

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Mrs. Urmita Datta (Sen), Member (J),

Case No. OA – 233 of 2022

Shyamal Datta - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No.
and
Date of order
7
30.06.2022

For the Applicant : Mrs. S. Mitra,
Mrs. P. Sasmal,
Advocates
For the State Respondents : Mrs. S. Agarwal,
Advocate
For the P.S.C., W.B. : Mr. G.P. Banerjee,
Mr. S. Bhattachrjee,
Advocates

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 354 – WBAT / 2J-15/2016 dated 18th May, 2022 issued in exercise of the powers conferred under Section 6(5) of the Administrative Tribunals Act, 1985.

The matter is admitted.

The instant application has been filed challenging the final order on the ground that one complaint was lodged by the Smt. Sumita Mukherjee, D.L.C., EL & MW Section to the Labour Commissioner requesting for initiation of appropriate action for harassment caused by Shri Shyamal Datta i.e. the applicant on 26.12.2013 on the allegation that the applicant had forwarded e-mail on 1st December, 2013 to all the direct recruit officers of West Bengal Labour Service along with some attachment, which includes private conversation between the complainant and the applicant during the period from 21.04.2013 to 21.11.2013 which had caused sexual harassment. Subsequently, the applicant submitted his apology letter to the Labour Commissioner on 01.04.2014 (annexure 'B'). On the same day, one conciliation meeting was held in the chamber of the Labour Commissioner with regard to the complaint of the lady wherein it was recorded that W.B.L.S.A. will expel the applicant for a period of five years from general membership and as executive of the association and it would be communicated

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to all the members immediately. Further the applicant was left with one warning and subsequently the complaint made by Smt. Sumita Mukherjee and Tania Datta was withdrawn and the matter was disposed on the basis of conciliation held before the Labour Commissioner. However, as per the applicant, that lady again made self-same complaint dated 02.09.2015 before the Joint Labour Commissioner and the Presiding Officer of I.C.C. of the office of Labour Commissioner. In the said letter, it has been stated that as no Internal Committee was duly constituted in her workplace, therefore, she filed one complaint on 26.12.2013 before the Labour Commissioner for taking appropriate steps. Subsequently, on 25.08.2015, one Internal Complaint Committee was constituted by the same Labour Commissioner. However, on the basis of the said letter dated 02.09.2015, the I.C.C. has issued one notice to the applicant as per Rule 7(ii) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 vide Memo dated 07.09.2015. Said Internal Complaint Committee submitted their report on 02.02.2016 and recommend the disciplinary authority to take action under the provision of concerned service. Subsequently, one charge sheet dated 22.08.2016 was served upon the applicant. It has been further submitted that from the perusal of the Annexure-4 to the charge sheet, it would be evident that the complainant was the only witness. Even the Presiding Officer of the I.C.C. had deposed and the applicant could not get any opportunity to cross-examine him as he was not aware that P.O. of I.C.C. would be a witness as stated in his reply to the Show Cause Notice dated 13.06.2017. However, the authority have passed the final order dated 03.12.2020.

Being aggrieved with the said final order, the applicant had earlier moved before this Tribunal in O.A. No. 201 of 2021. However, during the course of the hearing, he had submitted that even the said final order was contrary to the judgement passed by this Tribunal dated 11.01.2019 in O.A. No. 494 of 2017

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and the said final order was quashed by this Tribunal vide order dated 29.07.2021. However, as per the opportunity granted by this Tribunal, the respondent again passed the final order dated 02.11.2021. As per the applicant, once the complaint was withdrawn by the complainant and one conciliation had taken place in the presence of the Labour Commissioner on 01.04.2014, the self-same complaint cannot be entertained by the I.C.C. subsequently. Further as there was no other witnesses as per the Charge Sheet dated 22.08.2016, even one more witness had deposed in the absence of the applicant depriving him to cross-examine the said witness. Thus the disciplinary proceeding has been vitiated. Therefore, he has prayed for stay order of operation of impugned final order.

However, the counsel for the respondent has prayed for time to file reply in the present case and has raised objection for granting any interim protection. It has been further submitted by the respondent that since the applicant had come earlier and at that point of time he had only press prayer (c) i.e. challenging the earlier final order on the self-same cause of action, he cannot approach this Tribunal again without liberty to the court. Therefore, the application is hopelessly barred by resjudicata. However, the counsel for the applicant has submitted that he had earlier not only challenged the disciplinary proceeding but also the final order and restricted his submission with regard to challenge the final order, which was contrary to the settle principle of law and in pursuance to that the respondent had again passed the impugned final order, which she has challenged and as the entire disciplinary proceeding has been merged with the final order, therefore, he has every right to challenge the fresh final order, which he has done.

The counsel for the respondent has submitted that the opportunity of cross-examine was granted to the applicant, it would be evident from the report of the

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Internal Complaint Committee dated 02.02.2016. Therefore, the allegation of the applicant that he was not granted opportunity of cross-examination of the Presiding Officer of the I.C.C. is not tenable.

Heard both the parties and perused the records. It is noted that the complainant earlier approached the Labour Commissioner i.e. on 26.12.2013 and in a conciliation meeting dated 01.04.2014, the said complaint was considered and the applicant was expelled from the membership of the association as per their recommendation as well as he had tendered apology for such conduct and on the same meeting the complainant had also withdrawn her complaint. However, on the self-same allegation, she made another complaint, after one I.C.C. was constituted on 25.08.2015 and the second complaint was lodged on 02.09.2015. Subsequently, as per the recommendation of the I.C.C., one Charge Sheet was issued to him. On the perusal of the Charge Sheet with regard to the witnesses, it transpires that there was only one witness i.e. the complainant and no other witnesses are there to substantiate the allegation. Though as per the applicant, further the deposition of Presiding Officer of the I.C.C. was considered, while passing the final order. However, prima facie, neither she was found to be witness as per Charge Sheet nor as per the applicant, he was granted any opportunity to cross-examine her. Though the counsel for the respondent has drawn my attention that report of the I.C.C. which recorded, inter alia:

“Both the parties were given opportunities of being heard. Both the parties were cross-examined by the other party on 20.11.2015.”

However, from the above, it transpires that both the parties were granted opportunity for cross-examination of each other before the I.C.C., whereas the allegation of the applicant is that the Presiding Officer of the I.C.C. had deposed in the departmental proceeding and the applicant was not granted any

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opportunity to cross-examine her. As the balance of convenience is in favour of the applicant, the respondents are directed to file reply by three weeks and rejoinder by one week thereafter. In the interim, the respondents are directed to keep in abeyance to give effect of impugned Final Order dated 02.11.2021 till next date.

Let the matter be listed on **25.08.2022** under the heading '**Specially Fixed Matter**'.

URMITA DATTA (SEN)
MEMBER (J)

A.K.P.