

Gujarat High Court

Dipakkumar Dineshbhai Luhar vs State Of Gujarat on 12 April, 2023

Bench: Mauna M. Bhatt

C/SCA/2164/2023

JUDGMENT DATED: 12/04/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 2164 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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DIPAKKUMAR DINESHBHAI LUHAR  
Versus  
STATE OF GUJARAT

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Appearance:

MR CHINTAN N DESAI(9940) for the Petitioner(s) No. 1

MR ADITYA PATHAK ASST. GOVERNMENT PLEADER for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 2,3

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CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 12/04/2023

ORAL JUDGMENT

C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023

1. This petition is filed challenging the departmental proceedings initiated against the petitioner pursuant to the charge-sheet dated 19.4.2022, which culminated into Departmental Case No.198 of 2022.

2. Rule returnable forthwith. Mr. Aditya Pathak, learned Asst. Government Pleader waives service of rule on behalf of respondent-State.

3. The facts in brief are that, the petitioner herein pursuant to the advertisement issued by the State for the post of Class-II (Accounts Officer) applied and after selection was appointed in the year 2011. Thereafter, he was promoted and transferred at various places and lastly posted at Gandhinagar on 17.6.2022 as Accounts Officer in the office of Commissioner Rural Development, Gandhinagar and at present working there. It is case of the petitioner that pursuant to an anonymous complaint, a preliminary inquiry came to be initiated against him on 13.6.2019 and upon allegations being held proved, a show cause notice dated 22.1.2021, was issued by respondent No.2 calling for response of the petitioner. Petitioner responded to the said show cause notice by reply dated 28.1.2021. Thereafter, charge-sheet was issued on 19.4.2022 by respondent No.1, aggrieved by which, present petition is filed.

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4. Mr. Chintan Desai, learned advocate for the petitioner submitted that the charge-sheet dated 19.4.2022, issued to the petitioner is bad in law because of the following reasons:

(i) That in response to the charge-sheet dated 19.4.2022, petitioner addressed a communication dated 4.5.2022, requesting to provide copy of the anonymous complaint as also the additional documents, basis which departmental proceedings were sought to be initiated against him. The same has been denied vide communication dated 31.5.2022.

(ii) That based on anonymous complaint, preliminary inquiry was conducted wherein, the statements of lady employees were recorded. As per the government resolution dated 16.10.2015, no action can be initiated relying on anonymous complaint, and there for the initiation itself is contrary to G.R and therefore consequential proceedings are bad.

(iii) That the statement recorded of lady employees in preliminary inquiry cannot be stated to be fulfilling any of the ingredients of Rule 3-B of the Gujarat Civil Services (Conduct) Rules, 1971 ("the Rule 1971" for C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023 short). As per Rule 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("the 2013 Act" for short), any aggrieved woman is to make a complaint before the Committee constituted under the said Act. In the present case, there is no such written complaint to such committee and on this ground the proceedings initiated deserves to be quashed and set aside.

(iii) That the preliminary inquiry came to be initiated in the year 2019 and the charge-sheet is issued in the year 2022 and therefore, on the ground of delay the proceedings initiated deserve to be quashed and set aside.

(iv) That even otherwise, the ingredients of Rule 3-B of the Rules are not fulfilled and, therefore, initiation is bad in law. Further, work of the petitioner has been appreciated and acknowledged by the department ignoring which the present proceedings are initiated.

(v) That the discipline maintained by the petitioner in the office has been adversely taken. The complaint being offshoot of that, deserves to be C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023 ignored.

(vi) That under Sections 9, 10 and 11 of the Act 2013, special procedure has been laid down to meet with the aim and object of the Sexual Harassment Act 2013. In this case the provisions of 2013 Act are not followed and, therefore, the proceedings initiated under provisions of GCS Rules are bad and deserve to be quashed and set- aside. Further the charge sheet does not refer to the misconduct as specified under rule 3(1) read with 3-B of the Rules, 1971 and therefore, the same is bad in law.

4.1. He relied upon the decision of this Court in the case of Girishkumar Rameshchandra Soni v/s State of Gujarat, reported in 2018 (1) GLR 673 and submitted that as observed by this Court, if any complaint is to be made with regard to sexual harassment at work place, it is to be made in writing before the committee constituted for the same. In the present case there is no such committee and in absence of any written complaint, initiation of disciplinary proceedings pursuant to the oral representation would run contrary to the circular issued. He relied upon following paragraphs of the above judgment.

"8. Having heard the learned counsels appearing for the parties, we have carefully perused the entire material on record, as the disciplinary C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023 proceedings are initiated on the allegation of sexual harassment, against a judicial officer. In this case, it is not in dispute that the petitioner was initially appointed as Civil Judge (Junior Division) and J.M.F.C. in the year 2005 and thereafter, he was promoted to the cadre of Senior Civil Judge on 05.01.2012 and worked as such at Rajkot upto 21.06.2012. The alleged incident is of 22.03.2012, but undisputedly, there was no complaint from any lady member of the Bar. However, only when the then Hon'ble Chief Justice visited Rajkot District on 28.5.2012, it appears that there was an oral representation from a lady advocate about the alleged sexual harassment by the petitioner. Thereafter, remarks were called for from the Principal District Judge, Rajkot, by confidential letter dated 05.09.2012 addressed by this Court. Only after reminder was sent by this Court on 21.11.2013, remarks were sent by the Principal District Judge, Rajkot, on 30.11.2013 by recording the statements of three lady advocates. Thereafter, matter was placed before the Standing Committee and decision was taken in the Standing Committee meeting held on 10.2.2014 to initiate regular inquiry. Immediately thereafter, no steps have been taken, but by further recording the statements on 22.07.2016, charge

sheet was issued in departmental inquiry proceedings only on 21.01.2017. Prior to the enactment of Act 14 of 2013 i.e. the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Regulations namely, the Gender Sensitisation & Sexual C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023 Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Regulations, 2013 were framed in view of the judgments of the Hon'ble Supreme Court in the case of Vishaka v. State of Rajasthan reported in (1997)6 Supreme Court Cases page 241 and in the case of Binu Tamta and Another v. High Court of Delhi and Others reported in (2014)13 Supreme Court Cases 257. The said Regulations provide mechanism for lodging of complaint and inquiry into the complaint. As per the Regulations, the complaint can be made by any aggrieved woman in writing, of sexual harassment to the Competent Authority in accordance with law in the form which was notified. Regulations also provide that in cases where an aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or for any other reason, her legal heir or such other person directly concerned with her interest can also make a complaint. So, it is clear from the aforesaid Regulations that if any complaint is to be lodged of sexual harassment, it is to be made in writing. Even under the provisions of the Act 14 of 2013, procedure for lodging the complaint is provided under section 9 in Chapter IV. Section 9 of the Act reads as under:

"9. Complaint of sexual harassment.-(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023 within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section."

9. From a perusal of the procedure contemplated under Regulations, as well as under section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, it is clear that if any complaint is to be made with regard to sexual harassment at workplace, it C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023 is to be made in writing. In the case on hand,

it is not in dispute that there was no complaint in writing by any member of the Bar against the petitioner. Though alleged incident, as per the statements recorded of the witnesses, is on 22.03.2012, no complaint was made in writing. The only basis for initiation of proceedings, appears to be that of oral representation made to the then Hon'ble Chief Justice during his visit to the Rajkot District on 28.05.2012. Thereafter, remarks were called for by addressing confidential letter to the Principal District Judge of Rajkot District. However, the Principal District Judge has sent the report belatedly to this Court on 30.11.2013. Even thereafter, no departmental inquiry was initiated against the petitioner and departmental inquiry came to be initiated by issuing a charge memo in the departmental proceedings only on 21.01.2017. Though the said delay is sought to be explained by stating that during the relevant time, there were number of complaints in the Vigilance Department, but after perusing the explanation offered in the affidavit- in-reply filed on behalf of the respondent No.3, we are not convinced with the explanation for such abnormal and inordinate delay, in initiating proceedings. It is fairly well settled that in departmental inquiry, proceedings are to be initiated within a reasonable time and initiation of inquiry belatedly after several years, itself is a ground to quash the inquiry proceedings. Having regard to the alleged incident of 2012, departmental inquiry is initiated by issuing charge C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023 sheet only on 21.01.2017. Same is the ground for quashing the proceedings, in absence of proper and reasonable explanation to explain such delay. Apart from the fact that there is no complaint within the meaning of the Regulations and the Act, so as to proceed with the inquiry on the allegation of sexual harassment, there is also abnormal and inordinate delay in initiation of proceedings. It is to be noticed that except the statements of three advocates recorded on 13.07.2012 and thereafter further statements of the very same advocates on 22.07.2016, no other material is placed to substantiate the charge levelled against the petitioner."

5. On the other hand, learned Assistant Government Pleader Mr. Aditya Pathak for the respondent-State submitted that the aim and object of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is to protect the interest of women. With the same intent and object Rule 3-B, has been inserted. As the conduct of the petitioner was falling within the meaning of misconduct as specified under Rule 3(1) read with Rule 3-B of the Rules 1971, a decision was taken to initiate proceedings envisaged under the Rules 1971. Further as per rule 9(2) of the rules 1971, in case of complaint of sexual harassment the disciplinary authority is free to cause an inquiry in to the matter. In this case, in the preliminary inquiry held, the C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023 allegations prima facie was held to be true and therefore, charge-sheet dated 19.04.2022 was issued to the petitioner. Moreover, the Act, 2013 does not prohibit initiation of departmental proceedings. Statement of female employees were recorded, wherein, the ingredient of misconduct under Rule 3 (1) and Rule 3-B of the Gujarat Civil Service (Conduct) Rules, 1971 are fulfilled.

5.1. He further submitted that upon receipt of the letter dated 03.06.2019, by respondent No.2, regarding misbehavior of the petitioner with female employees, to keep the confidentiality of the complainant, respondent No.2 appointed Ms.Nisha U. Raval, District Assistant Examiner (Class-I) to undertake preliminary inquiry. Preliminary Inquiry Officer prima facie found the allegations made against the present petitioner true. Thereafter, report dated 27.06.2019 of Preliminary Inquiry Officer was sent to respondent No.1 for taking appropriate action. Respondent No.1 after going

through report dated 27.06.2019 after due perusal of the report, deemed it fit to issue Show Cause Notice and therefore, respondent No.1 directed respondent No.2 to issue Show Cause Notice. The respondent No.2 vide communication dated 22.01.2021 issued Show Cause Notice to the petitioner and the same was replied by the petitioner on 28.01.2021. Reply of the petitioner dated 28.01.2021 to the Show Cause Notice was forwarded to C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023 respondent No.1 for taking necessary action. Respondent No.1 did not find the reply satisfactory and decided to initiate departmental inquiry and deemed it fit to issue charge-sheet. Thus, charge-sheet dated 19.04.2022 was issued to the petitioner for misbehavior / misconduct as provided under Rule 3(1)(iii) and Rule 3-B of Gujarat Civil Service (Conduct) Rules,1971. Thus, at the cost of repetition, he submitted that principal of natural justice is fully complied with and there is no lacuna in the procedure adopted and judicial interference is not warranted. He therefore submitted that departmental inquiry is initiated against the petitioner in accordance with Rule 9 and 10 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971. He further submitted that this petition is filed at a premature stage and defence available to the petitioner can be raised before inquiry authority and therefore, this petition deserves to be dismissed.

5.2. In relation to Government Resolution dated 16.10.2015, on anonymous complaints, he submitted that on perusal of Clause (2) and (8) of the said Government Resolution it is clear that if any doubt is created with regard to any complaint/ application and if the complainant/ applicant is able to produce evidence on record in support of the said complaint/ application, the same is required to be inquired into. In this case proceeding are initiated under Rule 3-B of the Gujarat C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023 Civil Services (Conduct) Rule,1971 and therefore, submission that no proceeding can be initiated in relation to allegation of sexual harassment is not correct. In relation to non-supply of document, he submitted that along with charge-sheet dated 19.04.2022, statement of all female employees has been provided to the petitioner. He therefore submitted that provisions of the Gujarat Civil Service (Conduct) Rules have been duly complied with and departmental proceedings are rightly initiated against the petitioner. The present petition is devoid merits and the same deserves to be rejected.

6. Learned AGP for the State relied upon the decision in the case of Union of India & Anr. vs. Kunisetty Satyanarayana reported in (2006) 12 SCC 28. He submitted that as settled by series of decisions , no right would lie against a charge-sheet or show cause notice in relation to departmental proceedings. He relied upon the following paragraphs.

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghouse and another AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023 others 2001(10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943 etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be

held to be premature. A mere charge-sheet or show- cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet."

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7. Heard learned advocates appearing for the respective parties. The issue for consideration is "Whether initiation of departmental proceedings under Rule 3(1) read with Rule 3-B of the Gujarat Civil Services (Conduct) Rules, 1971 is appropriate or in such type of cases proceedings under Sexual Harassment Act 2013, can only be initiated?"

8. Following chronology would be necessary:

(i) On the complaint/ representation dated 3.6.2019, by the female employees of Pension Payment Office, Vadodara, a decision was taken by respondent no 2 to inquire in to the matter. Therefore, respondent no 2 appointed Ms.Nisha U. Raval, District Assistant Examiner (Class-I) to cause preliminary inquiry.

(ii) The inquiry authority after causing preliminary inquiry gave report dated 27.06.2019. In the preliminary inquiry statements of female employees were recorded. In preliminary inquiry report the allegations made against petitioner were found to be true.

(iii) Thereafter, a decision was taken to issue show cause notice to the petitioner and, therefore, respondent No.1 directed respondent No.2 to issue show cause notice.

C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023 To the show cause notice, a reply of the petitioner was called for. After receiving reply of the petitioner, the same was forwarded to respondent No.1 for taking necessary action. The respondent No.1 after due application of mind on the preliminary inquiry report as well as reply dated 28.1.2021 of the petitioner decided to initiate departmental inquiry and issued charge-sheet.

(iv) Along with the charge-sheet, statements recorded of the female employees during preliminary inquiry were provided to the petitioner.

Thus, the due procedure contemplated under the provisions of the Rules has been followed.

9. For the contention of the petitioner that no action/departmental proceedings can be initiated taking cognizance of an anonymous complaint, it is noticed that in the Government Resolution dated 16.10.2015, a reference has been made to the anonymous complaint in relation to corruption, honesty, misuse of powers and like other misconducts. It is further observed that generally due cognizance is not to be taken on an anonymous complaint and no action is to be taken based on anonymous complaint, however there is no absolute bar. In the present case, the C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023 facts on record suggests that the complaint/representation was made not by any anonymous person/outsider but by the employees of Pension Payment Office, Vadodara, where the petitioner is working and during preliminary inquiry, statement of all the female employees were recorded. The statement of female employees was provided to the petitioner along with the charge-sheet. The decision relied upon by the learned advocate of the petitioner in the case of Girishkumar Rameshchandra Soni (supra) is not applicable in facts of the present case. Therefore, the contention that departmental proceedings cannot be initiated based on anonymous complaint, in my opinion is not correct in the facts of this case as referred herein above.

10. In relation to the contention that in case of complaint of sexual harassment, action under Act 2013, can only be initiated, reproduction of Rule 3-B of the Rules,1971 would be appropriate.

"3-B Prohibition of sexual harassment of working women (1) No Government servant shall indulge in any act of sexual harassment of any woman at her work place.

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(2) Every Government servant who is in

charge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

Explanation:-

For the purpose of this rule "Sexual harassment" includes such unwelcome sexually determined behaviour, whether directly or otherwise such as-



- (a) Physical contact and advances;
- (b) demand or request for sexual favours;
- (c) sexually coloured remarks;
- (d) showing any pornography; or
- (e) any other unwelcome physical, verbal

or non-verbal conduct of a sexual nature. \*\*[Inserted vide Govt. Notification No.GS/99/9/ CDR/1098/171/Inquiry Cell, dated 24.3.1999] \$ [Renumbered vide Govt. Notification No.GS/2005(8)CDR/112005/U.O.248/Inq.Cell, dated 1.6.2005]"

11. Thus Rule 3-B of the Rule 1971, refers to misconduct for C/SCA/2164/2023 JUDGMENT DATED: 12/04/2023 which disciplinary proceedings as contemplated under the provisions of the Rules can be initiated. Rule 3B of the Rules is inserted with a view to avoid/prohibit sexual harassment to working woman at workplace and, therefore, proceedings against the petitioner are rightly initiated under the Rules, after following due procedure as envisaged under Rules 9, 10 and 11 of the Gujarat Civil Service (Discipline and Appeal) Rules, 1971. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is one of the mechanisms to safeguard the work place for women and that would not prohibit to initiate proceedings under Rule 3 (1) (iii) read with 3-B of the Rules. Accepting the contention of the petitioner that in view of provisions of Act of 2013, action under Rules of 1971, cannot be taken, in my opinion would make Rule 3-B, redundant. Moreover, in the present case, only charge-sheet has been initiated and scope of judicial review in relation to challenge to the issuance of charge-sheet being very minimal, I do not find any merit in the petition and therefore, the same is dismissed.

12. Rule is discharged. No costs.

(MAUNA M. BHATT,J) NAIR SMITA V.