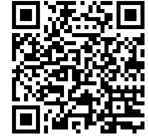

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 21st December, 2023***

\+ W.P.(C) 2615/2022 & CM APPL. 7481/2022

'XXX' ..... Petitioner

Through: Ms. Arunima Dwivedi, Ms. Swati Jhunjhunwala, Ms. Pinky Pawar and Mr. Aakash Pathak, Advocates

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION AND ORS ..... Respondents

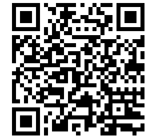
Through: Mr. Rahul Madan, Standing Counsel with Mr. Saurabh Anand, Advocate for R-1.
Ms. Rashmi Chopra, Ms. Vatsala C. Chaturvedi and Mr. Puneet Rathi, Advocates for R-3.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

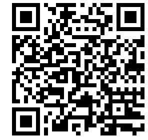
JYOTI SINGH, J.

1. By this writ of Certiorari, Petitioner seeks quashing of order dated 03.11.2021 passed by the Disciplinary Authority and the Internal Complaints Committee's (hereinafter referred to as 'ICC') report dated 24.05.2021, alleging contravention of the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the "2013 Act"). Declaration is sought that conduct of the Charged Officer/Respondent No.3 amounts to sexual harassment at workplace in terms of the judgment of the Supreme Court in ***Vishaka and Others v. State of Rajasthan and Others, (1997) 6 SCC 241*** and provisions of the 2013 Act. This Court is also called upon to impose penalty on Respondent No.3 commensurate with serious allegations against him as well as to award compensation to the Petitioner, amongst the other reliefs.



2. Facts to the extent necessary and as captured in the writ petition are that Petitioner joined National Council for Teacher Education ('NCTE') on 06.09.2004 as Stenographer Grade 'D' and was sent on deputation in July, 2012. Petitioner re-joined NCTE on 01.01.2015, on expiry of deputation tenure and was promoted as Personal Assistant to Deputy Secretary, Establishment on 14.01.2015. In March, 2015, Petitioner proceeded on leave on account of her daughter's 10th Class Board examination. After re-joining, she was posted in the Vigilance Section in April, 2015 as Personal Assistant to the then CVO. Respondent No.3 after completing his deputation tenure re-joined NCTE as Under Secretary in and around July, 2015 and was given the charge of Under Secretary (Vigilance). After the Assistant working in the Vigilance Department was transferred to Bhopal, Petitioner was deputed to work as dealing assistant under Respondent No.3, as the then CVO was working from the office at the Ministry.

3. Petitioner asserts in the writ petition that between August, 2015 and December, 2016, Respondent No.3 harassed her number of times, both physically and mentally and did not grant leave, even when required for her child's examination or health issues. It is alleged that around August, 2015 Respondent No. 3 came to her table and held her hand kept on the mouse, but apologised when Petitioner showed her annoyance. However, nothing changed and few days later he touched her knees on the pretext of operating the computer and again apologised. On two other occasions also Respondent No.3 repeated these acts, once when he cornered her while she was looking for a file in the cupboard and second time when he asked if he could get a kiss. Due to fear and shame, Petitioner did not inform anyone in the office. When her child was suffering from dengue, Respondent No. 3 refused to grant leave initially, though 2 days later earned leave was granted. In December, 2015, Petitioner's son was injured and she had to

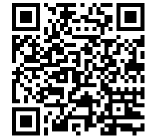


rush to the doctor. After she returned home, she saw a message on her phone that no leave would be granted and action will be taken if she did not come to the office. Petitioner faced the same problem when she sought leave for her daughter's 12th class Board examination. Somewhere in December 2015, a vigilance file pertaining to complaints received against the functioning of Eastern Regional Committee office of NCTE in Bhubaneswar, entrusted to a Committee for investigation, was misplaced. Petitioner was forced to come to office in January, 2016, under a threat that complaint will be made against her to the Member Secretary. Petitioner was forced to put a Note about the missing file and sign the same in the backdate, on the pretext that she was the custodian of the file, whereas the fact was that Respondent No.3 was in-charge of receiving and giving the files. Petitioner made an attempt to reconstruct the missing file and put up a Note dated 03.01.2017, which was seen by Respondent No.3 and marked to SO (Vigilance) and thereafter to the Member Secretary, NCTE. Petitioner confided in the PS to the Member Secretary and later informed the Member Secretary verbally about the misconduct of Respondent No.3, who advised her to concentrate on work and assured that he would counsel Respondent No.3. On 25.01.2017, Petitioner made a representation-cum-complaint to the then Member Secretary, bringing to his notice in writing, that pressure was being put on her for the misplaced file relating to inspection of ERC Office, NCTE Bhubaneswar as well as the conduct of Respondent No.3, who had been harassing the Petitioner mentally, physically and sexually in the past.

4. As per the chronology of dates and events set out in the writ petition, Complaint made by the Petitioner was entrusted to Mr. Sanjay Gupta, DS (OSD)/RD (SRC), NCTE, vide Office Order dated 03.02.2017, for investigation and submitting a report to the Chairperson, NCTE. Mr. Gupta

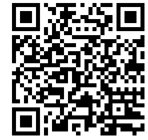
submitted his report on 10.04.2017, observing *inter alia* that there was an element of truth in the complaint and possibility of an attempt on the part of Respondent No. 3 to create circumstances such that Petitioner appears to be solely responsible for the missing file, cannot be ruled out. He also observed that there was loss of faith between the Petitioner and Respondent No.3 and recommended that either or both officials be shifted from the present place of posting in the Vigilance Section, since the complaint also had sexual harassment orientation. It is averred that the Investigation Report was seen by the Disciplinary Authority and sent to the Complaints Committee, constituted earlier vide Office Order dated 22.08.2016, comprising of Chairperson, representative from the NGO and two other members. By an order dated 12.10.2017, constitution of the Committee was partially modified and one of the members of the Committee was substituted for inquiry into Petitioner's complaint.

5. After conducting preliminary inquiry, in which statements of Sh. Juglal Singh, the then Member Secretary, NCTE; Sh. R.C. Chopra, SO; 'YYY', SO and Sh. Saras Dubey, DEO, were recorded, the Committee submitted its preliminary inquiry report on 29.12.2017. Based on the observations in this report, a Charge-Memorandum was issued on 20.06.2018 to Respondent No.3 under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the '1965 Rules'), alleging that he had caused mental, physical and sexual harassment to the Petitioner, thereby violating provisions of Rule 3-C of CCS (Conduct) Rules, 1964 (hereinafter referred to as the '1964 Rules') and acting in a manner unbecoming of a Government servant under provisions of Rule 3(1)(iii) of the said Rules. Oral inquiry was assigned to Internal Complaints Committee ('ICC') as a deemed Inquiring Authority under Rule 14 of 1965 Rules.



6. Initially, Dr. Sumita Das Majumder, US (Legal) was appointed as Presiding Member, however, she could not continue due to administrative reasons and was replaced by Ms. Mita Adhikary, Principal, KVS (Kendriya Vidyalaya). Department was represented by the Presenting Officer, while Respondent No. 3 engaged Sh. S.K. Jain, retired Director (Vigilance), Ministry of Commerce and Industry, Government of India, as Defence Assistant. Dr. Mridula Tandon was appointed as an NGO representative, who as per Petitioner's version, did not attend the inquiry proceedings. Almost after two and a half years, the ICC submitted the inquiry report on 24.05.2021, with a finding that charge against Respondent No. 3 was 'not proved'. The inquiry report was provided to the Petitioner and Respondent No.3. Aggrieved by the report, Petitioner made a representation dated 13.10.2021 to Respondent No.1/Chairperson, NCTE, for revisiting the inquiry report and also filed the present petition, assailing the inquiry report. Vide order dated 03.11.2021, Respondent No. 1 rejected the representation and petition was amended to include a challenge to the order dated 03.11.2021.

7. Assailing the order of the Disciplinary Authority and the inquiry report of ICC, it was contended on behalf of the Petitioner that mandate of Section 4(2)(c) of the 2013 Act, which provides that the Internal Complaints Committee shall comprise of one member from amongst Non-Governmental Organisations ('NGOs') or associations committed to the cause of women or a person familiar with issues relating to sexual harassment, has been violated during the inquiry. At the start of the inquiry, ICC was a four-member Committee with Dr. Mridula Tandon as the NGO member, however, from the inquiry report dated 24.05.2021 it is evident that she neither participated in the inquiry proceedings nor signed the inquiry report and therefore, the entire inquiry stands vitiated and



consequently, the inquiry report and the order of the Disciplinary Authority, deserve to be set aside on this ground alone.

8. It was further contended that the allegations made by the Petitioner against Respondent No. 3 were corroborated by the former Member Secretary, NCTE Sh. Juglal Singh, in his written statement dated 30.10.2017, given before the Preliminary Inquiry Committee. He confirmed that Petitioner had disclosed to him that Respondent No. 3 was harassing her by forcing her to sign the files and that his behaviour was not very good towards her and used to call her on the phone at odd hours. Mr. Juglal also stated that he had advised the Petitioner to concentrate on work and assured her that he would counsel Respondent No.3.

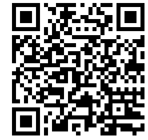
9. It was urged that Petitioner was not the only one who had made allegations against Respondent No.3. There were numerous incidents, which showcased his behaviour towards female employees. Section Officer (SO), Vigilance Department, 'YYY' had stated that Respondent No. 3 cracked cheap jokes in front of the ladies thinking they would enjoy the jokes and often made statements with double meanings. This was despite the fact that he knew that she was having a family dispute and even during her pregnancy he exchanged double meaning dialogues. She had also referred to the case of another woman employee 'ZZZ', who was working with the Vice Chairman and was her friend. 'YYY' stated that 'ZZZ' told her that once when she was walking towards the gate, after leaving the office, Respondent No. 3 took advantage of the darkness and started kissing her etc. without her consent. All this evidence has been overlooked by ICC, leading to erroneous conclusion that the charge was 'not proved'.

10. It was contended that Petitioner suffered mental harassment at the hands of Respondent No. 3 as well as the then SO, Vigilance, with respect to a missing vigilance file relating to inspection of Eastern Regional

Committee Office, NCTE, Bhubaneswar. Petitioner had repeatedly denied having custody of the vigilance files and/or the keys of cupboards, where the files were kept. Despite this, she was continuously interrogated and Respondent No. 3 insisted that an FIR be lodged and the incident be reported in writing. Respondent No. 3 harassed the Petitioner mentally, whenever she sought leave, which was never without reason and was on genuine grounds of children's education or health issues. Preliminary Inquiry Committee had observed that there was an essence of truth in Complainant's statement that she was harassed by Respondent No. 3 and yet the ICC and the Disciplinary Authority exonerated Respondent No. 3.

11. It was further contended that Section 12 of the 2013 Act mandates that during the pendency of an inquiry, on a written request made by the aggrieved woman, ICC may recommend to the employer to transfer the aggrieved woman or the Respondent to any other workplace. However, in contravention thereof, during the entire preliminary inquiry and the inquiry by ICC, Respondent No. 3 was not transferred to any other Department and resultantly, both continued to work at the same workplace. Assailing the appointment of Defence Assistant, it was argued that Sh. S.K. Jain, Director (Vigilance), Ministry of Commerce and Industry, was functioning as Investigating Officer in various cases of NCTE at that time and there being a conflict of interest, it was not ethical for Sh. Jain, to accept the appointment and defend Respondent No.3, as a Defence Assistant.

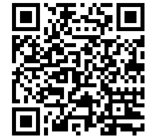
12. It was also argued that Respondent No. 3's complaints against the Petitioner alleging that she took leave without approval, did not attend office regularly and did not maintain official files, were wholly incorrect and false. Had there been any truth in these allegations, being a Reporting Officer of the Petitioner, he would have endorsed these remarks in the APARs and/or downgraded them or imposed any other penalty, which he



did not do. In fact, the written statement of Respondent No. 3 reflects that his categorical stand was that Petitioner was a responsible and sincere employee; output of her work was excellent and the APARs rendered by Respondent No. 3 were 'Outstanding'.

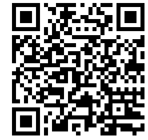
13. The disciplinary inquiry was conducted in a casual manner. Once in the Preliminary Inquiry Report dated 29.12.2017, it was observed that there was essence of truth in Petitioner's complaint that she was harassed by Respondent No. 3, the Disciplinary Authority ought to have imposed a penalty on Respondent No. 3, instead of holding another inquiry under Rule 14 of 1965 Rules. In ***L.S. Sibu v. Air India Limited and Others, 2016 SCC Online Ker 511,*** High Court of Kerala has held that Sections 11 and 13 of the 2013 Act, when read together, indicate that the inquiry under Section 13 is not a preliminary inquiry but a full-fledged inquiry as to the finding of facts and evidence and has to be conducted by ICC in the same manner as any disciplinary proceeding referable to service rules, if no service rules exist. Thus, when inquiry is concluded, what is left to the discretion of the employer is only to take action and impose penalty, in accordance with service rules for proven misconduct. In ***Pradip Mandal v. Union of India & Ors., 2016 SCC OnLine Cal 10305,*** the High Court of Calcutta held that recommendation of an Internal Committee under Section 13 is binding on the employer and he is mandated to act on it, within 60 days of receipt thereof. To the same effect is the decision of the Calcutta High Court in ***Debjani Sengupta v. Institute of Cost Accountants of India and Others, 2019 SCC Online Cal 734.***

14. The representation of the Petitioner made vide e-mail dated 13.10.2021 was erroneously rejected by Respondent No.1 without looking into the evidence on record, both oral and documentary, which spoke volumes on the conduct of Respondent No.3. Disciplinary Authority ought



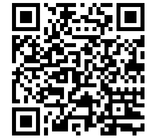
to have interfered and re-visited the inquiry proceedings and the report and/or imposed penalty on Respondent No.3, basis the investigation and Preliminary Inquiry Committee's reports.

15. *Per contra,* learned Standing Counsel for Respondent No. 1/NCTE submitted that when the complaint/representation dated 25.01.2017 was received from the Petitioner, Sh. Sanjay Gupta, Regional Director, SRC-cum-OSD, NCTE Headquarters was appointed vide order dated 03.02.2017, to investigate into the issue of the lost vigilance file, as that was broadly the structure of the complaint. Report was submitted by Mr. Gupta on 10.04.2017 with respect to the missing file, however, since the complaint had overtones of sexual harassment in one paragraph, the same was referred for inquiry by a Fact-finding Preliminary Inquiry Committee, which gave its report on 29.12.2017. Thereafter, charge-memo was issued to Respondent No. 3 under Rule 14 of 1965 Rules, the service rules applicable in the present case. After a detailed inquiry, the ICC rendered a finding that the charge against Respondent No. 3 was 'not proved'. It was contended that it is not within the scope of judicial review to re-appreciate evidence led before the Inquiry Authority and substitute the findings of ICC. Insofar as Dr. Mridula Tandon is concerned, she was appointed as NGO representative, however, after some hearings she did not turn up, despite timely written intimations of the dates and this fact was known to the Petitioner, but she never challenged or objected to this position. Statement of Sh. Juglal Singh is being misread by the Petitioner, as his statement does not reflect that Petitioner had complained of sexual harassment. Petitioner's allegation that Respondent No. 3 was habitual of inappropriate behaviour with other female employees of the organisation, is baseless. The allegations levelled against Respondent No.3, as part of the charge-memo were duly examined by the ICC and after examining the



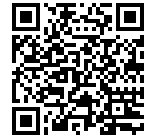
statements of the witnesses, ICC rendered a finding that charge was not proved. 'YYY' stated she had no knowledge of the present case or the incidents related to the Petitioner and the incident narrated by her with respect to 'ZZZ', had no connection with the allegations in the charge-memo. If the Petitioner wanted to extract some conclusion about the character of the charged officer, she could have produced 'ZZZ' as a witness and examined her, giving the charged officer an opportunity to cross-examine. Insofar as the misplaced vigilance file was concerned, the file was handed over to the Petitioner by Sh. D.N. Jha (Assistant) on 30.11.2015 and the receipt in acknowledgment is part of the official record.

16. Refuting the submissions of the Petitioner, it was argued on behalf of Respondent No. 3 that the allegations of sexual harassment made by the Petitioner were motivated and levelled only to save herself from a possible disciplinary action for misplacing a vigilance file, of which she was a custodian. The genesis of the inquiry is a complaint made by the Petitioner on 25.01.2017, which substantially pertained to this misplaced file and was a result of direction to the Petitioner to report the incident in writing and lodge an FIR, if the file was not found. Petitioner deliberately added one paragraph in the complaint, which was otherwise broadly related to the file, only to camouflage it as a sexual harassment complaint. Based on the evidence led before the ICC and the earlier investigation and preliminary reports, which were relied upon documents, the ICC rendered a finding that the charge was 'not proved' and the stand of Respondent No.3 that he was innocent, was vindicated. This is a classic case where Petitioner has misused the provisions of the 2013 Act, which was enacted to prevent physical, mental and sexual harassment of the women at workplace and protect them and safeguard their interests, but in genuine cases. The complaint was only to settle personal scores with Respondent No. 3 and to



cover up Petitioner's omission and negligence in maintaining the vigilance files properly. No dates/details of the alleged incidents etc. were mentioned in the complaint. Most of the witnesses deposed on the missing files or the grievances relating to leaves. 'YYY' began her deposition by stating that she had no knowledge of the allegations in the present case and as rightly observed by the ICC, if Petitioner wanted to extract some information from 'ZZZ', Presenting Officer should have summoned her as a witness. Even 'ZZZ' had nothing to do with the allegations in the present charge-memo. In the absence of any evidence against Respondent No. 3, the ICC could not have rendered a finding that the charge was proved on the asking of the Petitioner and rightly came to a considered finding that the allegations made by the Complainant are baseless and not supported by any documentary/oral or circumstantial evidence.

17. It was further urged that Petitioner was in the habit of taking unauthorized leaves, coming late for work and leaving early and Respondent No. 3 had duly informed the then CVO, Sh. Manik Mandal about her conduct. Learning of this and fearing disciplinary action, Petitioner decided to make false allegations against Respondent No. 3. The appointment of Sh. Jain as Defence Assistant has nothing to do with his functioning as Investigating Officer in other cases of NCTE and there was no conflict of interest. It was further submitted that Petitioner is wrongly relying on Section 12 of the 2013 Act as this provision was never invoked by her. A written request from the aggrieved woman to the Internal Committee is a pre-requisite for the ICC to take action for transferring either the complainant or charged officer or both and in the present case, the inquiry proceedings would reflect that no such written request was made to the Inquiry Committee to transfer Respondent No.3. Moreover, no prejudice in the conduct of the inquiry or bias against any member was



raised before the ICC. None has been pleaded even before this Court and it is not the case of the Petitioner that Respondent No.3 has influenced the finding of the ICC.

18. I have heard learned counsels for the parties and examined their contentions.

19. Before moving forward to examine the present case on its merits, it would be important and relevant to mention that there can be no doubt that sexual harassment is a social evil, which has plagued us for years and while increasing efforts were being made for enforcement of fundamental rights of working women at workplace under Articles 14, 19 and 21 of the Constitution of India, the turning point in the direction of protecting women at workplace from this menace was the landmark decision of the Supreme Court in ***Vishaka (supra).*** Relevant paragraphs of the judgment are as follows:-

> *"1. This writ petition has been filed for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon. With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard against such violations; and the resentment towards incidents of sexual harassment is also increasing. The present petition has been brought as a class action by certain social activists and NGOs with the aim of focussing attention towards this societal aberration, and assisting in finding suitable methods for realisation of the true concept of "gender equality"; and to prevent sexual harassment of working women in all workplaces through judicial process, to fill the vacuum in existing legislation.*
>
> *2. The immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. That incident is the subject-matter of a separate criminal action and no further mention of it, by us, is necessary. The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate and the urgency for safeguards by an alternative mechanism in the absence of legislative measures. In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfil this felt and urgent social need.*
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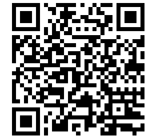
> *3. Each such incident results in violation of the fundamental rights of "Gender Equality" and the "Right to Life and Liberty". It is a clear*

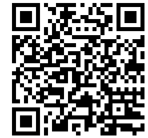


violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) "to practise any profession or to carry out any occupation, trade or business". Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason. A writ of mandamus in such a situation, if it is to be effective, needs to be accompanied by directions for prevention, as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.

xxx xxx xxx

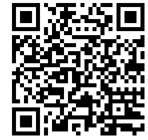
7. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and the enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till Parliament enacts legislation to expressly provide measures needed to curb the evil."

20. Guidelines were laid down by the Supreme Court in the said judgment which are known as 'Vishaka Guidelines' and this led to a historical legislation in the form of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. In a



subsequent decision, in ***Medha Kotwal Lele and Others v. Union of India and Others, (2013) 1 SCC 297,*** the Supreme Court held that compliance of Vishaka Guidelines was mandatory and directed as follows:-

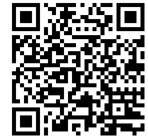
> *"44. In what we have discussed above, we are of the considered view that guidelines in Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place:*
>
> > *44.1. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (by whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings, etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.*
> >
> > *44.2. The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in para 44.1 within two months*
> >
> > *44.3. The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and State level. Those States and/or Union Territories which have formed only one committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such committees an independent member shall be associated.*
> >
> > *44.4. The State functionaries and private and public sector undertakings/organisations/bodies/institutions, etc. shall put in place sufficient mechanism to ensure full implementation of Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] guidelines and further provide that if the alleged harasser is found guilty, the complainant victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.*



44.5. The Bar Council of India shall ensure that all Bar Associations in the country and persons registered with the State Bar Councils follow Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] guidelines. Similarly, the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] . To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as the Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] guidelines and the guidelines in the present order."

21. As a consequence of these two decisions, the 1964 Rules and the 1965 Rules underwent amendments and Rule 3-C was inserted in 1964 Rules, while proviso to Rule 14(2) was inserted in the 1965 Rules. By virtue of this amendment, proviso to Rule 14(2) postulates that an inquiry into allegations of sexual harassment will be conducted as per the procedure laid down in the 1965 Rules, as far as possible, which was subsequently interpreted by the Supreme Court to mean flexibility for achieving a balance between sensitivity and fairness in an inquiry into sexual harassment.

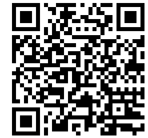
22. Coming to the present case and taking up the first contention first that Dr. Mridula Tandon, NGO representative, was not a part of the Inquiry by ICC, it needs to be noted that Petitioner was aware that Dr. Tandon had attended substantial hearings and was also privy to the dates on which she did not attend, as she had signed the proceedings. However, no objection was taken at any point in time and Petitioner continued to participate without protest or demur, allowing the inquiry to conclude and culminate in the inquiry report dated 24.05.2021. Therefore,



at this stage, this plea is not open to the Petitioner, having participated in the inquiry.

23. There is a wealth of judicial precedents that when a person takes a chance and participates in a proceeding, only because the result is unpalatable, he cannot contend that the procedure was faulty or the Committee was illegally constituted. In this context, reference to the decision of the High Court of Jammu and Kashmir in the case of ***Dr. Rehana Kausar v. UT of J&K and Others, 2022 SCC OnLine J&K 990,*** would be relevant since that was a case of inquiry under the 2013 Act. Inquiry report was challenged by the Petitioner *inter alia* on the ground that Complaints Committee did not include an external member, against the mandate of Section 4(2)(c) of the 2013 Act. Relying on the judgments of the Supreme Court, the High Court held that a person who participates in the inquiry proceeding without any demur cannot be permitted to challenge the constitution of the inquiry committee later, when the final result has gone against him. Relevant paragraphs are as follows:-

> *"17. The third argument that has been raised by learned counsel for the respondents is that the petitioner having participated in the enquiry proceedings conducted by the Complaints Committee without any objection or protest, cannot turn around and challenge the constitution of the Committee. It has been contended that the petitioner has acquiesced in the enquiry proceedings and once the result of the same was not as per her taste, she cannot turn around and challenge the constitution of Committee.*
>
> *18. Per contra, learned counsel for the petitioner has contended that the principle of estoppel cannot override the law. It is further submitted that the petitioner may have participated in the enquiry proceedings conducted by the Complaints Committee but she did not acquiesce in the illegal constitution of the Committee nor did she acquiesce in the illegal and unlawful procedure adopted by the Committee while enquiring into her complaint. In this regard, the learned counsel has relied upon the judgments of the Supreme Court in the cases of Krishna Rai (Dead) through LRS v. Banaras Hindu University, (2022) 8 SCC 713, Sneh Gupta v. Devi Sarup, (2009) 6 SCC 194, and Meeta Sahai v. State of Bihar, (2019) 20 SCC 17.*



19. If we have a look at the impugned enquiry report as also the documents placed on record by the parties along with their respective pleadings, there is nothing on record to even remotely suggest that the petitioner has at any point of time expressed here resentment, protest or demur to her participation before the Complaints Committee constituted pursuant to the impugned Government Order dated 23.10.2020. She has participated in the proceedings on a number of dates and has pursued her case vigorously right up to the conclusion of the enquiry without any demur. Even the petitioner does not claim that she has lodged any protest at any point of time as regards the alleged defective constitution of the Committee.

20. According to learned counsel for the petitioner, there can be no estoppel against law. It has been contended that the manner in which the proceedings were conducted clearly reflects that the principles of natural justice were violated and the petitioner cannot be stated to have acquiesced in compromising her right to be heard by the Committee. It has been submitted that the petitioner cannot be stated to have accepted the illegal procedure adopted during the enquiry proceedings.

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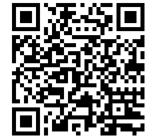
29. In Madan Lal v. State of J&K, (1995) 3 SCC 486, the Supreme Court has held that when a person takes a chance and participates, thereafter he cannot, because the result is unpalatable, turn around to contend that the process was unfair or the selection committee was not properly constituted. In the said case, the petitioner had appeared before the Interview Committee and thereafter challenged the constitution of the Committee when he did not find his name in the select list.

30. In G. Sarana v. University of Lucknow, (1976) 3 SCC 585, the petitioner, after having appeared before the Selection Committee and on his failure to get appointed, had challenged the selection result pleading bias against him by three out of five members of the Selection Committee. He also challenged the constitution of the Committee. Rejecting the challenge, the Supreme Court held as under:

> *"15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood or bias as despite the fact that, the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution. of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not. now open to him to turn round and question the constitution of the Committee. This view gains strength from a decision of this Court in Manak Lal's case (Supra) where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:—*



> *'9…….It seems dear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."*

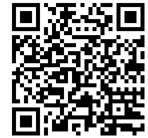
31. In P.D. Dinakaran v. Judges Inquiry Committee, (2011) 8 SCC 380, the Supreme Court, while dealing with an objection relating to appointment of a person as a member of the Committee, observed as under:

> *"86. In conclusion, we hold that belated raising of objection against inclusion of respondent No. 3 in the Committee under Section 3(2) appears to be a calculated move on the petitioner's part. He is an intelligent person and knows that in terms of Rule 9(2)(c) of the Judges (Inquiry) Rules, 1969, the Presiding Officer of the Committee is required to forward the report to the Chairman within a period of three months from the date the charges framed under Section 3(3) of the Act were served upon him. Therefore, he wants to adopt every possible tactic to delay the submission of report which may in all probability compel the Committee to make a request to the Chairman to extend the time in terms of proviso to Rule 9(2)(c). This Court or, for that reason, no Court can render assistance to the petitioner in a petition filed with the sole object of delaying finalisation of the inquiry."*

32. The High Court of Bombay in the case of Kishore v. Joint Commissioner and Vice Chairman, (2020) 6 Mah LJ 117, while considering challenge to the constitution of the Committee for the purposes of scrutinizing and verifying of caste and tribe claims, repelled the challenge laid by the petitioner by observing as under:

> *"6. We would have considered these objections had it been the case that the petitioner had not taken any part in the proceeding before the Scrutiny Committee in the present case. here, the petitioner participated in the proceedings before the Scrutiny Committee and when he found that the Scrutiny Committee's decision was against him, it dawned upon the petitioner that the constitution of the Committee was improper. A person, who has taken a chance in this way, it is settled law, cannot be permitted to turn around and raise a challenge which ought to have been made before his participation in the process. Therefore, we are not inclined to entertain any challenge to the validity of section 6 of the Act of 2000 and Rule 9 of the Rules, 2003, raised herein. Similar is the view taken by another Division Bench of this Court in the case of Ajaykumajr Yadaorao Nikhare v. State of Maharashtra, 2011 Mh.L.J. OnLine 92 = 2012 (1) ALL MR 280. The view commends to us. Accordingly, the constitutional challenge is rejected."*

33. In ABP Private Limited v. Union of India, (2014) 3 SCC 327, the Supreme Court has observed as under:

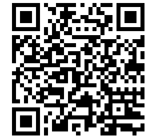


"40) On perusal of the materials available, we are satisfied that the Wage Boards have functioned in a fully balanced manner. Besides, it is a fact that the petitioners had challenged the constitution of the Wage Board before the High Court of Delhi, admittedly, the High Court had declined to grant interim relief. The said order declining/refusing to grant interim relief attained finality as the petitioners did not choose to challenge it before this Court. Thereafter, the petitioners have participated in the proceedings and acquiesced themselves with the proceedings of the Board. In view of the fact that they have participated in the proceedings without seriously having challenged the constitution as well as the composition, the petitioners cannot now be allowed to challenge the same at this stage. More so, it is also pertinent to take note of the fact that the petitioners herein opted for challenging the independence of the nominated independent members only after the recommendations by the Wage Boards were notified by the Central Government.

41) Hence, the attack of the petitioners on the independence of the appointed independent members by saying that they were not sufficiently neutral, impartial or unbiased towards the petitioners herein, is incorrect in the light of factual matrix and cannot be raised at this point of time when they willfully conceded to the proceedings. Consequently, we are not inclined to accept this ground of challenge."

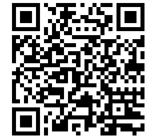
34. From the foregoing enunciation of law on the subject, it is clear that a person who participates in the enquiry proceedings or selection without any demur and later on challenges the constitution of the enquiry committee or the selection committee, as the case may be, after finding that the result of the enquiry/selection has gone against him, is not entitled to do so.

35. By participating in the enquiry proceedings without any demur, the petitioner has acquiesced in the constitution of the Complaints Committee and she has at no stage lodged any protest either regarding functioning of the Committee or regarding its constitution. She cannot be heard to challenge the constitution of the Committee once the result went against her. The judgments of the Supreme Court and Delhi High Court in the cases of Punjab and Sind Bank v. Durgesh Kuwar, (2020) 19 SCC 46 and Ruchikar Singh Chhabra v. AIR France, 2018 SCC OnLine Del 9340, relied upon by learned counsel for the petitioner in support of her contention that when constitution of the Committee is not in accordance with law, there can be no estoppel against the complainant, are misplaced for the reason that in both these cases the complainant had from the very beginning lodged her protest with regard to the constitution of the Committee and she had repeatedly raised her concern of not feeling comfortable with the manner in which the proceedings were being conducted. In the instant case, there is not even a whisper made in the writ petition that the petitioner had felt uncomfortable in participating in the proceedings or she had raised any objection with regard to the



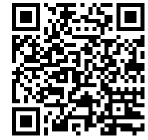
> *constitution of the Committee. The ratio laid down in the aforesaid cases is, therefore, not applicable to the facts of the instant case.*
>
> *36. For what has been discussed hereinbefore, it is clear that the petitioner has acquiesced in the constitution of the Complaints Committee by her conduct and has fully participated in the enquiry proceedings. She cannot be heard to question the constitution of the Complaints Committee at this stage when the result of the enquiry has gone against her, particularly when the enquiry proceedings have been conducted after observing the principles of natural justice and the findings of the Committee are based upon the material produced before it."*

24. Even on merits, the contention with respect to the absence of Dr. Tandon, the NGO representative deserves rejection. Firstly, on a factual note, the Inquiry record, which was called for and has been perused by the Court, reveals that Dr. Tandon attended most of the inquiry proceedings before the ICC and was not present on some dates towards the end and thus majority of the witnesses had deposed in her presence. On the legal aspect, coming to the statutory regime in this context, Section 4(2) of the 2013 Act stipulates the constitution of the ICC and provides that it shall include: (a) Presiding Officer, who should be a woman employed at a senior level at workplace from amongst the employees. The proviso enables nomination of the Presiding Officer from other offices or administrative units of the workplace in case the senior level woman employee is not available in the concerned department; (b) two members from amongst the employees, preferably committed to the cause of women or experience in social work or having legal knowledge; and (c) one member from amongst an NGO or associations committed to the cause of women or a person familiar with issues relating to sexual harassment. Section 4 further provides that at least one half of the total members shall be women. The purpose of constituting the ICC is to look into complaints received from the employees and against the employees, from time to time, pertaining to acts of sexual misconduct. ICC has a tenure of three years and performs multifarious tasks including



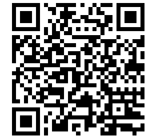
conducting inquiries into the sexual harassment complaints. While the 2013 Act provides the constitution of the ICC, it does not provide the manner for conduct of the inquiry. In exercise of power conferred under Section 29 of the 2013 Act, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (hereinafter referred to as the '2013 Rules') were framed by the Central Government. Rule 7 thereof lays down the manner in which the inquiry into a complaint of sexual harassment is to be conducted by the ICC. Rule 7 is extracted hereunder, for ready reference:-

> ***"7. Manner of inquiry into complaint**.- (1) Subject to the provisions of section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.*
>
> *(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days.*
>
> *(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).*
>
> *(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.*
>
> *(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an exparte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:*
>
> *Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.*
>
> *(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.*
>
> *(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present."*



25. From a conjoint reading of the 2013 Act and 2013 Rules, it is clear that the inquiry conducted by the ICC is a full-fledged inquiry. Rule 7(7) of the 2013 Rules provides that in conducting the inquiry a minimum of three members of the Complaints Committee, including the Presiding Officer or the Chairperson, as the case may be, shall be present. Section 4 of the 2013 Act only provides for constitution of the inquiry while the manner of conducting the inquiry is laid down in the 2013 Rules. It is a settled law that Rules cannot supplant or supersede the parent Act or be made in derogation thereof, however, it is equally settled that Rules can supplement and fill in the gap in the Act. It is evident that the 2013 Act only lays down the constitution of ICC and the 2013 Rules framed under Section 29 of the 2013 Act, supplement and provide the manner of holding the inquiry. Conjoint reading of Section 4 and Rule 7(7) leads to an inevitable conclusion that as long as the inquiry is conducted by a Committee comprising of three members including the Presiding Officer or the Chairperson and more than one half are women, the constitution cannot be faulted. Rajasthan High Court had the occasion to deal with this very issue in ***Shital Prasad Sharma v. State of Rajasthan & Ors., 2018 SCC OnLine Raj 759*** and relevant paragraphs are as follows:-

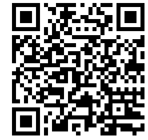
> ***"70.*** *If the submission of Mr. Lodha is to be accepted, the composition and constitution of Internal Complaints Committee will always be dependent on the rank of the person against whom such complaint is to be examined. The purpose of constituting Internal Complaints Committee as per the requirement of Section 4 of the Act of 2013 has been to appoint a Committee for a tenure of three years to look into the complaints received against the employees from time to time committing the act of sexual misconduct. Once a Committee is constituted as per Section 4 of the Act of 2013, there cannot be change of Presiding Officer as per rank of official against whom charge of sexual harassment is framed.*
>
> ***71.*** *So far as the submission of Mr. Lodha that since the members of the Committee were not having legal knowledge, the Committee is to be vitiated on account of violation of sub-section (2) (b) of Section 4 of the Act of 2013, is concerned, this court finds that the authority/State*



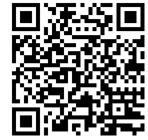
> *Government is required to nominate two members from amongst the employees preferably committed to the cause of women or who have the experience in social work or have legal knowledge and since the word 'preferably' is there, it cannot be construed that any person having no legal knowledge will not be able to be a member of the Committee.*
>
> ***72.*** *The submission of Mr. Lodha that since one member of NGO did not attend the meeting when the report was submitted, is liable to be rejected, as on the date of submitting the report, if member of NGO was not present, the said report cannot be vitiated.*
>
> ***73.*** *The perusal of sub-rule (7) of Rule 7 of the Rules, 2013 would reflect that in conducting the enquiry, a minimum of three members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present. A perusal of the enquiry report, in the case in hand, shows that there were as many as five members who had prepared the enquiry report and have submitted the same to the authority concerned for taking further action. The allegation of the petitioner that due to non participation of one of the member of NGO, the enquiry report stands vitiated, cannot be accepted in view of the present of more than three persons, as required under sub-rule (7) of Rule 7 of the Rules, 2013."*

26. In the present case, the ICC comprised of 3 members at all times, including the Chairperson and 2 out of three members were women. Thus, the inquiry was in consonance with the Rules and the contention that it stands vitiated, has to be negated. There is another aspect of the matter. The objective of involving an external member of the NGO is to ensure impartiality and transparency in the inquiry proceedings. In the present case, Chairperson of the Committee was Ms. Adhikary, Principal, KVS, an outside/external member and therefore, the purpose and objective of including an external member in ICC i.e. ensuring there is no bias and/or proceedings are conducting fairly and as per Rules, stands achieved and it is significant to take judicial notice of the fact that there are no allegations of bias against any member of the ICC.

27. Petitioner also questions the very holding of the inquiry under Rule 14 of the 1965 Rules. In a nutshell, the contention was that the Disciplinary Authority ought to have acted on the report of the Preliminary Inquiry

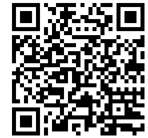


Committee and passed a penalty order, without recourse to a further inquiry under Rule 14. Having participated in the inquiry, this plea is not open to the Petitioner only because ICC has rendered a finding that the charge is not proved. Preliminary inquiry was initiated based on the investigation report rendered by Mr. Gupta on 10.04.2017, triggered by a complaint by the Complainant dated 25.01.2017. This was only a fact-finding preliminary inquiry, which made some observations, but no findings were rendered, a fact not disputed by the Petitioner. Preliminary Inquiry Committee rendered a report on 29.12.2017, observing that there was an essence of truth in Petitioner's statement that she was harassed by Respondent No. 3. Based on the observations in the report, disciplinary proceedings were initiated against Respondent No. 3 in consonance with the service rules and charge-memo was issued on 20.06.2018 under Rule 14 of the 1965 Rules alleging physical, mental and sexual harassment of the Petitioner. No objection was raised against the issue of the charge-memo under Rule 14 and Petitioner participated in the inquiry, without any protest/objection. In ***Medha Kotwal Lele (supra)***, the Supreme Court held that the inquiry relating to allegations of sexual harassment will be conducted by the employer in accordance with the service rules, wherever existing. The ICC report rendered prior thereto is only a preliminary fact-finding report, which serves the basis, on which the ICC recommends to the employer to initiate disciplinary proceedings. This issue came up before the Calcutta High Court in ***Debjani Sengupta (supra)*** and the Court held that a conjoint reading of Sections 11, 13(3) and (4) shows that once there is a complaint before the ICC, the committee should proceed in accordance with service rules applicable to the employee and where no service rules exist, ICC would proceed in the manner prescribed. Therefore, when service rules exist, report of ICC will be a fact finding or preliminary



inquiry report with regard to allegations of sexual harassment and employer will proceed under the service rules to hold an inquiry before imposing penalty. Setting aside the impugned order, Court directed for issuance of chargesheet under the service rules and to proceed therefrom. Thus, the contention of the Petitioner that disciplinary authority ought to have treated the preliminary inquiry report as the final report and proceeded to impose punishment on Respondent No.3, cannot be sustained in law. Petitioner does not dispute that 1965 Rules are the existing service rules and Rule 14 thereof will govern the disciplinary proceedings, post the amendment, when proviso was added as a result of judgment in ***Vishaka (supra).*** Relevant paragraphs of the judgment in ***Debjani Sengupta (supra)*** are as follows:

> ***"21.*** *A harmonious reading of Sections 11, 13(3) and 13(4) would clarify the position that once there was a complaint before the ICC, the committee should proceed in terms of the service rules applicable to the employee and where no service rules existed, then the ICC should proceed in such manner as may be prescribed, and parties should be given an opportunity of being heard. While proceeding with such an inquiry the ICC would have the power vested in a civil Court which included examination of witnesses, discovery and production of documents, etc. As the ICC had the power to summon witnesses and take their statement, rules of natural justice demanded that the ICC should also enable the parties to cross-examine such witnesses. Section 13(3)(i) provided that when the charges made in the complaint were proved, the ICC was empowered to recommend to the employer that action should be taken against the employee by treating sexual harassment as a misconduct in accordance with the service rules of the respondent.*
>
> *xxx xxx xxx*
>
> ***23.*** *From a conjoint reading of the provisions of Section 13(3) of the said Act and Rules 7 and 9 of the said Rules, it emerges that where service rules existed, the report of the ICC was a fact finding report or a preliminary report with regard to the allegation of sexual harassment and the employer was bound to then proceed under the service rules before imposing any major penalty.*
>
> ***24.*** *In this case, the ICC made a recommendation. The recommendation of the ICC is quoted below:—*



"After due consideration of the investigation of this case, ICC has come to the conclusion that the respondent should be awarded major penalty of Reduction in the Grade for Five years (static) along with Removal of Management Authority comprising sanctioning leaves and doing appraisals for five years. The above penalty is considered by the ICC in synchronization with the Sexual Harassment Policy and Disciplinary Procedures of the Institute of Cost Accountants of India."

25. *The employer on the said recommendation was then mandated to initiate a disciplinary proceeding in terms of the service rules of the employee and only in cases where there were no service rules, was the ICC empowered to recommend punishment, but, in all cases where service rules existed, the disciplinary authority was mandated to proceed on the basis of the service rules by initiating a disciplinary proceeding before imposing any major penalty. Section 28 of the said Act also clarifies the position that the said Act was in addition to and not in derogation of any other law for the time being in force meaning thereby, the said Act was also not an alternative to the service rules of an employee. Once the charge of sexual harassment was proved before the ICC, the basis for proceeding against the accused employee for committing the misconduct of sexual harassment was already there. In other words, with the findings of the ICC, the ground for inquiring into the truth of any imputation of misconduct or misbehaviour were already in existence. In this case, the institute has its own service rules. Pursuant to the recommendation of the ICC, the service rules ought to have been followed and the employer, that is, the respondent no. 3 herein ought to have initiated proceedings in terms of Rule 91of the service rules and should have proceeded from the stage of Rule 91(iii) and ought not to have issued the memorandum dated February 19, 2019 straight away under Rule 91 (viii) upon consideration of the response of the respondent No. 7 to the show-cause notice issued by the respondent No. 3. Invocation of power contained in Rule 91 (viii) does not require issuance of a show-cause notice to the employee and seeking a response from the employee to the enquiry report of the ICC. As such, the memorandum impugned to this writ petition is misconceived, contrary to law and contravenes the service rules.*

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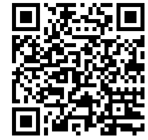
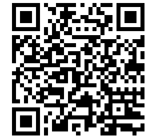
30. *For the reasons aforesaid, the order dated February 19, 2019 suffers from illegality and is quashed and set aside both, on the ground of procedural impropriety and also violation of the principles of natural justice. The respondent no. 3 is directed to take immediate steps as indicated above in accordance with Rule 91 of the service rules, treating sexual harassment as misconduct. A charge sheet under Rule 91(iii) of the service rules should be issued and the proceedings should be conducted from that stage as per the service rules. It is expected that the disciplinary proceedings thus initiated should be concluded within a period of three months from initiation thereof. The contentions of the respondent institute and the respondent no. 7, that the report of the ICC was vitiated due to*



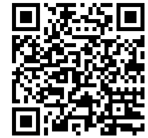
> *the illegality in the procedure followed by the ICC, cannot be decided in this case as the decision of the ICC is not under challenge before this Court."*

28. Next plank of the argument of the Petitioner was that the ICC ignored the evidence of two material witnesses, Mr. Juglal, ex-Member Secretary, NCTE and 'YYY', SO and erroneously held that the charge was not proved. Before examining this contention, it is important to have a look on the observations and findings of the ICC. Noting that the complaint dated 25.01.2017 was bereft of necessary details of dates of the alleged incidents, which ought to have been mentioned, since Section 9(1) of the 2013 Act stipulates a period of three months from the date of the incident or in case of series of incidents, period of three months from the date of last incident, within which the aggrieved woman can file a complaint, ICC was of the view that Presenting Officer was unable to justify the reason for not making a complaint within the time stipulated. On the evidence led, ICC observed that it was apparent from 'YYY's own statement that she had no knowledge of the present case or the alleged incident(s) relating to the Petitioner and the incident narrated by her in respect of 'ZZZ' had nothing to do with the allegations in the present charge-memo. ICC thus concluded that there was no evidence on record to hold that Respondent No. 3 did not maintain cordial relations with other women officers. ICC returned a finding that no evidence was produced by the Presenting Officer substantiating the allegations made by the Petitioner that her leave was denied many times by Respondent No. 3 and also failed to justify how she absented without sanction/approval of leave. ICC took note of the stand of Respondent No. 3 highlighting that he had earlier informed the CVO, Sh. Manik Mandal about the irregular attendance, late coming and early leaving of the office by the Petitioner, who had then assured that he will



bring the matter to the notice of the concerned authority. After examining the entire evidence on record, ICC gave a finding that Petitioner had worked as PA under Respondent No. 3 during 2016-17 in the Vigilance Section and her complaint dated 25.01.2017 was primarily centred around the missing vigilance file and while in paragraph 5 of the complaint, there was a mention of alleged mental, physical and sexual harassment by Respondent No.3, however, complainant was unable to bring any evidence, documentary or oral or circumstantial, in support of the allegations levelled. In light of lack of evidence in support of the charge, the ICC came to a finding that the charge was 'not proved'.

29. First and foremost, be it ingeminated that scope and ambit of judicial review in matters relating to departmental inquiries is extremely limited and narrow, *albeit* it is equally settled that technical rules of evidence should not come in the way of a complainant to get justice, if the allegations are otherwise proved in inquiries relating to sexual harassment. The Supreme Court has also cautioned the Courts from invalidating inquiries into sexual harassment on specious pleas and hyper-technical interpretations of service rules. Nonetheless, appreciation and re-appreciation of evidence is still beyond the scope and remit of the writ Court while dealing with departmental inquiries. It is a settled law that if the conclusion drawn by the Inquiring Authority, whether of guilt or otherwise of the charged officer, is a plausible conclusion, based on material on record or lack of material and evidence, it is not for the High Court in a writ jurisdiction under Article 226 of the Constitution of India to review the evidence and material on record and come to a different conclusion or finding. Where the departmental inquiry is conducted fairly and required procedure has been followed, with no violation of principles of natural justice, examination of adequacy or reliability of evidence is

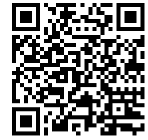


beyond the remit of this Court. Departmental inquiry proceedings are quasi-judicial and a writ Court is not a court of appeal. It is equally settled that inquiry proceedings are not totally insulated and High Court can interfere if it is found that the ultimate conclusion is based on no evidence or finding is so perverse that no reasonable or prudent person could have reached that conclusion, basis the evidence on record or where it is a proven case of bias of inquiry officer or violation of mandatory procedure or principles of natural justice, resulting in prejudice to either side. In this context, I may refer to the judgments of the Supreme Court in ***Union of India v. H.C. Goel, AIR 1964 SC 364; B.C. Chaturvedi v. Union of India and Others, (1995) 6 SCC 749*** and ***Aureliano Fernandes v. State of Goa and Others, 2023 SCC OnLine SC 621.*** It would be relevant to allude to the judgment of the Supreme Court in ***Union of India and Others v. P. Gunasekaran, (2015) 2 SCC 610,*** wherein the Supreme Court has laid down parameters within which the High Court can interfere in an inquiry proceedings and relevant passages are as follows:-

> ***"12.*** *Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*
>
> *(a) the enquiry is held by a competent authority;*
>
> *(b) the enquiry is held according to the procedure prescribed in that behalf;*
>
> *(c) there is violation of the principles of natural justice in conducting the proceedings;*
>
> *(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*

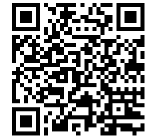
> *(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
>
> *(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
>
> *(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
>
> *(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
>
> *(i) the finding of fact is based on no evidence.*
>
> ***13.*** *Under Articles 226/227 of the Constitution of India, the High Court shall not:*
>
> *(i) reappreciate the evidence;*
>
> *(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
>
> *(iii) go into the adequacy of the evidence;*
>
> *(iv) go into the reliability of the evidence;*
>
> *(v) interfere, if there be some legal evidence on which findings can be based.*
>
> *(vi) correct the error of fact however grave it may appear to be;*
>
> *(vii) go into the proportionality of punishment unless it shocks its conscience."*

30. Present case will have to be thus examined in light of the settled principle that acting in a supervisory and not appellate jurisdiction, this Court will not re-appreciate evidence and interfere in findings of fact reached by the inquiry officer, unless the Petitioner shows that material evidence has been ignored or inadmissible evidence has been admitted by ICC. Be it reiterated that Petitioner neither pleads nor urges bias of the ICC members nor it is her case that there were any procedural violations and/or unfairness in conduct of the inquiry proceedings. I may now deal with the contention of the Petitioner that ICC has ignored the evidence of two material witnesses. The genesis of the present inquiry lies in a complaint made by the Petitioner on 25.01.2017. It is evident from a bare perusal of

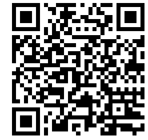


the complaint, as rightly contended by the Respondents, that it was largely and broadly structured on the issue of the missing vigilance file and while in paragraph 5, Petitioner alleged mental, physical and sexual harassment by Respondent No.3, but no date(s) of alleged incident(s) or the incidents were mentioned. Since the complaint was largely on the issue of misplaced vigilance file, initial investigation proceeded in that direction and findings were centred on the file. However, in view of allegations in Paragraph 5, the matter was also referred for conducting a fact finding preliminary inquiry and after the report of the Committee, charge-memo was issued to Respondent No.3 and inquiry was held by the ICC, in accordance with the applicable service rules i.e. Rule 14 of 1965 Rules. Respondent No.3 submitted the Statement of Defence in writing and examined Sh. Mohinder Singh as defence witness. He chose not to offer himself as a witness and therefore, after examination and cross-examination of defence witness, defence case was closed. Respondent No.3 was generally examined by ICC under Rule 14(18) of 1965 Rules. As a matter of record, the witnesses examined during the course of inquiry on behalf of the department were 'YYY' and R.C. Chopra, both SOs (Vigilance); Mamta Gupta, PA; Deepak, Helper; Rajendra Singh, Guard and the Petitioner, while Mohinder Singh was examined as defence witness. Petitioner relied on her written statement before the Preliminary Inquiry Committee and was cross examined by the Defence Assistant. The allegations of harassment can be broadly classified in 3 compartments: (a) pressure by Respondent No.3 to initiate a written note for the misplaced/missing vigilance file and lodge an FIR; (b) denial of leaves to the Petitioner as a method of harassment; and (c) sexual harassment.

31. Indisputably, the complaint, which was the starting point, came on 25.01.2017 i.e. closely after the incident of missing vigilance file No. 7-

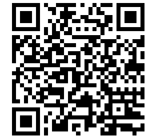


6/2016/NCTE/Vig. in December 2016. From the evidence, it is established that it was the Member Secretary (Competent Authority) who had issued two directions, one to lodge an FIR and the other for the custodians to answer for the lapse. Evidence shows that Petitioner was in-charge of keeping/storing the vigilance files in the cupboards, which had 2 sets of keys, one of which remained with the Petitioner and other with Respondent No.3, who was the Under Secretary (Vigilance). One of the witnesses, Sh. Chopra, stated before the Investigating Officer Sh. Sanjay Gupta (Ex.S1/77-84) that Respondent No.3 informed him of the missing file '7-6/2016/NCTE Vig.' telephonically on 10th and 13th January, 2017 as Sh. Chopra was on leave on 11th and 12th January, 2017. Thereafter, note was put up on his table by the Petitioner on 13th/16th January, 2017, informing that the file had been misplaced somewhere in the office or in the transit. Thereafter, efforts were made to see if the file could be reconstructed. He further stated that since Petitioner was maintaining the files of vigilance section, as a custodian, she must know her role to ensure the safe custody of vigilance files. There were two sets of keys and one set of keys of Almirahs housed in Room No.110 including the keys of outside gate and the cabin were handled by the custodian of the keys, i.e. the Petitioner and one set of keys of outside gate and its cabin was also handled by Respondent No.3 which was given to the Petitioner on 31.01.2017 on her request for opening and closing the door. It was the Competent Authority who had directed that FIR be lodged and accordingly, through proper channel, matter was marked to the Petitioner to do so. Establishment section issued directions to inquire into the lapse by the custodian of the file. The file was later found on 01.02.2017 by the Petitioner and she had intimated about this on the same day. Another witness Deepak, who was a contractual employee working as a helper/MTS since 2013, deposed that he

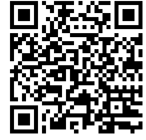


had knowledge that the vigilance file was misplaced and on being asked to search, made efforts but could not locate the file. He also stated that vigilance files were given to him for storing in the cupboards and the bunch of keys used to be given by the Petitioner. After keeping the files back in the cupboards, he used to return the bunch to the Petitioner, who was the custodian. Petitioner never denied that she was in custody of one set of keys of the cupboard where the file was kept *albeit* she did state that there were 2 sets of keys, of which one remained in her custody and other with the charged officer. The depositions of both the witnesses and the Petitioner shows that Petitioner was the custodian of the vigilance file, a fact which she disputed, but was unable to substantiate in her favour.

32. Petitioner's testimony on the misplaced file is replete with contradictions. She did not dispute that the vigilance file went missing and/or she was the one who had intimated that it was found subsequently. On how the Petitioner gained knowledge of the missing file, her statement was that she learnt of the missing file from Saras Dubey, DEO on 19.12.2016/20.12.2016 and attempted to find the file in the room of the charged officer. Saras Dubey was very worried and told her that Respondent No.3 was making inquiries about the file and if the file was not traced, Saras Dubey would lose his job. On the reason for initiating the note dated 03.01.2017, Petitioner testified that on 03.01.2017, Respondent No.3 told her to give in writing that the file was lost, in response to which she told him that they should first search the file and thereafter she would give in writing, if the file was not found, but the officer pressurised her and also directed her to lodge an FIR as she was the custodian of vigilance files. In her cross-examination by the Defence Assistant, Petitioner initially stated that she could not recollect if Respondent No. 3 was in office on

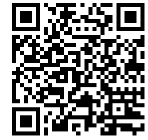


03.01.2017 but on further cross-examination admitted that Respondent No. 3 was on official tour from 03.01.2017 and she was aware of this fact on 02.01.2017 itself. She further stated that she received instructions from Respondent No. 3 on 10th and 11th January, 2017 and had placed the Note dated 03.01.2017 on his table on 12.01.2017. This makes it evident that the Note dated 03.01.2017 was not at the instance of Respondent No. 3, much less under his pressure. Petitioner stated in her cross-examination that she came to office on 12.01.2017 despite her being on leave and placed the note on the table of Respondent No. 3. If the note was placed on the table on 12.01.2017, it is not understood why the same was dated 03.01.2017, when on the said date admittedly she was not instructed to initiate a note. Significantly, in response to a pointed question in cross-examination as to whether it was correct that she received a note on 24.01.2017 by which she was asked to lodge a complaint/FIR, Petitioner stated 'Yes'. This further belies the stand that Respondent No. 3 had pressurised her into initiating a note and in fact, strengthens the case of the Charged Officer that upon receiving this note on 24.01.2017, a complaint was made instantly by the Petitioner on 25.01.2017 apprehending action. A suggestion was also put in this context to the Petitioner that the complaint on 25.01.2017 was in anticipation of the Police questioning her if the FIR was lodged. The allegation of the Petitioner that Respondent No. 3 was putting pressure to sign the note of the missing file and/or lodge an FIR is also belied by the record and the first investigation report of Sh. Sanjay Gupta from which it is clearly emanating that both these directions were in fact issued by the Member Secretary, after the file was put up to him, through proper channel, which included Respondent No. 3, since he was the Under Secretary (Vigilance). Thus Petitioner failed to establish the allegations that Respondent No.3 harassed her on the pretext of misplaced vigilance file by



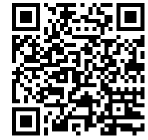
pressurising her to initiate the Note dated 24.01.2017 and/or lodge an FIR and there is substance in the contention of Respondent No.3 that Petitioner filed the complaint on 25.01.2017, after she received the note on 24.01.2017 to lodge FIR, as she feared that disciplinary action will be taken for the misplaced vigilance file as also that she would be interrogated by the police.

33. On the second issue that Respondent No.3 denied/objected to the leaves of the Petitioner, it glaringly comes forth from the evidence and noted by the ICC, that this allegation was incorrect and contrary to the official record. Leave record fortified the stand of Respondent No. 3 that Petitioner had been regularly availing leaves and had even absented herself from the office on some occasions without leave application and/or leave sanction. As an illustration, when Petitioner was cross-examined with respect to her being on leave from 09.01.2017 to 20.01.2017, contrary to the leave record reflecting that no leave was debited for this period, she evasively stated that inquiry be made from the Establishment section in this regard. When cross examined on CCL from 14.09.2015 to 28.10.2015 i.e. for 44 days, without sanction, Petitioner offered no justification. Pertinently, ICC observed that *"However, PO did not make this point clear in his examination in chief of 'XXX' as of how could she availed leave without proper approval neither he could produce any document which justify that her leave have been denied many times (as mentioned in page no.7 point no.3 of written brief of PO). Though CO in his written brief (page no.67 point no.iii) cleared that her leave was denied only once that too stating the reason that CVO, MHRD was to conduct meeting with NCTE."* Respondent No.3's stand was clear that Petitioner was regularly absenting, taking leaves, coming late and going early and he had brought her conduct to the notice of the CVO, Sh. Manik Mandal and fearing that



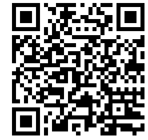
her APAR may be downgraded, Petitioner did not submit the APAR for 2015-16, after completing self-appraisal and same position continued for APAR for the year 2016-17. He proved that Petitioner's narrative that her ordeal started 2 months after his joining in July, 2015, was false and motivated because he had objected to her repeated absence, from the attendance record from July, 2015 to September, 2015 which reflects her not being on duty for 5, 8 and 8 days, respectively. Respondent No.3 did admit that leave was denied on one occasion as the CVO, MHRD was scheduled to conduct a meeting and this is noted by the ICC. Mohinder Singh, the Defence Witness deposed that Petitioner would often leave her seat to pick up her children from school and drop them at home and Petitioner did not controvert this statement. Therefore, the allegations in respect of the file and denial of leaves, were not established by the Petitioner during the inquiry.

34. Insofar as allegations of sexual harassment are concerned, coming to the statement of Sh. Juglal, he was not a witness in the inquiry under Rule 14 of 1965 Rules. Reliance was placed on his statement in the Preliminary Inquiry, which did not reflect that Petitioner had complained to him of sexual harassment by Respondent No.3. Insofar as witness 'YYY' is concerned, the ICC noted that she had admitted at the start of the Preliminary inquiry that she had no knowledge of any incident related to Petitioner's case and this stand of the witness was consistent. Her reference to an alleged incident way back in the year 2003 narrated to her by 'ZZZ' did not establish the allegations under the charge-memo and ICC rightly observed that if Presenting Officer wanted to lead evidence on the character of the charged officer, he could have summoned 'ZZZ' for examination. In light of lack of evidence to substantiate the charge levelled against Respondent No.3, the contention of the Petitioner that the ICC overlooked



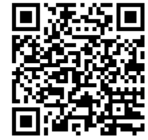
the testimonies of the aforementioned two witnesses and erred in rendering a finding that the charge was not proved, has no merit.

35. Insofar as the testimony of Petitioner is concerned, there can be no quarrel with the legal proposition that in a given case the sole testimony of the aggrieved woman may be sufficient to prove the charge, where the testimony inspires confidence. In the present case, as noted above, Petitioner's stand on the missing file and alleged denial of leaves by Respondent No.3 was found to be contrary to the evidence of other witnesses as well as the official record. In her cross-examination, Petitioner made several self-contradictory statements and seen holistically, from the evidence it emerged that she had been coming late to the office and absenting without approval/sanction of leave and that complaints were made by Respondent No.3 in this regard. An attempt was made to even falsify the biometric attendance record during the cross-examination. ICC observed that Petitioner was never denied leave, save and except, on one occasion when a meeting was scheduled by CVO, MHRD. Petitioner was unable to establish the allegation that Respondent No. 3 declined to grant her leave, when required. In fact, the cross-examination of the Petitioner reflects that she was on CCL from 14.09.2015 to 28.10.2015 without any sanction and in answer to Question No. 105 on this aspect, she first denied being on CCL, however, on being shown Ex.D1/7-8, which was the biometric attendance record, showing her absence, she admitted that on account of her child's ill-health, she used to be absent from time to time. Even on the aspect of the missing vigilance file, Petitioner failed to establish that she was not the custodian of the files and/or that Respondent No.3 had pressurised to initiate the Note or lodge an FIR. Coming to the allegations of sexual harassment against Respondent No. 3 that he touched the hand of the Petitioner on the mouse of the computer or her knees on the



pretext of looking into the computer etc. are concerned, ICC observed that the allegations were vague and general and Petitioner did not mention any date(s) of the alleged incidents, either in the complaint or in the deposition and never took any step to even request for a change of her section/office. From a perusal of the inquiry report as well as the deposition and the complaint of the Petitioner, this Court agrees with the ICC that the allegations were vague and unsubstantiated even by circumstantial evidence and in my view, do not even meet the threshold of preponderance of probability for this Court to interfere in the inquiry report. The falsity of her stand with respect to the issues of the missing file and the denial of leaves, does not repose confidence to accept the version of the Petitioner in the absence of corroboration. Respondent No.3 is right in his stand that complaint was made by the Petitioner on 25.01.2017 only after she was asked to report the incident of missing vigilance file and lodge an FIR on the direction of the Member Secretary, as she apprehended interrogation by the police and/or criminal and disciplinary proceedings against her. This is amply clear from a reading of the complaint, which was more in the nature of defence and an attempt to escape an action for the misplaced vigilance file but was given a colour of sexual harassment complaint by adding one paragraph with vague allegation of mental, physical and sexual harassment, without any dates or incidents.

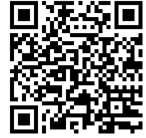
36. It needs no emphasis that an inquiry officer is the best judge and master of evidence and findings of facts. This Court cannot, in its limited jurisdiction of judicial review under Article 226 of the Constitution of India, embark on the journey of re-appreciating evidence and come to a different finding. Having analysed the inquiry report and the submissions of the parties, this Court does not find the conclusion/finding of the ICC to be perverse or without application of mind. The Disciplinary Authority has



accepted the report and no infirmity is found in the said order nor any has been pointed out on behalf of the Petitioner, warranting interference. The argument that Sh. Jain should not have accepted the appointment as a Defence Assistant of Respondent No.3, also has no merit as the same was independent of his functioning as Investigating Officer in other cases of NCTE and no material was placed by the Petitioner before the ICC to prove that there was a conflict of interest. Even today, Petitioner has been unable to substantiate the allegation.

37. It was argued that if there was truth in the stand of Respondent No.3 with regard to the conduct of the Petitioner in taking leaves or absenting etc., he would have imposed a penalty or downgraded her APARs. This issue has been aptly answered by Respondent No.3 and noted by ICC that Petitioner did not submit her APARs for the years 2015-16 and 2016-17 and thus he never had the opportunity to reflect her work and conduct. Submission of APARs is a matter of official record and perhaps for this reason, this issue was not controverted by the Petitioner before the ICC. The contention is wholly devoid of merit and is rejected.

38. Insofar as the contention of the Petitioner that there is a violation of Section 12 of the 2013 Act is concerned, a bare reading of the statutory provision shows that the recommendation of the Committee can only be made for transfer of the aggrieved woman or the Respondent to any other workplace, during the pendency of an inquiry, if a written request is made in that behalf. Perusal of the record reflects that no such request was received from the Petitioner by the Inquiry Committee. Even assuming that such strict Rules of procedure can be stretched to holding that even if there was no written request, an oral request may suffice in a given case, even then the Petitioner has no case on this score as at no stage even an oral



request was made to the employer or to the Committee to transfer Respondent No.3 from the workplace. In fact, the ICC takes note of this fact that if the Petitioner was facing harassment, she could have approached the concerned authority at some stage to request for her being moved out of the section, which she chose not to do. This contention, therefore, is devoid of merits.

39. For all the aforesaid reasons, this Court finds no merit in the petition warranting interference in the impugned inquiry report or the order of the Disciplinary Authority and the writ petition is accordingly dismissed along with the pending application.

JYOTI SINGH, J

DECEMBER 21, 2023/*shivam*