

PETITIONER:
MISS RADHA BAI

Vs.

RESPONDENT:
THE UNION TERRITORY OF PONDICHERRY REPRESENTED BY ITS CHIEF S

DATE OF JUDGMENT 20/04/1995

BENCH:
PARIPOORNAN, K.S.(J)
BENCH:
PARIPOORNAN, K.S.(J)
KULDIP SINGH (J)

CITATION:
1995 AIR 1476 1995 SCC (4) 141
JT 1995 (4) 34 1995 SCALE (2) 842

ACT:

HEADNOTE:

JUDGMENT:
PARIPOORNAN, J.:

1. The Petitioner in Writ Petition No. 1329 of 1979 of the High Court of Madras, is the appellant herein. This appeal is filed against the Judgment of the High Court of Madras dated 26.10.1983, in pursuant to the special leave granted by this Court on 13.1.1986 in S.L.P.(C) No. 3643 of 1984. There are three respondents in this appeal. They are: The Union Territory of Pondicherry represented by its Chief Secretary, The Union of India represented by Secretary, Ministry of Home Affairs, and Sri D. Ramachandran, former Home Minister of Pondicherry.

2. The relevant facts which gave rise to this appeal may be stated. The date of birth of the appellant is 25.8.1934. She was appointed as a Child Welfare Organiser under the Pondicherry State Social Welfare Advisory Board on 21.11.1958. The service of the employees of the Board was merged with the Government service. The employees of the Advisory Board became Government employees. On 11. 12.1962 the appellant was appointed as Social Education Organiser in the Development Department, Government of Pondicherry. In 1973, the appellant was Assistant Director of the Social Welfare Department. At that time, the third respondent was the Minister for Social Welfare in the Government of Pondicherry. In that year a protective and shelter home for women arrested under the Suppression of Immoral Traffic Act was started at Reddiarpalayam by the Social Welfare Directorate. It is the appellant's case, that in 1973, she received a report that the above institution was being misused by the third respondent herein with the connivance of the Superintendent, for illegal and

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immoral purposes. The appellant reprimanded the Superintendent. This infuriated the third respondent and other officers who apprehended that their misdeeds will be exposed. They began teasing the appellant. The appellant

was transferred from Pondicherry to Karaikkal. On an enquiry by the Inspector-General of Police on the orders of Lt. Governor conducted in 1976, the Secretary, Local Administration Department was transferred in January, 1977. In 1977, the third respondent again became the Home Minister. He continued to use the women's institutions as before for his immoral activities with the help of some officials. The appellant's presence was an Irritation to the third respondent and other officials. In September, 1977, some false criminal charges were leveled against the appellant by the said officials and attempts to commit her to prison were made on the ground that she was a lunatic. She demanded an enquiry in the matter. Therefore, she was suspended from service with effect from October 14, 1977. Thereafter, the appellant resorted to fast, and on the assurances of the Chief Minister and the Union Minister for Tourism that remedial action will be taken, she gave up the fast. On 10.7.1978, the appellant submitted a representation to the Governor of Tamil Nadu Sri Prabhudas Patwari who had taken over the administration of Pondicherry by then. In her representation, she alleged attempts made to molest her and other misdeeds of officials and prayed for intervention to set right the matters. A detailed petition was also sent later. On 22.7.1978, the Governor of Pondicherry, in his capacity as Administrator of Pondicherry Administration, directed that an enquiry be held into the allegations contained in the complaint filed before him. The authorities failed to give effect to this order. Thereupon the appellant moved the High Court of Madras in Writ Petition No. 1329 of 1979 and prayed for issue of a writ of mandamus to implement the orders passed by the Governor of Tamil Nadu and the Administrator of the Union Territory of Pondicherry dated 22.7.1978, and for other reliefs. The High Court of Madras by its Judgment dated 26.9.1983 held that the order dated 22.7.1978 is incomplete and in-executable and denied relief to the appellant. It is thereafter, the appellant moved this Court by S.L.P.(C) No.3643 of 1984, and obtained leave by order dated 13.1.1986. This Court ordered expeditious hearing of the appeal. Thereafter, the appeal came up for hearing on a few occasions and finally on 26.7.1994, this Court passed the following order:

"Miss Radha Bai, the appellant, was working as Assistant Director, local Administration Department, Govt. of Pondicherry. She made

a written complaint before the Governor of Pondicherry wherein it was alleged that the Minister in-charge and other officers, named therein, were misusing the Social Welfare Department and they attempted to molest the appellant. The Governor in his capacity as the Administrator of Pondicherry Administration by his order dated July 22, 1978 directed that an enquiry be held into the allegation contained in the complaint filed before him by Radha Bai. The operative part of the order was as under:

'proceedings of the Governor of Tamil Nadu
And
Administrator of the Union Territory of Pondicherry.

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Dated: 22nd July, 1978.

Sub:Representation from Miss N. Radha Bai,

Assistant Director, Local Administration Department.

After giving full consideration to the representation of Miss N. Radha Bai, Assistant Director, Local Administration Department, Pondicherry, and after going through the comments of the Chief Secretary to the Government of Pondicherry presented to me today at 12 Noon, I feel that the matter regarding allegations against Shri D. Ramachandran, Shri T.T. Joseph and Shri S.V. Ranganathan about the endeavours to molest the applicant need independent enquiry in the interests of justice and in order to keep up the prestige of the Administration and particularly women members of the staff. I order that a Judicial Officer of the rank of District Judge be appointed to conduct the enquiry only for the above points.'

The order of the Governor, quoted above, was not complied with by the Administration and no enquiry was held. Radha Bai filed a writ petition under Article 226/227 of the Constitution of India before the Madras High Court seeking a direction to the Pondicherry Administration to hold an enquiry as directed by the Governor. The writ petition was dismissed by the High Court. This appeal by way of special leave is against the judgment of the High Court.

We have heard learned counsel for the parties. We are of the view that the High Court fell into patent error in dismissing the writ petition. Instead of doing substantial justice in the case the High Court declined to interfere on the reasoning which was wholly irrelevant and against law. We are of the view

that the order passed by the Governor in his capacity as the Administrator of Pondicherry Government was valid and the Administration was bound by the same. We direct the Pondicherry Administration through its Chief Secretary to request the District Judge Pondicherry to hold an enquiry into the complaint made by the appellant as ordered on July 22, 1978 by the then Governor. This shall be done by the Chief Secretary within two weeks of the receipt of this order. The District Judge shall give opportunity to Miss Radha Bai and the persons named in the complaint to adduce evidence oral as well as documentary in support of their respective contentions. The District Judge shall complete the enquiry within three months of the receipt of the request to him from the Chief Secretary. The enquiry report be sent to the Chief Secretary, Union Territory of Pondicherry and a copy of the same be sent to this Court.

The appeal to be listed for further directions on 6.12.1994.

Registry to send the copy of this order to the Chief Secretary and District Judge, Pondicherry before 9.8.94. "

3.The enquiry by the District Judge, Pondicherry, unfortunately took some time and this Court granted extension of time for submitting the report. There is only one District Judge in Pondicherry. He has submitted a report containing 40 pages (56 paragraphs). In the said report, the deposition of 19 witnesses (PW1 - PW 19) and the documents (Ext. P1- Ext.P12) have been adverted to. The finding of the District Judge is to the effect that the allegations of the appellant against the third respondent and two others "are not proved by corroboration of the evidence of the complainant or her documents." In more

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places than one, after adverting to the evidence of PW-1 (to PW-19) (appellant and others) the learned District Judge has stated that there is no corroboration for the evidence so given. The learned District Judge failed to bear in mind the long lapse of time after the incident, in appreciating the evidence in the case.

4.We heard Sri K. Sukumaran, Senior Counsel who appeared for the appellant, Sri A.S. Nambiar, Senior Counsel who appeared for the first respondent, and also the counsel for the respondent Nos. 2 and 3. Written submissions have also been submitted by counsel for the appellant and counsel for respondent Nos. 1 & 3. We perused the same.

5.In the earlier order passed by this Court on 26.7.1994, this Court found that the High Court failed to do substantial justice in this case and declined to interfere in the matter on the basis of irrelevant and faulty reasoning and so the Judgment is erroneous in law. We have no doubt that it is so. In the light of the above, one of the main prayers of the appellant in the writ petition to give effect to the order passed by the Governor of Tamil Nadu and the Administrator of Union Territory of Pondicherry dated 22.7.1978 was given effect to by this Court by order dated 26.7.1994 and the District Judge was directed to conduct the enquiry. We are sorry to note that the Enquiry Report submitted by the District Judge is unhelpful, infirm and is unsustainable. As we indicated earlier the substantial reasoning and conclusion of the learned District Judge is to the effect that the evidence (statements) of the appellant are not corroborated by other material. It is rather surprising that the law laid down by this Court in a series of decisions from 1952 as to whether there is any need to insist upon corroboration to the testimony of prosecutrix in sexual offence, has been completely ignored by the District Judge in submitting his report. We may mention only two cases as illustrative of the principle to be borne in mind in appreciating the testimony of the victims of sexual offences. In *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* 1983 (3) SCC 217, at p.226, this Court stated the law thus:

"On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self inflicted) is the best witness in the sense that she is least Rely to exculpate the real offender, the evidence of a victim of a sex offence is entitled to great weight, absence of corroboration notwithstanding..... if the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities factor' does not render it unworthy of credence, as a general rule, there is no reason to insist on

corroboration."

Again in State of Maharashtra v. Chandraprakash Kewalchand Jain etc. 1990 (1) SCC 550, at p.559, this Court laid down the law thus:

"...if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclosed that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack under-

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standing must be accepted. The degree of proof required must not be higher is expected of an injured witness.....

Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation. "

(emphasis supplied)

6. In the light of the above decisions of this Court the report submitted by the District Judge, Pondicherry in pursuance of the order passed by this Court is unacceptable and we reject the same.

7. It is unfortunate that an order passed by the Administrator of Pondicherry on 22.7.1978, nearly 17 years ago, was not given effect to by the Administration and even when the appellant approached the High Court for implementing the said order, it was opposed and relief was denied to her, by Court. No useful purpose will be served by ordering an enquiry again at this distance of time. Reading the affidavits filed by the appellant, her statements of allegations, the various documents and also the other relevant papers filed in the case, we have no doubt in our mind, that something, as stated by the appellant, should have happened in a broad sense though the precise details relating thereto have not come to light. The entire episode is really unfortunate and we express our anguish in the matter. It also appears that all was not well with regard to the manner and method of the running of the institution started at Reddiarpalayam by the Social Welfare Directorate and the steps taken in that regard by the appellant to set right the matter seems to have provoked "the powers that be". It is evident that there was inaction and attempt to cover up the entire episode. The fact that the high constitutional dignitary, Governor of Tamil Nadu, who was the Administrator of Pondicherry, felt that a prima facie case is disclosed and ordered that the allegations regarding the endeavour to molest the appellant need independent enquiry in the interest of justice cannot be and should not have been ignored. The Administration failed in its duty to give effect to the said order within a reasonable time. On the other hand, the attempt was to "shelve" the matter, by putting forward untenable pleas. A responsible statutory authority or administration, owes a

duty to the public, to discharge its functions reasonably, honestly and bonafide, without driving the aggrieved persons from pillar to post, and should there be any non-excusable lapse on this score, the concerned authority or administration, should be held responsible for the loss or damage accruing thereby to the aggrieved persons. Even the High Court on an erroneous view declined relief to the appellant. It cannot be gain said that the modesty of a woman is very precious to her from all points of view and when attempts were made to molest her and also to thwart the genuine attempts made by her to set right the undesirable happenings in the shelter home for women, any person placed in the position of the appellant will certainly feel annoyed and ashamed. There is every reason for the appellant to feel greatly humiliated. There is bound to be moral indignation or resentment. Even a judicial enquiry, ordered by the highest constitutional functionary in the State to investigate the matter, was rendered futile by the concerned officials and

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for a period of 17 years no redress or remedy has been rendered to the appellant. This is sad indeed! The appellant entered service in 1958. Due to estranged relationship, events one after another followed and eventually the appellant was removed from service on 30.9.1981 and she was driven from pillar to post to seek redress for the wrong done to her. On the day when she was removed from service she had 23 years of qualifying service. She was entitled to pension. Under Rule 48-B of the Central Civil Services (Pension) Rules, 1972 weightage of a period not exceeding 5 years can be added to the actual service rendered by a civil servant as period of grace, if the total qualifying service does not exceed 33 years and if it does not take the civil servant beyond the date of superannuation. In the normal course the appellant would have attained superannuation only on 25.8.1992, her date of birth being 25.8.1934. There are materials available in the records to show that the appellant was a highly competent, hard working, sincere and devoted official. She has been referred to as an asset to the department. But for the estranged relationship and the acrimonious battle, she would have normally served the State till superannuation. There was no impediment therefore. Considering the totality of the circumstances and the non-excusable lapses of the administration and in doing complete justice in the matter, we are of the view that it should be declared that the appellant was compulsorily retired on at training the age of superannuation and should be afforded pension and all other consequential and incidental benefits, of the basis that she was compulsorily retire from service on 25.8.1992. She would be entitled to pension and other retirement benefits. Besides, the appellant should be afforded relief by award of a lump-sum compensation for the loss of her reputation and honour and the agony she had to suffer in the long battle, which we fix at Rs. 3 lacs, payable jointly by respondents 1 and 3, within one month from today. We order accordingly.

8. The appeal shall stand disposed of as above with no order as to costs.

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