

Ambika Bisht vs.govt. Of Nct & Ors

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Court : Delhi

Decided On : Oct-31-2017

Appellant : Ambika Bisht

Respondent : Govt. Of Nct & Ors

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: October 31, 2017 W.P.(C) 9624/2017 & CMs. 39172-73/2017 AMBIKA BISHT

... Petitioner

Through: Ms. Sumati Sharma and Ms. Neetu Sethi, Advocates versus GOVT. OF NCT & ORSRespondents Through: Ms. Manika Tripathy Pandey and Mr. Ashutosh Kaushik, Advocates for respondents No.1, 2, 4 & 5 CORAM: HON'BLE MR. JUSTICE SUNIL GAUR JUDGMENT (ORAL) Vide order of 18th October, 2016, disciplinary action was initiated against petitioner, who was a Head-Clerk in respondent-Academy and petitioner claims that in terms of this very order of 18th October, 2016 (Annexure A-1), petitioner has been suspended w.e.f. 18th October, 2016 itself and the said suspension order is illegal because it has been passed by the Acting Secretary. It is submitted by learned counsel for petitioner that as per the O.M. of 24th January, 1963, an Officer performing current duties of a post cannot exercise statutory powers under the Rules. The relevant extract of the said O.M. relied upon by petitioners counsel reads as under: - An officer appointed to perform the current duties of an appointment can exercise administrative or financial power W.P.(C) 9624/2017 Page 1 of 3 vested in the full-

fledged incumbent of the post but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament (e.g. Income Tax Act) or Rules, Regulations and Bye-Laws made under various Articles of the Constitution (e.g., Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules etc.) (MHA OM No.7/14/61-Ests. (A) dated 24th January, 1963) So, it is submitted by learned counsel for petitioner that the suspension of petitioner is illegal and it needs to be set aside and petitioner be put back in service. In this petition, a direction is also sought to respondent No.3-Art, Culture and Language Department, GNCTD through its Secretary to constitute a Sexual Harassment Committee under Chapter-III of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in view of petitioners complaint (Annexure A-8) where allegations of sexual harassment have been leveled against respondent No.5-Deputy Secretary-cum-Acting Secretary of Delhi Sanskrit Academy. According to petitioners counsel, the said complaint (Annexure A-

8) is not being proceeded with and the initiation of the departmental inquiry against petitioner is vitiated as it has been triggered off by petitioners complaint (Annexure A-8). Upon notice, learned counsel for respondents No.1, 2 & 3 submits that as per Annexure A-12, respondent-Delhi Sanskrit Academy has constituted a Disciplinary Committee on petitioners complaint (Annexure A-8) on 3rd September, 2016. W.P.(C) 9624/2017 Page 2 of 3 At this stage, petitioners counsel points out that the constitution of this Committee is not in compliance with Chapter-III of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. On a query put to petitioners counsel, it was disclosed that the disciplinary action is at the advanced stage i.e., Inquiry Officers report has been furnished to petitioner wherein petitioner has been held guilty of the charge levelled against her. Moreover, it needs to be clarified that petitioner has made complaint (Annexure A-8) after the Memos (Annexure A-5) were served upon her. In such a situation, this Court is not inclined to interfere at this advanced stage of the proceedings. It is left open to petitioner to question the legality of the impugned suspension order while assailing Inquiry Officer's report at the appropriate stage. So far as petitioners complaint (Annexure A-8) is concerned, respondent-Delhi Sanskrit Academy shall apprise petitioner about the status of her

complaint within four weeks and shall ensure that the said complaint is taken to its logical end expeditiously. This petition and the applications are disposed of with aforesaid directions while refraining to comment on merits of the dispute raised herein. OCTOBER31 2017 s (SUNIL GAUR) JUDGE W.P.(C) 9624/2017 Page 3 of 3

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