



J&K State Information Commission
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www.jksic.nic.in

File No: SIC/CO/SA/232/2015
Decision No: SIC/CO/SA/232/2015/727

Title:- Ms. ABC V/s PIO University of Jammu

Jammu
09.02.2015

1. This is a case of alleged sexual harassment by a senior University teacher against a junior colleague. The identity of the appellant is not disclosed in this order to ensure that the personal dignity, honour and modesty of the appellant is preserved.
2. The appellant is working in University of Jammu as Assistant Professor. She had allegedly faced the sexual harassment and the concerned authorities had accordingly appointed CASH Committee (Committee against sexual harassment) on 12.10.2012 “in order to take action” in the harassment met to her by her senior colleague who stately happened to be the Head of Department at the relevant point of time. The appellant had earlier also filed an RTI application before the PIO. Stately, in consequence of the earlier RTI application, some information was supplied to her vide PIO’s Order No: PIO/JU/14/11732 dated: 28.7.2014 in response to RTI application dated: 13.5.2014. Prima facie, the appellant has not gone through the RTI Act carefully and that is the reason that she had not filed first appeal before the FAA

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or before this Commission. Hence, now vide RTI application dated: 5.8.2014 which is under the adjudication of this Commission, she required the PIO to give her the following information:-

1. full text of the report of the Committee against Sexual Harassment which was sent to the Hon'ble Chancellor.
2. statements of her colleagues, ex-Directors and students.
3. copy of order passed by the appropriate authority to implement the disciplinary action against the offender.
4. copy of order under which the disciplinary action was taken against the alleged defaulter Professor and implemented by informing him "disciplinary action for sexual harassment and copy of warning issued by the Vice Chancellor.

3. The PIO responded to this RTI application vide his order No: PIO/JU/14/12505-006 dated: 28.8.2014. He provided some information consisting of three leaves from Vice Chancellor's office. Regarding other information, he informed the appellant that the remaining information involves third party information, therefore, "notice under Section 11 has been issued to the concerned. As the third party (parties) have objected in sharing their statement giving different reasons, therefore, the said information is not provided."

4. Being aggrieved with this order, the appellant preferred first appeal before the Registrar-cum-FAA of University of Jammu vide her appeal dated: 29.8.2014. In her appeal, she had raised grounds of appeal that the information supplied by the PIO vide his order referred above was incomplete because she was not supplied full text of the report sent to the Hon'ble Chancellor, statement of her colleagues, ex-Directors and students nor was she given copy of order passed by the appropriate

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authority against the alleged accused, the implementation of disciplinary proceedings against the offender, notice given to alleged offender about the disciplinary action taken against him. She also wanted a copy of order vide which the accused was removed from the Directorship of Law School two years back.

5. The FAA was required to adjudicate this appeal in accordance with Section 16 of the J&K State RTI Act, 2009 within a maximum time of 45 days. The FAA passed an order vide No: FAA/14/94-96 dated: 13.10.2014. FAA's operative part of order runs as under:-

"whereas certain issues raised by the appellant during the personal hearing were addressed by the First Appellate Authority instantly and the appellant was convinced that what ever information available in the material form has been provided to her except as under:

1. Statement of her colleagues, Ex-Directors and students
2. Full text of the report sent to the Hon'ble Chancellor.

Whereas w.r.t point 1, the PIO has conveyed during the hearing, that he has gathered some statements and is also in process to collect the remaining statements.

Whereas during the hearing it was resolved that the PIO will:

- a. expedite the process of collecting the statements of left out persons
- b. provide a copy of full text of the report sent to the Hon'ble Chancellor

Whereas the PIO is hereby directed to provide the above information to the appellant at the earliest".

6. Again, not being satisfied with the directions of the FAA, the appellant filed second appeal before this Commission on 12.1.2015 alleging therein that even after the directions of FAA, the full copy of the report sent to the Chancellor, a final report of CASH and statement of her colleagues and students were not given to her. It would be relevant to reproduce what directions and relief the appellant is seeking from the Commission:-

"I request your good self to kindly apprise me with requisite information for the same and shall be highly obliged if you furnish me a copy of full report sent to the Chancellor, final report of CASH and statements of my colleagues and students and why the authorities are contradicting their own information in reply to my letters till date. I would like to request your goodself to compensate me for not submitting requisite information timely and to penalize them for unreasonable delay and to submit false information that there was nothing against each other. Needless to say that it was severe blow on my dignity and

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modesty. I could not reconcile mentally and socially till date. I have suffered irreparable loss. It was attack on my dignity and my career prospects are ruined”.

The Commission has considered the appellant's prayers made in the second appeal and has heard the PIO and FAA. The PIO has passed the order in consequence of FAA's order dated: 15.10.2014 wherein he has informed the appellant that there is a third party information. The third party information was denied to the appellant on the plea that a notice under section 11 was issued to third party for seeking their objections against providing information which they strongly objected.

7. The PIO has grossly erred in refusing to give the information i.e statement of the students and fellow colleagues of the appellant which were given before the Committee on sexual harassment. Section 11 makes it clear that only that information becomes third party information which “relates to or has been supplied by a third party and has been treated as confidential by that third party. The objections, if any, have to be sought by the PIO from these third parties within five days from the receipt of the request (i.e the RTI application) The notice has to be very specific to inform the third party that the PIO “intends to disclose the information or record or part thereof.” And third party has to give objection, if any, within ten days from the date of receipt of notice by the PIO. Mere objection by any third party does not make it incumbent for the PIO not to provide this information to the information seeker because vide section 11(3) it is the PIO who has to take a decision whether or not information has to be disclosed. The law provides that disclosure of the information inspite of the objections has to be made if the public interest in disclosure outweighs any importance in harm or injury to the interests of such third party. The PIO has not brought anything on record to suggest that the disclosure of third party information i.e their statements before the Committee on sexual harassment does not over weigh the public interest. He has also not brought

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anything on record to suggest that when these third parties gave the statement before the Committee that their statements, depositions and evidences be treated as confidential. The PIO has passed an absolutely non speaking order. PIO has submitted thirteen such letters before this Commission. Most of them have simply stated that they have an objection for disclosure of their statements to the information seeker. Only few of them have clearly stated that they apprehend being subject to “harassment, ridicule and even physical harm”. Secondly, some witnesses have stated that as they have given the statements before the said committee, therefore, their deposition and evidences be not disclosed. The Commission has given serious thought and consideration to their objections. This issue has to be decided in the backdrop of the serious allegations of sexual harassment which definitely is a larger public interest to be served. Individual interest i.e not giving the statements and evidences to the information seeker without any justifiable objections obviously falls in the category of an individual objection which is not over weighing the public interest. The disclosure in this case definitely will over weigh the individual interest. Secondly, the concept of secrecy and non disclosure of information under the J&K State RTI Act has to be upheld in extreme situations where there is a serious threat to an individual. The only exception under the J&K State RTI Act for disclosure of information is provided in sections 8 and 9. PIO has not brought anything on record to suggest that any limb of information as sought by the appellant is coming under these provisions of law. Vide section 19 of the J&K State RTI Act, 2009 the provisions of the Act have over riding effect “notwithstanding anything inconsistent therewith contained in the State Official Secrets Act, Samvat 1977, and any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act”. There is thus no justification not to allow access to the information seeker

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to the statements and depositions which have been given by various witnesses before CASH. The PIO is, therefore, directed to allow the disclosure of such deposition, however, without disclosing the names of those witnesses who have apprehended danger to their safety and security. Therefore, evidences be shared with the information seeker in the assumed nomenclature like statements of a,b,c,d etc; Similarly, information on other points sought in the RTI application be disclosed and provided to the information seeker within 15 days. The compliance of this order be made within 15 days of the receipt.

8. The penalty proceedings under section 17 of the J&K State RTI Act, 2009 r/w section 15 are initiated as the PIO in his first order had not provided full and complete information. His explanation, if any, must reach this Commission within 30 days from the receipt of this order. The appellant has also requested the Commission for issuing a direction to the public authority for providing compensation to her for any loss or any other detriment suffered. The public authority in accordance with section 16(9)(b) is required to explain the reasons why such compensation may not be awarded to the appellant. The appellant is also required to explain what loss or other detriment she has suffered because the onus for establishing such claim is on the complainant/appellant.

Before concluding this decision, the Commission considers it appropriate to make following observations:

“Obviously, the parties involved; i.e FAA, PIO and the appellant herself though being law knowing person have not fully appreciated the provisions of the J&K State RTI Act, 2009 with regard to the duties caste on PIO, FAA and the nature of right of appeal to the appellant. It is a case where the appellant had earlier preferred RTI applications but allegedly has not received full information. The

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present RTI application which is under consideration of this Commission is rather a reminder to the PIO for providing full and correct information which was sought vide her RTI application dated: 13.5.2014. The appellant's attention is invited to provisions of section 6 and 7 of the State RTI Act, 2009. Had she not received complete and correct information in response to her first RTI application dated: 13.5.2014, she should have preferred first appeal before the FAA and then moved to this Commission if aggrieved with the FAA's order. The Commission is constrained to observe that the J&K State RTI Act, 2009 is in operation since more than five years but users and implementers are by and large showing their reluctance and ignorance to know how to use and pursue the right to information."

9. The Commission would once again request to the public authorities and users of this Act particularly those users who are qualified to teach and practice law to appreciate the provisions of the J&K State RTI Act, 2009 along with J&K RTI Rules, 2012 if they want to reap the fruits of J&K State RTI Act, 2009, a revolutionary and public friendly legislation empowering the people to be stakeholders in the governance of the State.

Sd/-

(G.R. Sufi)

Chief Information Commissioner

Copy to:-

1. Registrar-cum-First Appellate Authority, University of Jammu, Jammu
2. Public Information Officer, University of Jammu,
3. Appellant
4. Private Secretary to Chief Information Commissioner
5. Guard file

(G.Q. Bhat)

Registrar

State Information Commission