed above. The findings recorded by the Enquiry Officer have been rightly held to be based on conjectures and surmises. Respondent No. 4 has rightly accepted the tentative opinion recorded by the Management Committee, Respondent No. 2.

(23) To satisfy ourselves, that no miscarriage of justice has occurred we have examined the findings recorded by the Enquiry Officer, the tentative findings recorded by the Management Committee and the final conclusions recorded by the Commissioner. Higher Education. We are satisfied that the action taken by the respondents against the petitioner cannot be termed as arbitrary or in violation of rules of natural justice.

(24) In view of the above, we find no merit in the writ petition and the same is dismissed.

R.N.R.

5519/HC—Govt. Press, U.T., Chd.