

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

Reserved on : 06.04.2009
Pronounced on : 12.10.2009

+ **WP (C) No.1730/2001**

U.S. Verma, Principal, D.P.S. Faridabad Petitioner

Through : Mr. Raju Ramachandran, Sr. Advocate with Mr. Reetesh
Singh and Mr. R.P. Singh, Advocates

WP(C) No.1733/2001

Delhi Public School Society Petitioner

Through : Mr. Rakesh K. Khanna, Sr. Advocate with Mr. Puneet Mittal
and Mr. Surya Kant, Advocates

Versus

National Commission for Women & Ors. Respondents

Through : Ms. Malvika Rajkotia, Advocate

WP(C) No.1731/2001

Jayshri Kannan and Anr. Petitioners

Through : Ms. Malvika Rajkotia, Advocate

Versus

U.S. Verma & Ors. Respondents

Through : Mr. Raju Ramachandran, Sr. Advocate with
Mr.Reetesh Singh and Mr. R.P. Singh, Advocates for
Respondent No.1.

Through : Mr. Rakesh K. Khanna, Sr. Advocate with Mr. Puneet
Mittal and Mr. Surya Kant, Advocates for DPS Society.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

- | | | |
|----|--|-----|
| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |

3. Whether the judgment should be reported in the Digest? Yes

HON'BLE MR. JUSTICE S.RAVINDRA BHAT

*

1. In W.P. No.1730/2001, two inquiry reports dated 29.06.1999 regarding the alleged sexual harassment at Delhi Public School, Faridabad (hereafter the "School") issued by the National Commission for Women (first respondent, hereafter "the Commission") are impugned. The petitioner is hereafter referred to as "Verma". One report, as received by him, is alleged to be of a three-member committee and the other, of a four-member committee, received by the DPS Society; both these committees were constituted on 25.05.1999. It is stated that both committees were constituted to look into the same allegations made by the common complainants (respondents no. 3 to 6, who are petitioners in W.P.-1731/2001 and referred to as "the teachers") in complaints dated 09.04.1999. Both the reports are similar in content and their conclusions are based on evaluation of common facts and statements of the same witnesses. The complaints were made before the Chairman of the Delhi Public School Society (hereafter DPS Society), by the teachers. The DPS Society has filed W.P. (C) No.1733/2001, and concerned allegations of sexual harassment by Verma, of the three complainants.

2. Verma alleges that the Commission could not have constituted two separate committees to investigate into the same matter on same date. It is pointed out that the four-member committee comprised of all the three members of the other committee, which was the three-member committee. The fourth member of the committee never participated in the proceedings. It was alleged that the no such committee was ever constituted and the reports were a sham, by pointing out that the petitioner was never informed about constitution of any committees. It is also stated that out of the four

complaints only one, dated 17.11.1998, was made to the Commission and the rest were addressed to the Chairman DPS Society. Verma states that on the back of these complaints contained an endorsement “delivered by hand, received by me on 17.05.1999” sd/- Shayeeda S. Hameed. Further, the two reports talk of the press conference held on 13.05.1999 held by the Commission along with the complainants. Thus, the Commission is put in the position of the complainants and as such it be could not be allowed to be a judge in its own cause. The approach of the Commission is challenged as being contrary to principles of natural justice and in transgression of all norms of exercise of legal authority since neither a copy of the complaints nor the material on which the investigation was initiated were ever supplied to Verma, despite repeated requests. His rights were prejudiced, as a notice of contents of the charges was never supplied to him; he was also never called upon to respond to any of the complaints; only summons were issued to him on 28.05.1999 to attend and depose before the Commission, without disclosing to him in what capacity and for what purpose was he had to report. The summons were not issued by any of the two committees formed for investigating the matter.

3. It is stated that the committees summoned none of the witnesses rather it was the Commission that summoned the witnesses. Two witnesses’ statements, i.e. Dr. Kamla Chowdhary and Justice (Retd.) N.N. Goswamy, Chairman, DPS Society were recorded on 25.05.1999 and summons were issued to them on 21.05.2009, four days prior to the constitution of the two committees. In the absence of any committee (on the date of issuing summons) the witnesses could not have deposed before such committees. It is also pointed out that no proceeding of the Commission ever took place. Verma states that only after repeated requests for providing a copy of the complaints and the documents, was he merely allowed to see and note down the contents of the complaints on 11.06.1999, and except for complaint dated 17.11.1998

no other complaint was made to the Commission. The Commission by neither putting Verma to notice nor supplying him a copy of the complaints and other documents violated principles of natural justice. The two reports nowhere discuss the dates on which the complaints were received, by Commission. Verma was neither given any notice nor allowed to participate in the day-to-day proceedings before the committees, and he was not permitted to cross-examine the witness or engage the services of an advocate. The complainants were allowed assistance by lawyers and NGOs. Further the citation of the instances of sexual harassments, innuendo, assault, demand for sexual favour and verbal abuses made against him are devoid of any particulars, vague and unspecific. The reports do not point out instances relating to which complainants aired their grievances.

4. Verma also challenges report of Dr. Kamla Chowdhary dated 17.02.1999, and other instances of sexual harassment, which were subsequently brought to the Commission's notice. He states that the four complaints shown to him were the complaints of Shyista Jabeen Raza, Jayshree Kannan and Shrini Kaul, dated 09.04.1999 and the complaint of Mrs. Anju Gupta dated 22.04.1999. Therefore it was not possible to give a report on the complaints two months before their presentation. He questions the veracity of the report of 17.02.1999 as it was without informing him of the charges against him or providing him a copy of the complaint and requiring him to appear. The authenticity of Dr. Chowdhary's report dated 17.02.1999 is also doubted as it does not mention of recording of statements of the witnesses, and, being conjectural, is based on no evidence. Verma contends that Dr. Chowdhary, in her letter dated 05.04.1999, admitted that no evidence was recorded by her before writing her report.

5. The finding in Ms. Choudhry's report regarding the DPS Society having not taken any action despite request by the Commission and letter dated 09.05.1999 of IFSHA /

SHAKSHI (NGOs) is alleged as incorrect. It is stated that a five member “complaints committee” was constituted by the DPS Society on 20.04.1999, and the fact was revealed to the Commission. Verma denies refusing to accept summons as stated in the impugned reports. He also challenges the Commission’s action in examining the Vice Principal of DPS Faridabad, Mrs. Renu Mittal; she proceeded on leave on 08.05.1997 and rejoined on 26.08.1997 and the very next day she again proceeded on leave. Thereafter she got herself transferred to DPS, R.K. Puram and remained there ever since. Thus, she could possibly have nothing to depose. The complaints pertain to the period that she was not at DPS, Faridabad. The conduct of the Commission in not letting the teaching staff depose in Verma’s favour and when had also written letters to the Commission for this purpose, is also questioned. The finding in the impugned reports that any threats to complainants, intimidation or pressure to withdraw the complaints were brought to the notice of the school authorities is challenged.

6. It is pointed out that during a Press Conference on 13.05.1999 and at the time of lodging the FIR there were only three of the four complainants, the fourth complainant (fifth respondent) refused to respond to the summons issued by the Commission. In such circumstances it is hard to comprehend why the impugned reports were made in respect of four complainants. Verma alleges that a reading of the impugned reports shows that no witness supported the allegations or corroborated the complainants’ version. It is submitted that the Faridabad Police, (including senior officials of the rank of DSP and a lady inspector) investigated the complaints and concluded in the report dated 22.06.1999 that they were baseless, recommending cancellation of the FIR registered against Verma. Further the impugned reports are challenged as beyond the jurisdiction of the committees in as much as they recommend reinstatement of the complainant teachers and staff members with full back-wages and continuity of service, and termination of the Principal. In terms of Section 10 of the National Commission for

Women Act (the Act) the Commission merely has powers to investigate the matter. It is alleged that the conduct of the complainants, Respondents 2 to 6 was *malafide* and motivated in an attempt to lower the image of the school and Verma, its Principal. On the basis of the above, quashing of the two impugned reports dated 29.06.1999 is sought.

7. The teachers and the Commission deny Verma's allegations, and urge that the report of the Sharda Nayak Committee (set up by the society hereafter called "the Vishakha Committee" or the "Sharda Nayak Committee") cannot be accepted. They argue that the Commission's report, written after following principles of natural justice, and recording depositions on oath, indicts Verma, and should be accepted. Their position is similar to what is taken by them in their writ petition, and would be discussed in detail, later in the judgment.

The DPS Society's writ petition

8. The DPS Society is aggrieved by the report of the National Commission. It claims to be an institution of repute, which has established several prominent and well known schools throughout the country. It contends that its Faridabad School was established in 1995 and that Verma was a leading spirit and had acted as its Principal. That school had 2600 students at the time of filing of the writ petition. It states that Verma had 38 years' teaching experience with unblemished career and was responsible for building up the Faridabad school.

9. The DPS Society alleges that the teachers' complaints are devoid of credence as all of them apparently colluded or joined hands to vilify Mr. Verma and the DPS Society. The DPS Society alleges that - Ms. Shyista Jabeen Raza (hereafter referred to as Ms. Raza) worked between 1.7.1997 and 7.4.1998 and was terminated due to inadequacies

in her work. The society relies upon memos issued to her on 20.08.1997, 22.09.1997 and 14.10.1997. It is alleged that Ms. Raza celebrated her birthday and accepted gifts from the students; the DPS Society also alleged that complaints were made against her from the Supervisor on two occasions. It is alleged that upon being served with the termination letter, Ms. Raza expressed the desire to resign; the affidavit of Ms. V. Lakshmi dated 28.07.1999 to that effect is relied upon. It is also alleged that after the termination on 9.4.1998 Ms. Raza sent a letter stating that she had suffered miscarriage on 7.4.1998 and was advised to rest for 45 days, she sought medical leave w.e.f. 13.04.1998. It is stated that on 9.4.1998 she met the then President of the Society Mr.Salmaan Khursheed and later wrote a letter on 30.04.1998 to the Member (Education) of the DPS Society. It is claimed that in that letter she leveled allegations of vindictiveness against the DPS Society. The DPS Society alludes to a review sought by Ms. Raza on 27.5.1998 regarding the termination of her services, which was rejected by the Society on 23.06.1998. In these circumstances, it is alleged that Ms. Raza joined DAV School, Ballabgarh on 6.7.1998. The DPS Society alleges that on 11.10.1998 Ms. Raza wrote a letter to the then President of the Society where she admitted representing on 30.04.1998 and reiterating the allegations made.

10. As regards the second teacher, Ms. Jayshree Kannan (hereafter referred to as "Ms. Kannan"), it is alleged that she was appointed as TGT w.e.f. 1.7.1995 on probation for a year and that she applied for the post of PGT in 1998. The DPS Society contends that there were discrepancies in the work experience claimed by her. It is contended that during her employment, on 2.9.1996, Ms.Kannan by a letter requested to be relieved of her duties, as she needed to devote more time at home. The Society also contends that she worked between 1996-1998 till applying for the post of PGT and never asked for being relieved. It also alleged that Ms. Kannan was careless and lost two answer scripts, of mid semester exams of a class Tenth student. It is alleged that

while giving her explanation she never mentioned about any harassment. The Society alleges that on 12.10.1998, the Secretary of the Principal of the Faridabad School noticed variation in Ms.Kannan's experience and credentials and submitted a note, which led to her being called by the Principal and discrepancies being pointed out. This ultimately resulted in her stopping to report to the school w.e.f. 12.10.1998 when she also resigned. Later she wrote on 15.10.1998 stating her desire to withdraw the resignation letter. It is contended that for the first time on 20.10.1998 Ms.Kannan wrote a detailed letter to the Chairman of the DPS Society complaining against Verma leveling allegations without any allegation of sexual harassment. The DPS Society refers to further correspondence between her and the school whereby acrimonious letters were written when she was asked to report on her absence; it is alleged that in a later letter dated 2.12.1998, though several allegations were made, nothing about the sexual harassment by Verma was ever referred to.

11. About Ms. Anju Gupta, the third teacher, the Society alleges that she was appointed as TGT on 1.7.1995 to teach Physics. The society refers to several complaints received about her performance and her eventual **resignation** on 23.07.1996. The Society states that though the resignation was submitted, it was not forwarded by the Principal for acceptance to the Society; however, Ms. Gupta's record was erratic and she sought 47 days' leave in 1998-1999. It is stated that eventually she resigned on 11.11.1998 on the basis of a medical certificate stating that she suffered from mitral wall prolapse syndrome.

12. The last staff member Ms. Shrini Kaul, the sixth respondent in the DPS Society's petition, joined the School on *ad-hoc* basis on 15.4.1998 and worked till 31.3.1999; as Receptionist. The DPS Society refers to some general allegations about Ms. Kaul's alleged misconduct and what it terms as her objectionable behaviour. It relies upon the

complaint of a parent and states that Ms. Kaul used to travel in private cars after school hours. The Society alleges that the Principal of the School, on 4.12.1998, saw her boarding a Maruti car and confronted her next day, upon which she became furious, alleging that it was her personal matter.

13. The Society alleges having received a letter from Ms. Raza dated 1.12.1998 and its President, referring the matter to the Member (Education) who in turn placed it before the Chairman – Justice (Retd.) N.N. Goswami (hereafter “the Chairman”). He requested Ms. Kamla Choudhry to look into the matter and report to him. On 11.1.1999 Dr. Kamla Choudhry informed Verma that the DPS Society constituted a two-Member Committee comprising herself and Ms. Sharda Nayak asking him to appear before that Committee on 14.1.1999. The DPS Society states that on 17.2.1999 Dr. Choudhry forwarded a report. The same is produced with the petition. It would be relevant at this stage to extract the said letter, which reads as follows: -

*“February 17, 1999
Justice N.N. Goswamy,
DPS Society
Flat No.26 & 27, F-Block
DPS Staff Chambers
East of Kailash
New Delhi – 110 065*

Dear Justice Goswamy:

You have referred to me two cases of alleged sexual harassment from teachers of DPS, Faridabad, against Mr. U.S. Verma, Principal of the School. The two files refer to the cases of –

- (i) Mrs. Sayishta Jabeen Raza*
- (ii) Jayshri Kannan.*

I have interviewed Principal Verma, as well as Mrs. Raza and Jayshri Kannan. In addition I have interviewed 4 others who have left the school

alleging in two cases, sexual harassment, and in other two cases “harassment” and unbecoming behavior of the Principal.

I have gone through the files and listened to the Principal and the six aggrieved persons – most of whom have left service.

After the long and painful interviews I have no doubt in my mind that sexual harassment and blatant outrage of women’s modesty has taken place in at least 3 cases and plain harassment in two cases. The wealth of detail in the women’s descriptions of the events, settings, Principal Verma’s conversations and actions conveyed complete conviction, a sense of authenticity that was enhanced by the evident pain which accompanied the revelations.

Several of them alleged that Principal Verma was able to get ‘signed papers’ supporting his version of any event he chose to highlight from some people who worked for the school. Because of fear and hope of favors, they did what he asked them to do in terms of helping to fabricate the documents he needed for harassment. Independently, some of the women who tried to stand up to him, mentioned that Principal Verma said nothing could happen to him since - in his words - “the President is in my right pocket, and the Chairman in my left pocket”. These very words were quoted independently by 4 of the interviewees.

Attempts at ‘physical contact’ was mentioned by 3 persons. The violation of ‘decency’ was alleged by all. The rejection of Principal Verma’s sexual advances was used for issuing notices alleging that work was not being properly carried out.

The statement of Chief Justice A.S. Anand of the Supreme Court seems to describe the situation of the interviewees well. Chief Justice Anand said that “sexual harassment is a form of discrimination projected through unwelcome sexual advances, the request of sexual favors and other verbal and physical conduct with sexual overtures, either directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance”. Further, he stated “the behavior of the accused did not cease to be outrageous for want of an actual assault or

touch by the superior officer". Principal Verma's behavior seems to have gone even further than the criteria laid by the Supreme Court.

The evidence of the 6 women interviewed inspired confidence. And although I believe that further investigation is not necessary, if however, this investigation has to be pursued further then in order to have a fearless probe the right conditions by speaking fearlessly will have to be assured so that nepotism does not subvert a free and fair probe.

Given the contemporary sensitivity of the issue of sexual harassment in our public life, the possibility that the media already has a scent of these happenings, I believe the Chairman needs to take strong and urgent action so that when this Pandora Box does open – as is quite possible – there is no room for an impression to be created that the DPS Society and its offices bearers were tolerating such reprehensible behavior.

Best wishes,

Yours sincerely

Sd/-

(Kamla Chowdhry)

Vice-President : DPS"

14. Apparently, in a subsequent meeting, senior Members of the Working Committee of the Society discussed the report during which Dr. Kamla Choudhry stressed about the need for confidentiality. The DPS Society refers to a letter written by Dr. Kamla Choudhry on 5.4.1999 stating as follows:-

"You mentioned in the meeting that in the files referred to me of Mrs. Sayisha Jabeen Raza, and of Jayshri Kannan, no mention of sexual harassment has been made. I agreed that in the written files of these two teachers, accusations of sexual harassment have not been made. IT was only during the interviews with these two teachers and others I invited that considerable data emerged which led me to the conclusion that a serious problem exists in DPS Faridabad and that the Society needs to take urgent concrete steps in handling it.

In the meeting on April 1 you had asked me to find out if the women who allege sexual harassment will write to you, giving details of such harassment. The teachers and other employees who alleged sexual harassment say that they have already given details of such harassment to The Society via the Vice-President. They were reluctant to put it down on papers fearing that the Principal with his power base in Faridabad might harm them further. However, if the Society wishes written notes (even after my investigation!) three of the interviewees were ready to do so and will be sending it to you for further action. I assured them that you were keen on taking appropriate action and will be protected.

I would like to emphasise again that it is important to take urgent action. The media has already a scent of these happenings and before this Pandora's box opens publicly we should be seen to be doing the right thing at the right time.

I also hope that you are considering the guide-lines as given by the Court for appointing a Complaints Committee for handling investigations of sexual harassment."

The above letter was written to the Chairman of the DPS Society, which says that immediately after the event, complaints were received by it, from Ms. Raza, Ms. Kannan and Ms. Kaul, on 17.04.1999, and that another complaint dated 22.4.1999 was received from Ms. Anju Gupta. The DPS Society alleges that these complaints were after thoughts and were concocted. It is alleged that the complainants and the National Commission, with an NGO held a press conference on 13.5.1999 leveling reckless allegations of sexual harassment in DPS, Faridabad. The DPS Society states that 105 teaching and non-teaching staff of the DPS, Faridabad in a meeting, resolved that the charges leveled against Verma were baseless; it refers to a Resolution forwarded to the Society on 19.5.1999. The Society states that in the meanwhile it had set up the Sharda Nayak Committee, which requested the complainants to attend its hearings. On 17.5.1999, two of the complainants – Ms. Raza and Ms. Kannan declined to appear before the Committee by writing letters; Ms. Kaul informed the Committee she had some prior engagements and was unable to attend the meeting.

15. The DPS Society submits that the National Commission preceded post-haste to lodge a complaint with the police authorities and also went ahead with own proceedings through two Committees. It also alludes to hearing dated 17.6.1999 and 21.6.1999 before the Sharda Nayak Committee when the complainants did not appear and the final date was fixed on 29.6.1999. It is contended that by then, the witnesses in support of Mr. Verma had been examined; the complainants appeared but did not depose and left the premises, which ultimately led to closure of the Society's Committee proceedings. It is contended that the same day, i.e. 29.6.1999, the National Commission, without providing any opportunity to the DPS held a press conference and released its reports holding Verma guilty of the charges of sexual harassment. Later on 2.7.1999, the DPS Society's complaint committee submitted an enquiry report, which after extensively considering all the materials concluded that there was no substance in the teachers' complaints. The Society alleges that the police report of the police dated 22.6.1999 was also received by it; that along with the two reports of the National Commission a report of the DPS Committee dated 2.7.1999 was made available to its General Body on 12.8.1999. After due deliberations and consideration of the matter, Society accepted the report and rejected the two reports of the National Commission. The Managing Committee of DPS Faridabad also followed suit on 16.8.1999. The Society also refers to an order, dated 28.10.1999 by the Magistrate, who accepted the closure of the complaints and rejected the Teachers' objections.

16. Besides joining Mr. Verma's contentions about the lack of jurisdiction of the National Commission and the proceedings enquiring into allegations leveled by the Teachers as was done, it is contended that provision of the Act particularly Section-10 do not permit any adjudicatory role, to the Commission. Relying on the Act, both Verma and the Society submit that the National Commission is only a consultative and advisory

body, clothed with investigative powers and its recommendations are not binding. The learned Sr. counsel for the DPS Society urges that the pattern of the enactment is similar to legislation setting up other Commissions – as in the case of National Minorities Commission, National Commission for Backward Classes etc. Reliance was placed upon decisions reported as *Bal Patil & Anr. V. Union of India and Ors.* 2005 (6) SCC 690 and *T.T. Anthony v. State of Kerala* 2001 (6) SCC 181 to submit that such Commissions cannot assume adjudicatory functions. It is also contended that the questions of sexual harassment at the workplace, addressed to by the Supreme Court in *Visakha v. State of Rajasthan* 1997 (6) SCC 241 also did not contemplate any role of the Commission as has been assumed in the present case. Learned counsel argued that if the intention of the Supreme Court was to clothe the Commission with any role, there would have been some express mention of such intention in the judgment. Reference is made to the decision in *Delhi Domestic Working Women Forum v. Union of India* 1995 (1) SCC 12 where the Supreme Court visualized a role for the National Commission under the Protection of Human Rights Act, 1993; the Court had also directed the National Commission to frame a scheme.

17. It is contended that one of the cardinal principles upon which our legal system is founded is a fair procedure, which should be followed by every authority before arriving at adverse findings against anyone. Such fair procedure would include prior reasonable notice, notification of the subject matter of enquiry or charge, reasonable opportunity to defend oneself and evaluation of the materials by impartial and unbiased tribunal who would render findings based on the materials presented during the course of the proceedings. The DPS Society supports Verma's contention that each of these essentials were breached by the National Commission while arriving at its conclusions, adverse conclusions regarding sexual harassment of the teachers. Both of

them rely upon the Sharda Nayak Committee report dated 2.7.1999, which exonerates Verma and states that it was compliant with the direction in *Visakha's* case.

18. The teachers deny the Society's allegations, and contend that the procedure adopted by the Sharda Nayak committee was defective, as the NGO member did not participate in the inquiry, which was why they did not attend its hearings. It is argued that the school and the society did not show any seriousness in dealing with the complaints, despite the Commission writing to them, in December, 1998, which led to the teachers approaching an NGO, in April, 1999. The Commission was concerned about the school's lack of responsiveness, despite the binding directions in *Vishaka*, as a result of which it was constrained to inquire into the matter; its conclusions accorded with the previous report of Dr. Kamala Chowdhary, of 17.2.1999. The attempt of the school to close the issue was deplorable, as it violated the law declared by the Supreme Court. The teachers' position is discussed in greater detail below.

The teachers' writ petition

19. The teachers, in their Writ Petition (W.P. (C) No.1731/2001) seek a direction to the DPS Society to terminate the services of Verma, and reinstate them (the petitioners) to their jobs with full back salary and consequential benefits. They also seek implementation of the Kamla Chowdhary Committee report dated 17.02.1999 and without prejudice to that, the findings and recommendations by the Commission's report dated 29.06.1999.

20. The teachers assert that the DPS Society and the School have a public duty towards the female staff, teachers and students, which they have failed to perform, thus infringing the Fundamental Rights as guaranteed under Articles 14, 19 and 21 of the Constitution. The teachers allege that Verma was found guilty of sexual harassment in

the report of the Commission and the Kamla Chowdhary Committee report, and non-compliance with the directions of the said report are illegal. Once the Committee was formed the second respondent was bound by its findings. The conduct of the Society in allowing Verma to continue in service violated the directions in the Commission's report to terminate his services.

21. It is pointed out that the committee set up by the DPS Society to investigate the matter was not in accordance with the *Vishakha Judgment* guidelines as there was no NGO participation. A member of that committee who claimed NGO credentials did not inspire confidence in the minds of the teachers. Despite requests, the terms of reference of that Committee were not divulged to them, which contravened principles of natural justice. It is alleged that the members of the DPS Society and the School attempted to cover up Verma's illegal acts. It was stated that the Chairman of DPS Society, in his deposition before the Commission, threatened the petitioners for seeking NGO support and stated that their careers were "sealed". It is stated that in not giving one month's obligatory notice to the second petitioner before terminating her services during the probation period the authorities violated Rule 28 (1) of Chapter VIII of Central Board of Secondary Education Affiliation Bye-laws, which regulate the conditions of service for the employees working in the school. It is stated that the teachers lost their jobs and are unable to secure fresh ones, resulting in grave financial difficulty; and it is alleged that the DPS Society is preventing the petitioners from securing jobs and even the police complaints by them in that regard have failed.

22. It is argued that Ms. Kamla Chaudhry's report unequivocally recorded a *prima facie* finding of sexual harassment by Verma after having met all the complainants and after interviewing them. It is urged that this finding is corroborated by the report of the Commission, which went into the complaints in great detail, recorded the depositions of witnesses, including of two members of the management of the DPS society, before

concluding that Verma had behaved improperly and that such behavior amounted to sexual harassment within the meaning of the term spelt-out in *Vishakha*.

23. Ms. Rajkotia, learned counsel submitted that the Chairman of DPS Society, had deposed before the National Commission. She relied upon the deposition and submitted that he mentioned about the complaints by the teachers. Denying that Verma was not given adequate opportunity, learned counsel pointed out that he had appeared and sought time to inspect the complaints. Learned counsel stated that Verma had filed a detailed para-wise reply to the complaint, which starkly contradicted his submission that he did not have access to the Commission's reports. It is submitted that Verma filed a Medical Certificate before the Commission expressing his inability to appear and yet was available on those same dates for deposition before Sharda Naik Committee constituted by the school. Learned counsel submitted that the Commission's report cannot be characterized as beyond its jurisdiction. Relying on Section 10 of the Act, it was argued that the Commission's investigative powers were sufficiently broad to encompass enquiries of the kind it held in relation to the complaints by the teachers. After being satisfied that the school and the Society were not acting upon the complaints, despite some background – here the emphasis being upon Kamla Chaudhry report of February, 1999 – the Commission took-up the task of investigating the matter *suo motu*. Learned counsel argued that the responsibility of ensuring that *Vishakha* guidelines were implemented both in letter and spirit was that of the employer. Though *Vishakha* may not have expressly spelt-out any role of the Commission, on a fair reading of the judgment and the mandate cast upon it by the law, it could be reasonably inferred that any failure by the employer to comply with the *Vishakha* procedure could result in the Commission taking-up the job and enquiring into the matter – which happened in this case. It was argued by the teachers that the allegation that the Commission did not follow a fair procedure is unfounded because summons were issued to Verma and the management; the latter was represented and depositions of its

Managing Committee members, including the Chairman were recorded. Refuting the submission by Verma and DPS that two Committees had been appointed, the teachers argued that in fact the Commission had constituted a three-member Committee on 25.05.1999 and that the fourth member was added on 17.06.1999.

24. Attacking the Sharda Naik Committee report, the teachers submit that the DPS Society did not adhere to the *Vishakha* guidelines. It is submitted that inspite of submission of the complaints in September 1998, no action was taken, which led to some of the teachers approaching the Commission in November 1998, which asked the DPS Society to look into the matter on 01.12.1998. Dr. Kamla Choudhry therefore investigated into the matter and recorded that there were clear instances of sexual harassment by Verma. These were brought to the notice of the DPS Society, which took no further action – and as records of these cases reveal, even resolved not to do anything further. Constrained by this deliberate wall of silence, the teachers lodged complaints on 09.04.1999, alleging sexual harassment by Verma. The DPS society then woke-up and claimed that the Sharda Naik Committee was set-up on 20.04.1999 and that held its first meeting on 05.05.1999 and requested the complainants to be present on 17.05.1999.

25. It was argued that the teachers had reservations about Sharda Naik Committee and had written on 15.05.1999 to Ms. Sharda Naik, asking particulars about it (the Committee) after which they would decide to participate further in the matter. This letter was never responded to. It is submitted that Sharda Naik Committee comprised only representatives of the management and the NGO member, mandated by Vishakha was not involved. This resulted in the entire proceeding getting vitiated, its findings, illegal. The teachers urge that in the absence of any order suspending or transferring Verma, as was required by *Vishaka*, the Sharda Naik committee should not have proceeded with its inquiry. The Supreme Court guidelines in this regard, urged their

counsel, were specific – if the complainants were in employment, they were to be given the choice of a transfer, or else, the alleged perpetrator should have been temporarily posted away somewhere, or asked not to attend work, as a confidence assuring measure. The school deliberately ignored this.

26. It is submitted that the DPS society flouted the law in *Vishaka*, as the records of this case establish. Counsel argues that the Sharda Naik Committee had initially submitted a report, which revealed that the NGO member was co-opted only for two hearings. Reliance was placed on the report, submitted to the society, dated 30.6.1999, to say that Ms. Chandrika Vasudev was nominated late during the proceeding, at the behest of Ms. Sharda Nayak. The relevant part of the said document, (at page 182, of WP 1731/2001) is as follows:

“...The Chairperson of the Committee Mrs. Nayak met the Chairman suggesting that a third party, a woman, be co-opted in order to counter any criticism from the complainants that the Committee did not “meet the guidelines of the Supreme Court”. The Chairman agreed and the chairperson made considerable efforts to contact women in NGO’s and women’s organizations. Mrs. Chandrika Vasudev, a business woman and social worker kindly agreed to spare the time on two afternoons 17th and 18th June....”

It is argued that the DPS Society, in its reply to these averments, says that the report dated 30.6.1999, was a “draft” since it was not signed by all members of the (Sharda Naik) committee, and that this discrepancy was noticed by the Society, after which all members of the committee signed the report; yet the Society does not deny that the draft did mention that Ms. Vasudev participated only on two dates, in June, 1999. The teachers also submit that the Sharda Naik committee’s report displays a zeal to “get on” with the matter, and see if Verma could be exonerated, and is contrary to the intendment of *Vishaka*, which is to enquire into allegations of sexual harassment, at the workplace. The DPS Society, and the Committee, made no attempt to answer the

concern of the teachers, in relation to composition (of the Committee) voiced in the letter of 15.5.1999, by Ms. Raza, which had elicited specifics about the its mandate, to be satisfied about the *bona fides* of the society. It is submitted that another letter, dated 8th June, 1999 was written, repeating the request – this was in response to the committee’s intimation (dated 28.5.1999) about the hearing scheduled on 17th June, 1999.

27. The teachers argue that the DPS society’s actions belie its claims of having acted fairly – the minutes of the society’s meetings are relied on for the purpose. It is also argued that even the Sharda Naik Committee report *ex-facie* reveals a pre-disposition to exonerate Verma. Learned counsel submitted that the report records that during the first sitting when two teachers had appeared, in response to the intimation, they expressed reservations about the participation of two members, i.e. Dr. Nanda and Mr. Narender Kumar as they “*were associated with Mr. Verma and they felt they would not get a fair hearing.*” At this, those said members (of the Nayak committee) “*withdrew*” from the committee, as recorded in its report. Yet, point the teachers, they later participated; Mr. Narender Kumar even appeared to have given his personal observations about his meeting with one of the teachers, which really constituted his being a witness, thus completely negating his neutral position as an unbiased member of a fact finding committee. It is, in these circumstances, argued that the Sharda Nayak Committee report cannot be accepted, and the court should act upon Dr. Kamla Chowdhary’s report, and the Commission’s report, which had indicted Verma.

28. Verma counters the teachers’ allegations, stating that they are wrong and incorrect and that, besides, they have suppressed material facts. It is stated that the FIR dated 22.05.1999 filed by the teachers with the Faridabad police was found to be baseless and false upon investigation and the objections raised against the final report of the Faridabad Police (by the teachers) were rejected by the court on 28.10.1999.

Verma also contends that Ms. Kaul was a receptionist in the school between the period of 14.04.1998 to 05.12.1998. According to him, the Kamala Chowdhary Committee report and the Commission's report were *ex-parte*, in defiance of principles of natural justice as no charges were ever framed against him and no notice was served on him. He was also not provided with a copy of the complaints or allowed to participate in the day-to-day proceedings of the Committee/Commission in this matter. The Kamla Chowdhary, Committee report, says Verma is devoid of evidence and statements of witnesses as they were never recorded. The report of the Commission has recorded statements of four witnesses none of whom were connected with the School in any manner nor were eye-witnesses. The Commission had ignored the requests of the all the teaching and non-teaching staff of the School for being permitted to depose in the matter.

29. Verma says that Ms. Kannan joined the school in July, 1995 as T.G.T. teacher, and after working for about two and a half years she applied a PGT position. Her application contained wrong and misleading credentials, which contradicted her application for the TGT post, furnished by her in 1995 and, on being questioned on 12.10.1998 she tendered her resignation and stopped coming to school. Later by letter dated 15.10.1998 she withdrew her resignation but did not resume office. She then sent a medical certificate dated 16.11.1998 of a private doctor seeking medical leave from 25.10.1998 to 24.11.1998, and finally on 25.11.1998 she again sent a handwritten resignation letter stating that she will not be able to render services on the ground of deteriorating health. The resignation letter was accepted after three months notice period and she was relieved from her duties. Verma alleges that Ms. Raza joined the school on 01.07.1997 on probation for one year, during which her work and conduct was unsatisfactory and her services were terminated w.e.f. 07.04.1998 (after approval of the Chairman of the DPS Society) on 19.03.1998, and all her dues were cleared. Ms.

Kaul was appointed as Receptionist on ad-hoc basis for one year w.e.f. 14.04.1998. She stopped reporting for work from 05.12.1998 and abandoned her job.

30. Verma denies that when a teacher in D.P.S., R.K. Puram he held the post as a government teacher. He denies that he was transferred from R.K. Puram to Faridabad and states that he was selected for the post of Principal for D.P.S., Faridabad in an open selection after the vacancy was advertised in the press. Prior to that he had served as Vice Principal at D.P.S., R.K. Puram for five years. It is stated that immediately upon receiving the teachers' complaint in April, 1999 a six member complaints committee was constituted by the D.P.S. Society to investigate the matter in conformity with the *Vishakha* guidelines. The said committee, upon examining the allegations concluded that they were false and baseless. There was no dereliction in performance of duties by Verma. It is submitted that complaint dated 17.11.1998 of Ms. Raza, sent to the Commission did not contain any allegation of sexual harassment. It was addressed to the President of the DPS Society, who marked it to the Chairman, in whose opinion it was a service matter and he appointed a two-member committee comprising of Dr. Kamla Chowdhary and Sharda Nayak to look into it and directed them to submit a short report. This committee, it is submitted, seems to have never met, nor recorded any evidence. It is alleged that the petitioners have misquoted the statement of the Chairman before the Commission. The letter by the second petitioner dated 30.04.1998 contained no allegations of sexual harassment and further, she stated that she had suffered miscarriage on 07.04.1998 despite which she could meet the President of DPS Society on the morning of 09.04.1998.

Stand of the National Commission

31. The Commission, in its returns and affidavits, recounts the history of the litigation, mentioning how its report attracted *suo motu* attention by the Supreme Court, which initiated proceedings, deemed to be under Article 32 of the Constitution of

India. During pendency of those proceedings (in which the Society and Verma were issued with notices) writ petitions were filed on behalf of Mr. Verma, and the Society, in this court. Eventually, the matters were directed to be heard by this court.

32. The Commission submits to receiving a complaint from Ms. Raza, in November, 1998, and asking the DPS society, through a notice dated 1.12.1998, to make suitable enquiries; it also submits that consequent to its request, Dr. Kamla Chowdhary, a member of the DPS staff, was asked to look into the matter; she reported to the Society by her letter dated 17.2.1999, corroborating that indeed, there were instances of such conduct, by Mr. Verma, that amounted to sexual harassment. It also states that since the DPS Society took no action, letters were written to it, by the victims- all teachers and employees of DPS Faridabad, on 9.4.1999, through an NGO. Since no action was forthcoming, the NGO addressed a press meeting on 13th May, 1999. The Commission denies that the press meeting was held under its aegis, and mentions that only one of its members was present then.

33. The Commission refutes having adopted an unfair procedure, alleged by Verma, or the DPS Society. It submits that no less than four summons were sent to Verma; he attended the Commission hearing, and submitted that he had no copy of the complaints, and other materials. He was allowed inspection, and he availed of that opportunity, on 11th and 12th June, 1999, after which he failed to attend the hearings. It is submitted that repeated summons to the DPS society did not evoke any response, and ultimately, at his convenience, having regard to the Chairman's (of the society) status, a hearing was given on 22.6.1999; on that day the fourth member could not be present, as the meeting was scheduled at the convenience of the Chairman.

34. The Commission relies on its report, and submits that all precaution was taken to grant opportunity to the concerned parties, including the complainants, the Society, and

Verma. It states that only one report- dated 29th June, 1999 was issued, and that the other was a copy, produced by Verma and the Society which is an unauthorized draft version. It points out to the differences between the two, to say that they are mainly in regard to mistakes, and errors, and not as regards matters of substance.

35. It is contended by the Commission that the powers under Section 10 – particularly Section 10(1) (e) and (f) are sufficiently broad to encompass jurisdiction to enquire into specific allegations concerning women’s issues, which include complaints of sexual harassment at the workplace, aimed at informing appropriate government authorities, to ensure suitable remedial action. It is submitted that though *Vishaka* does not expressly assign any role to the Commission in such matters, if such function fall within the legitimate sphere of its jurisdiction, the court should not restrict the provision, through statutory interpretation.

The questions requiring decision

36. The following questions, according to this court, arise for consideration:
- (1) Jurisdiction of the Commission and fairness of the procedure adopted by it;
 - (2) Whether the DPS Society and the DPS Faridabad followed the *Vishaka* guidelines suitably, in addressing the allegations of sexual harassment at the workplace, by the teachers;
 - (3) If the answer to the previous question is in the negative, the appropriate relief.

Point No. 1

37. The Commission is a statutory body for women, set up in 1992, by Central Government under, the National Commission for Women Act, 1990 (Act No. 20 of 1990). The objective of the Commission is to represent the rights of women in India and to provide a voice for their issues and concerns. It has published about and campaigned

on several issues that concern women in India, such as dowry, equal representation for women in jobs, politics, religion and the exploitation of women workers. The Commission has also dealt with allegations concerning police abuses against women. The functions of the Commission, (set up under Section 3) are spelt out in Section 10. They include investigation and examination of matters relating to the safeguards provided for women under the Constitution and other laws; present to the Central Government, reports upon the working of those safeguards; draw up reports and recommendations for effective implementation of safeguards for improving the conditions of women by the Union or any State; review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments to suggest remedial legislative measures to address, inadequacies or shortcomings in such legislations. The Commission is also empowered to *“take up the cases of violation of the provisions of the Constitution of other laws relating to women with the appropriate authorities”*

38. Section 10 of the Act, which sets out the functions of the Commission, is as follows:

“10. Functions of the Commission. -- (1) The Commission shall perform all or any of the following functions, namely: --

- (a) Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;*
- (b) Present to the Central Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;*
- (c) Make in such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State;*
- (d) Review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;*

- (e) Take up the cases of violation of the provisions of the Constitution of other laws relating to women with the appropriate authorities;*
- (f) Look into complaints and take suo moto notice of matters relating to –
 - (i) Deprivation of women's rights;*
 - (ii) Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and developments;*
 - (iii) Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women,*And take up the issues arising out of such matters with appropriate authorities;*
- (g) Call for special studies or investigations into specific or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;*
- (h) Undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and indentify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;*
- (i) Participate and advise on the planning process of socio-economic development of women;*
- (j) Evaluate the progress of the development of women under the Union and any State;*
- (k) Inspect or cause to be inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action, if found necessary;*
- (l) Fund litigation involving issues affecting a large body of women;*
- (m) Make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;*
- (n) Any other matter which may be referred to it by the Central Government.*

(2) The Central Government shall cause all the reports referred to in clause (b) of sub section (l) to be laid before each house of parliament along with a memorandum explaining the action taken or proposed to be taken on the

recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(3) Where any such report or any part thereof relates to any matter with which any State Government is concerned, the Commission shall forward a copy of such report or part of such State Government who shall cause it to be laid before the legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(4) The commission shall, while investigating any matter referred to in clause (a) or sub clause(i) of clause (f) of sub-section (I), have all the powers of a civil Court trying a suit and, in respect of the following matters namely –

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;*
- (b) requiring the discovery and production of any document;*
- (c) receiving evidence on affidavits;*
- (d) requisitioning any public record or copy thereof from any court or office;*
- (e) issuing commissions for the examination of witnesses and documents; and*
- (f) any other matter which may be prescribed.”*

39. A crucial power, relied on by the teachers, and the Commission, is the *suo motu* provision, under Section 10; it reads thus:

*“....10. **Functions of the Commission.** - (1) The Commission shall perform all or any of the following functions, namely –*

-*
- (f) Look into complaints and take suo moto notice of matters relating to –*
 - (i) Deprivation of women’s rights;*
 - (ii) Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and developments;*
 - (iii) Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women,*

And take up the issues arising out of such matters with appropriate authorities;...”

40. Section 10(4) also confers certain powers, vested in the civil court, to summon witnesses, take statements on oath, etc., *in aid* of the functions that the Commission

can discharge. The *suo motu* power is a general power, perhaps specifically built in, to allay any doubts that the Commission's mechanism can be activated only through a complaint, or formal reference. Yet, this freedom to investigate *suo motu*, pertains to general or generic "matters" as the contents of each sub clause (i), (ii) and (iii) testify. The allusion to "deprivation of women's rights"; "non-implementation of laws enacted to provide protection to women" and "Non-compliance of policy decisions, guidelines...aimed at mitigating hardships and ensuring welfare..." by someone, agency, or institution, is with the aim of taking up "*the issues arising out of such matters with appropriate authorities..*" Crucially, these powers are aimed at making reports and recommendations. Such reports or recommendations are to be given to the Central Government (Section 10(3)) or to the State Government (Section 10(4)).

41. There is judicial authority for the proposition that reports and recommendations of commissions, and other (sometimes statutory) bodies, entitled to investigate, or inquire into certain categories of matters, or specific matters, would, unless the controlling enactment so enjoins, not be given the character of judicial "findings" (See *R.K. Dalmia v. Tendolkar*, AIR 1958 SC 538; *M. Rasiklal Gangani v. State of Goa* (2004) 106 Bom. LR. 626; *P. V. Jagannath Rao & Ors. v. State Of Orissa* AIR 1969 SC 215; *University Of Delhi, Appellant v. Raj Singh & Others* 1994-(Suppl. 3) SCC 516). It is also an unimpeachable fact that the Commission was conceived of, and functions as, a national level body, primarily looking into policy issues to highlight them, and recommend appropriate measures to the Government(s) concerned. It cannot, in principle, look into individual issues, unless they pose, or concern, a wider policy, or legislative structural dilemma, which requires to be addressed. In line with this understanding, it is established that such "findings" or recommendations are of little or no evidentiary value; they do not amount to substantive evidence in judicial proceedings. At the same time, one must hasten to add that some species of judicial tribunals are also given the appellation of

“commission” – a nomenclature, which cannot denude the binding nature of their adjudicatory determinations. The Commission, in this case, in the opinion of this Court, falls into the former, and not the latter category; its investigations are to be – particularly since it is a national level body- exerted towards broad policy issues and concerns, advising or “recommending” the appropriate government or agencies of the best practices aimed at addressing a broad range of gender related concerns, generally.

42. As a result of the above discussion, it is held that the Commission could at best have investigated into the matter, upon receipt of complaints from the teachers, with the aim of finding out if the management of the school had taken or was contemplating taking any step towards following the *Vishaka* guidelines, for determining whether any sexual harassment had taken place. It could certainly have commented if no response was taken, and suggested that or adequate measures to follow the guidelines had to be taken. However, it could not have inquired into the matter in a manner in which the Committee, required to be set-up under *Vishaka*, could have. Saying that the Commission could have performed that role would be permitting it a function that had to be discharged primarily by the employer, in setting up the *Vishaka* mandated mechanism. That is clearly beyond the domain of the Commission’s jurisdiction. Another way of looking at the matter is that wherever an employer does not act or acts contrary to *Vishaka*, automatically the Commission would be empowered to examine and decide on the nature of the compliance (or non-compliance) with the law- jurisdiction that is clearly that of the courts of law. The power to so decide is essentially a judicial one, and cannot – unless the controlling statute (here, the 1990 Act) had so provided – be performed by the Commission. Here, the Commission not only looked into the materials, but also examined witnesses to decide whether the allegations were well founded, or not. Such an exercise cannot be termed as a “fact finding” one, aimed at investigating whether the *Vishaka* guidelines were followed; it clearly impinged on the merits and veracity the allegations, and decided the complaints. That the final

recommendations suggested remedial action by appropriate authorities, does not detract from the objective fact that the report (of the Commission) reflects and decides the truth and veracity of the allegations. The findings in the report, on the merits, were, in the opinion of the Court, therefore, clearly beyond the Commission's jurisdiction.

43. As regards the fairness of the procedure adopted by the Commission, there are two limbs to this question. The first is whether the Commission should have inquired into the matter, in the manner it proceeded to, since the DPS Society alleges that it held a press conference on the same question on 13th May, 1999, and later decided to hold an inquiry. The second, related question is whether the procedure adopted by it was fair and compliant with principles of natural justice.

44. The allegation against the Commission about its fairness is found in the DPS' writ petition; it is contended that it (the Commission) had held a press conference on 13th May, 1999, when the complainants had addressed the press, under the aegis of an NGO, and later, it decided to inquire into the matter. The Commission refutes this, but states that one of its members was present in the press conference. This establishes that a press conference was indeed held on the issue, on 13th May, 1999 and that one of the Commission's members participated in it. The Commission however, does not say that the member who was present, did not participate in the inquiry, that led to the recommendations in the matter.

45. An elementary principle of natural justice is that the administrative authority should be free from bias. Bias or impartiality is fairly easy to comprehend. Yet there frequently are situations when the dividing line between what is acceptable, and what is not, is not a bright one. On such occasions, courts have chosen to follow the "reasonable likelihood" of bias standard, which has now been reiterated as a "strong

suspicion” of bias standard. This, coupled with the sound aphorism that not only impartiality, but the appearance of impartiality, should be the guiding standard, is the criterion which courts ordinarily follow. The absence of explanation by the Commission, in this case, about the member who participated in the press conference, about this very question, - i.e. whether she (or he) actually participated in the inquiry, in the mind of this Court raises pregnant possibilities of an unpleasant kind. Nothing prevented the Commission from saying the complete truth in this regard; its ambiguity, therefore, works to its disadvantage.

46. In the United Kingdom the authorities disclose varied approaches about the test (of bias), to be applied - whether it is the 'reasonable suspicion' of bias test or the 'real likelihood' of bias test, or, after the decision in *R v. Gough* [1993] AC 646, the 'real danger' of bias test. *R v. Bow Street Metropolitan Stipendiary Magistrate & Ors, Ex parte Pinochet Ugarte (No 2)* [1999] 2 WLR 272 ["the *Pinochet* case"] discussed those tests. There, the House of Lords set aside its earlier decision when it was disclosed (after delivery of judgment), in the earlier appeal, that Lord Hoffmann, (one of the members of the Appellate Committee who heard the appeal), had some link with Amnesty International. That body was an intervener in the appeal; the judge was an unpaid director of the Amnesty International Charity Ltd. ("AICL"), a charity wholly controlled by Amnesty International. The House of Lords held that the relationship between Lord Hoffmann and Amnesty International through his directorship in AICL, led to his automatic disqualification from sitting on the hearing of the said appeal without the need to investigate whether there was a likelihood or suspicion of bias in the circumstances of that case.

47. In *Ebner v. The Official Trustee in Bankruptcy* [2000] HCA 63, the High Court of Australia, described the test of bias as follows:

“The common law in both England and Australia in relation to this subject has come a long way since the middle of the nineteenth century. In Australia, the common law has developed along lines somewhat different from the development in England. In this country, an issue such as that which arose in Pinochet (No 2) would be resolved by asking whether a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge was required to decide. That is the test to be applied in the present appeals, and it reflects the general principle, which is to be applied to problems of apprehended bias, whether arising from interest, conduct, association, extraneous information, or some other circumstance.”

48. The test now followed in the United Kingdom, after *Gough (supra)* and *Pinochet* has been indicated *Porter v. Magill* 2002 (1) All ER as follows:

“The question which a fair minded and informed observer, having considered the facts would conclude that there was a real possibility that the tribunal was biased.”

49. In *Kumaon Vikas Mandal Nigam Ltd v. Girija Shankar Pant* 2001 (1) SCC 182 the Supreme Court revisited the issue of bias by a decision maker; it observed as follows:

“in Locabail (U.K.) Ltd. v. Bayfield Properties Ltd.: 2000 Q.B. 451, the Court of Appeal upon a detail analysis of the oft cited decision in Reg. v. Gough [(1993) A.C. 646] together with the Dimes case, (3 House of Lords Cases 759): Pinochet case (supra), Australian High Courts decision in the case of re J.R.L., Ex parte C.J.L.: (1986 (161) CLR 342) as also the Federal Court in re Ebner (1999 (161) A.L.R. 557) and on the decision of the Constitutional Court of South Africa in President of the Republic of South Africa v. South African Rugby Football Union (1999 (4) S.A. 147) stated that it would be rather dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. The Court of Appeal continued to the effect that everything will depend upon facts which may include the nature of the issue to be decided. It further observed:

“By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in

such outspoken terms as to throw doubt on his ability to approach such persons evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see Vakuta v. Kelly (1989) 167 C.L.R. 568); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be."

33. The Court of Appeal judgment in Locabail (supra) though apparently as noticed above sounded a different note but in fact, in more occasions than one in the judgment itself, it has been clarified that conceptually the issue of bias ought to be decided on the facts and circumstances of the individual case a slight shift undoubtedly from the original thinking pertaining to the concept of bias to the effect that a mere apprehension of bias could otherwise be sufficient.

34. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom - In the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in Locabail case (supra)."

50. In view of the Commission's ambiguity about participation of its member in the press conference, held by an NGO on the issue, and whether that member participated in the Committee's proceeding, the Court is constrained to conclude that had there been no such participation, the pleading would have been clear and categorical. The silence of the Commission is significant; the Court concludes that there is a strong probability of participation of such member in the inquiry, impugned in this case, sufficient to hold it to be improper.

51. The second aspect to the question concerns correctness and legality of the procedure followed by the Commission. The common complaint of the DPS Society and Verma in this regard are that the Commission's report and findings are tainted since they were not preceded or followed by principles of natural justice. The fairness of the procedure adopted by the Commission has been impeached. It is contended that copies of the complaints were not given to the Verma despite written request. He was not permitted or called upon to participate in the proceedings and charges were never communicated to him. It is alleged that no evidence or papers received by the Commission during the proceedings were made available to those accused and cross-examination of the witness was not permitted. It is further alleged that the teachers and the staff members of the School who wished to depose in Verma's support were not permitted to do so. It is also alleged that though the DPS Society's Chairman was examined, the Commission should have in all propriety awaited the decision of the Vishakha's Committee set up by DPS Society, rather than rushing through its report and publishing it.

52. On the factual aspects it is contended that the Commission ignored the final report of the local police, which closed the issue and also the correspondence of the complainants who had resigned or left the service, which clearly indicated that at the

relevant time they did not ever voice the grievance of the kind, they later chose to complain against before the Commission. The Commission also ignored the service records of those teachers and the previous unblemished reputation of Verma.

53. It is alleged that the Commission fell into error in excessively relying on the Kamla Chaudhry's report even though the DPS Society in its meeting chose to discard it - a meeting in which Dr. Kamla Chaudhry herself was a participant. The DPS Society also places reliance upon Minutes of that meeting and contends that the said Kamla Chaudhry report was conjectural, as it did not ever record the statement of any witness or even involve Verma in its proceedings.

54. The Commission's report has been annexed. Although both DPS Society and Verma alleged that there were two reports, what is clear from a reading of the two documents that one is a draft, and the other is the actual report, which was published and sent to the concerned parties. The report has dealt with in detail the kind of behaviour, which the teachers complained against under a separate heading "sexual advances" and recounted each incident and remark alleged by the teachers. In the section "The investigation", the Commission mentions having taken *suo motu* cognizance on the complaint of one of the teachers dated 19.11.1999 as well as on the other instances of sexual harassment. It states that the DPS Society was asked to investigate in to the matter and proceed to discuss her report, dated 17.2.1999. The Commission states that the report was never disclosed to it. It thereafter states that Dr. Kamla Chaudhry affirmed her observations. The relevant part of the report is as follows:

-

"Dr. Chowdhry in her deposition before this Commission on 25.5.99 reaffirmed her findings. She was constrained to note: "As I interviewed the victims, they were slowly able to open up and I began to realize that there was much more behind what they were

saying. I started asking for the people who had recently left the school to find out what made them leave. Another three or four cases with very explicit description of sexual harassment were narrated to me". Dr. Chowdhry expressed deep concern at the tardy response of the Management to the unsavoury situation. Dr. Chowdhry's deposition is exemplary of a concerned and committed office-bearer who, regardless of the immediate consequences of this unfortunate situation, was worried about the larger and long term welfare of the students and reputation of the school.

That the recommendation for a strong and urgent action coming from an office-bearer of the society had failed to stir the management committee from its complacency for almost two months has shocked the NCW. This despite the active intervention of NGO's IFSHA/SAKSHI who filed a further complaint dated 9.4.99 on behalf of the teachers/complainants urging DPS (F) to comply with the established law of India as set out in Vishaka judgment in which the Hon'ble Supreme Court of India formulated mandatory guidelines proscribing Sexual Harassment "for observance at all work places or other institutions, until a legislation is enacted for the purpose."

55. The Commission thereafter stated that a press conference was held on 13.05.1999 in which the NCW Member and several NGOs were present; it states that none of them were aware of the composition of the sexual harassment committee set up by the Society - an obvious reference to the Vishakha's Committee set up by the Society on 20.04.1999.

56. According to the Commission, neither the composition of the Vishakha Committee nor the terms of its reference were notified to the concerned persons i.e. the complainants despite two letters requesting such information. In the circumstances, the teachers declined to depose before the Vishakha Committee set up by the School. The Commission, therefore, concluded that both requests were in line by the Vishakha's

ruling by the Supreme Court, which specifically provided for the victims advocates in such cases. It also concluded that the teachers' request was perceived negatively and no effort was made to render the process transparent.

57. As far as the procedure adopted by the Committee is concerned, the report mentions that summons were issued to the Chairman for the hearing dated 25.05.1999. He did not appear despite two summons and thereafter finally attended the proceedings on 22.06.1999 and deposed before the Commission. As to Verma's response, the following extracts of the Commission's report would be relevant: -

"He refused to accept the first summon. IN response to the second, he again failed to appear but wrote to the Committee that he would appear only after getting a copy of the complaint filed against him. It is a matter of record that a copy of the complaint had been forwarded to the DPSS in November 1998 and acknowledged by them in January 1999. It defies common sense that despite the fact that the Kamla Chowdhry Committee inquired into the matter on the basis of this very complaint, that he as the principal accused should not have got a copy of it from his own employer. If his claim that he was not aware of the complaint is true, then it is a matter for conjecture how he defended himself before the Kamla Chowdhry Committee? Obviously this was his move to deflect the Commission's efforts to get to the truth, to delay the investigations, and to avoid deposing on oath before the National Commission for Women.

When he finally appeared on June 10, instead of co-operating with the investigation, Mr. Verma entered into an argument with Members for a copy of the complaint. Finally, in its wisdom the Committee allowed him to inspect the file on the following day and asked him to appear for deposition on June 14. Mr. Verma did turn up on June 11 to inspect the file, but failed to turn up for investigations and instead sent a medical certificate of illness, which advised rest for seven days with effect from 14th June. The Commission would like to note and place on record that Principal Verma has feigned illness and through this certificate lied to the Commission. He has appeared before the DPS Sexual Harassment

Committee during those very seven days. This has been conveyed to us by no less a person than the Chairman of the DPSS and the Chairperson of the DPS Sexual Harassment Committee. The NCW is also deeply concerned whether his attending doctor at the Sun Flag Hospital has acted with the requisite professional ethics? Mr. Verma was finally summoned to appear before the Committee on June 28th. It appears, however, that after “recovering” from his illness he has speedily left the town and no summons could be served on him.

The Commission is constrained to infer from the above that the failure of Principal Verma to testify before it, reaffirms its belief that he places himself beyond the scope of the law and outside the purview of authority of the NCW. Such disregard smacks of irreverence towards the seriousness of the issue at hand. We wish in this report to correct for future, such wrongful assumptions on the part of all individuals, institutions and authorities that the Commission’s functions and authority could be taken lightly. We also wish to place on record our dismay at the irresponsibility displayed by a person who holds high office of the head of an educational institution of supposed high standing. Principal Verma’s blatant disregard of the Commission’s status and powers is shameful example for the institution he professes to lead.”

The Commission appears to have (through its four-member Committee) examined two senior members of the school faculty whose names were withheld for reasons of confidentiality. The report mentions their depositions and extracts it in the following terms: -

“Despite the circumspect attitude and professional ethics evident in both the depositions there is some conclusive evidence of the Principal’s propensity to sexually and administratively harass women teachers.

We have quoted selectively from their depositions:

“There was no case of harassment but his behaviour did show some biases to some people. His preferential treatment was not on the basis of professional competence of that person but due to personal preference.”

"In 1995 when I joined I use to find COSMOPOLITAN magazine on his table with obnoxious covers, I used to turn them upside down"

"He can destroy the teachers if they don't act according to his wishes. Sections of parents will not come out due to fear and desire for favours He has his own way of handling the parents."

"Working conditions/environment were so vitiating that it was impossible for me to work with him".

When asked whether Shayista reported any incident of sexual harassment, it was stated: "There was something she told me and I advised her not to go into the Principal's office alone, nothing beyond. I do not remember the words."

"When asked whether the Principal was in the habit of touching frequently, the answer was "In a friendly manner he used to put his hands on the shoulders. Teachers never complained of it. They never felt offended."

When asked whether the girls in the school ever complained about the Principal's behaviour. "I don't know about that. Some girls find Verma's behaviour very different."

"There is terror in the environment".

These significant observations made by senior teachers in their very guarded statements, give an insight into the Principal's psyche and his ability to manipulate his dealings with women who were in a subordinate position and incapable of protesting."

58. The Commission's report also disclosed that Ms. Sharda Nayak, Member of the DPS Society and Chairperson of the Vishakha Committee was examined. She conceded not having informed the teachers about the compositions of the Committee and also stated that she was asked to share the information with the teachers. The report expresses its concerns that the Society did not follow the Vishakha's directives since

5/6th of the membership belonged to the DPS Society and the lone outsider was not from any NGO and not an expert in matters of sexual harassment.

59. An overall analysis of the report reveals that the Committee set up by the Commission attempted to follow the fair procedure. It did summon the Principal i.e. Shri Verma - four summons were issued. Apparently Verma did attend the office of the Commission and even sought for copies of the documents. The Committee's approach was that he had no right to secure such copies; it, however, permitted inspection to him. Similarly, it recorded the depositions of the Chairman of the DPS Society, considered Dr. Kamla Chaudhry's report and also recorded the depositions of other teachers working in the School and even the deposition of Ms. Sharda Nayak, who headed the Vishakha Committee set up by the School. In view of the previous finding of this Court that the Commission does not possess adjudicatory powers, the approach and procedure adopted by it cannot be termed as unfair or illegal. If one considers that the limited role of the Commission, which certainly extends to taking *suo motu* cognizance of the complaints including individual complaints having regard to the gravity of the allegations, one must recognize that the powers under Section-10 particularly sub-section 4 are sufficiently wide to enable it to at least enquire into such concerns. As a statutory body it is expected to follow a fair procedure. It is now established that "fair procedure" is not a rigid incantation of inflexible content.

60. The procedure to be adopted by the concerned agency or authority has to necessarily yield to the nature of the enquiry and the powers, which it exercises. As it has been held that the Commission does not possess adjudicatory powers, what it is entitled to enquire into are the matters outlined in Section-10. This may also, in certain circumstances, extend to enquiring into individual complaints, the Court is of the opinion that the procedure to be adopted in such cases has to be a broadly fair one,

which should consider the view points of the concerned parties. This finding is consistent with the holding in *Vishakha* since the adjudicatory function, of determining whether sexual harassment at the work place occurred (a species of aggravated misconduct, but misconduct nevertheless) is that of the domestic tribunal, to be set up by the employer. Therefore, the Commission's role in enquiring into such cases has to conform broadly with the concern that *Vishakha* is to be followed and nothing further. In doing so, the Commission should satisfy itself that certain essential elements are present, i.e. whether there are complaints; whether such complaints have been disclosed to the employer; whether the employer has taken remedial measures, and so on. It may become necessary for the Commission to look into the nature of the remedial action and while doing so to meet the kind of allegations leveled. Yet its statutory mandate has to be scrupulously adopted and at the highest it may bring to the notice of the authorities and the employer, the perceived shortfalls, if any, without commenting in detail on the merits of the allegations. The procedure followed by the Commission, in this case if one were to keep in mind its statutorily assigned role, as explained in the judgment - cannot be faulted; it was fair, in the circumstances of the case.

61. In view of the above discussion, it is held that the Commission's report to the extent it adjudicates upon the complaints and proceeds to list out its recommendations in the manner it has done cannot be sustained. At the same time, it is also held that the Commission followed as fair a procedure as was warranted in the circumstances of the case.

Point No. 2

Vishaka in context – sexual harassment at the workplace a form of discrimination

62. Sexual harassment of working-women was first conceived as a special type of wrong entitled to legal remedy in the United States, thirty years ago by Catharine

MacKinnon in an article, *Sexual Harassment of Working Women* (New Haven: Yale University Press, 1979). She made a perceptive argument that sexual harassment constitutes sex discrimination under Title VII of the 1964 Civil Rights Act. Congress had enacted Section 703, Title VI of the Civil Rights Act, 1964, to address the issue of sexual harassment at the workplace. This provided the basis for civil action, and was rapidly assimilated into the wider discourse of discrimination, in the US (*Meritor Savings Bank v. Vinson* (1986) 477 U.S. 57). In *Harris v. Forklift Systems, Inc.* (1993), 510 U.S. 17, it was held that:

"When the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment, Title VII is violated."

63. In *Joseph Oncale v. Sundowner Offshore Services, Inc.* 523 U.S. 75 (1998) the US Supreme Court (judgment delivered by Justice Scalia) even held that behavior deemed offensive could cover same sex intimidation, ridicule, or other abusive conduct. While on the subject, it would be interesting to note that the general perspective, which the courts often adopt, in the United States is not the standard of a "reasonable man" but the standard of a "reasonable woman" (Ref. *Ellison v. Brady*, (1991) 9th Circuit, 924 F.2d, 872):

"we believe that in evaluating the severity and pervasiveness of sexual harassment, we should focus on the perspective of the victim. Courts "should consider the victim's perspective and not stereotyped notions of acceptable behavior."...Conduct that many men consider unobjectionable may offend many women.... Men tend to view some forms of sexual harassment as "harmless social interactions to which only overly-sensitive women would object"; the characteristically male view depicts sexual harassment as comparatively harmless amusement.

We realize that there is a broad range of viewpoints among women as a group, but we believe that many women share common concerns which men do not necessarily share. For example, because women are disproportionately victims of rape and sexual assault, women have a stronger incentive to be concerned with

sexual behavior. Women who are victims of mild forms of sexual harassment may understandably worry whether a harasser's conduct is merely a prelude to violent sexual assault. Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive. One writer explains: "Their greater physical and social vulnerability to sexual coercion can make women wary of sexual encounters. Moreover, American women have been raised in a society where rape and sex-related violence have reached unprecedented levels, and a vast pornography industry creates continuous images of sexual coercion, objectification and violence....Because of the inequality and coercion with which it is so frequently associated in the minds of women, the appearance of sexuality in an unexpected context or a setting of ostensible equality can be an anguishing experience."

In order to shield employers from having to accommodate the idiosyncratic concerns of the rare hyper-sensitive employee, we hold that a female plaintiff states a prima facie case of hostile environment sexual harassment when she alleges conduct which a reasonable woman would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment....Of course, where male employees allege that coworkers engage in conduct which creates a hostile environment, the appropriate victim's perspective would be that of a reasonable man....

We note that the reasonable victim standard we adopt today classifies conduct as unlawful sexual harassment even when harassers do not realize that their conduct creates a hostile working environment.... To avoid liability under Title VII, employers may have to educate and sensitize their workforce to eliminate conduct which a reasonable victim would consider unlawful sexual harassment....If sexual comments or sexual advances are in fact welcomed by the recipient, they, of course, do not constitute sexual harassment. Title VII's prohibition of sex discrimination in employment does not require a totally desexualized work place....

We cannot say a matter of law that Ellison's reaction was idiosyncratic or hyper-sensitive. We believe that a reasonable woman could have had a similar reaction.... A reasonable woman could consider Gray's conduct, as alleged by Ellison, sufficiently severe and pervasive to alter a condition of employment and create an abusive working environment...."

64. Several other countries have drawn up laws against sexual harassment, oftentimes based on substantially different models of unwelcome and objectionable sexual behavior, deemed to be harassment than the ones that underwrote MacKinnon's understanding, and U.S. law (Australia enacted the Sex Discrimination Act 1984; the United Kingdom enacted the Sex Discrimination Act, 1975, and also framed the Sexual Discrimination and Employment Protection (Remedies) Regulations, 1993).

65. Article 15(3) of the Constitution enables the State to legislate special provisions, or frame policies to *inter alia*, address gender specific concerns. There are gender specific laws, to foster good practices in the work place, and ensure gender equality (special provisions in the Factories Act, the Maternity Benefit Act, the Equal Remuneration Act, etc). Yet, the legislative vacuum and lack of clarity in statute law to address the problem of sexual harassment at the workplace, was recognized in *Vishaka*, where the Supreme Court formulated guidelines that would govern the field, till appropriate legislation was initiated and brought into place. The Supreme Court, in *Vishaka*, recollected the Convention on the Elimination of All Forms Discrimination Against Women, adopted by the General Assembly of the United Nations, in 1979 and the resolution of the Committee on the Elimination of Discrimination against Women (CEDAW), -set up under the Convention,- adopted in January 1992 i.e. the General Recommendation No. 19 on violence against women.

66. It has now been 12 years since the declaration in *Vishaka*; no legislative framework is however, in sight. Its subsequent application, by the Supreme Court, in the *Apparel Export Promotion v. A.K. Chopra* AIR 1999 SC 625, establishes the binding nature of the declaration, and its universality to the workplace (the court even recognized that 'physical contact' is not an essential feature of sexual harassment). That sexual harassment at the workplace is an unacceptable behavior, by employers and co-

employees alike, is now an established part of the judicial and legal lexicon. Whenever found, the perpetrator is expected to be dealt with through suitable sanctions. *Vishaka*, and its guidelines – that are to be adhered to in establishments, are aimed at ensuring a workplace safe from sexual harassment, and protection of female employees from hostile circumstances in employment, on that account. The elaborate guidelines, evolved and put in place were a sequel to the court's declaration of law that such gender based unacceptable behavior had to be outlawed, and were contrary to Articles 15(1) and 21 of the Constitution of India.

67. Whenever such complaints of harassment arise, it is expected that the authority – be it employer, regulator (of private enterprise, or agency, against which such complaint is made) is alive that such are outlawed not only because they result in gender discrimination, of the individual aggrieved, but since they create and could tend to create- a hostile work environment, which undermines the dignity, self-esteem and confidence of the female employees, and would tend to alienate them. The aim of the *Vishaka* was to ensure a fair, secure and comfortable work environment, and completely eliminate possibilities where the protector could abuse his trust, and turn predator, or the protector-employee would insensitively turn a blind eye.

68. At this stage, the relevant portions of *Vishaka*, setting out the guidelines to be followed by employers, are usefully extracted:

“It is necessary and expedient form employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women :

1. Duty of the Employer or other responsible persons in work places and other institutions :

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition :

For this purpose,sexual harassment includes such unwelcome sexually determined behaviour (Whether directly or by implication) as :

- a) Physical contact and advances;*
- b) a demand or request for sexual favours;*
- c) sexually coloured remarks;*
- d) showing pornography;*
- e) any other unwelcome physical, verbal or non - verbal conduct of sexual nature.*

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victims employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

.....

5. Disciplinary Action :

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint Mechanism :

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaints Committee :

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should

involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them. The employers and person in charge will also on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department."

69. The assertion of the DPS Society and Verma, in these cases is that the *Vishaka* committee appointed on 20th April, 1999 was in conformity with the law, and that it held its proceedings fairly. They allege that the teachers deliberately stayed away from the proceedings, which constrained the committee to examine the materials presented before it, and fairly conclude that the allegations of sexual harassment were unfounded and baseless. It is also alleged that the teachers and Ms. Kaul's performance in the school, in the duties assigned to them were unsatisfactory; consequently they left, or were terminated from the services. At or during the time, or immediately after severing their employment, they never whispered about Verma's misconduct, and the allegations were made much later. The committee dealt with the versions of Verma, and some teachers of the school; it also considered the statements of some parents and staff members, about the nature and behavior of Verma presumably with the aim of seeing whether he was the kind of individual who displayed the propensity to indulge in the kind of acts and behavior he was accused of, by the teachers.

70. The teachers resist the management's version, and the stand of Verma. They say that the *Vishaka* committee did not comply with the law declared by the Supreme Court. Here the objection is that no NGO member was associated; it is also stated that the lone NGO participant was drawn into the proceedings much later, and as a matter of fact, attended only two hearings. It is contended that the various memos served on the teacher/complainants were issued *mala fide*, when they refused or objected to the sexual advancements by Verma, who abused his authority as Principal. It is alleged that

the complainants aired their grievances to the President of the society and Mr. Narendra Kumar, member of the society. When there was no response, they complained to the Commission, in November, 1998 –which led to the constitution of the Kamala Chowdhary committee. That committee found that there was substance in the allegations. Even thereafter, the society was reluctant to act; ultimately, the teachers were constrained to approach an NGO, under whose aegis, complaints were addressed, on 9-4-1999, to the society. When no action seemed to be forthcoming, a press conference was held on 13th May 1999. At that stage, the society informed the teachers about constitution of the Sharda Nayak committee, and its hearing, scheduled on 17-5-1999. A few teachers wanted to know its constitution; this was not disclosed; nevertheless, some of them attended the hearing on 17-5-1999, and declined to participate, having regard to the composition of the committee, which was only from the representatives of the management. Besides the obvious violation of *Vishaka*, in regard to the committee's constitution, the procedure adopted by it showed bias against the complainants; no deposition of the witnesses were recorded, and the society's anxiety was to somehow extricate itself from the whole affair, and also give a clean chit to Verma. It is also contended that apart from bias in the composition, and bias by members of the committee, the society did not take steps to lend confidence or assurance to the teachers, by keeping Verma away from the place of his work, which was so vital for the fairness in the enquiry, and mandated by *Vishaka*. All these show that the society had a predisposition to entirely discredit the teachers' version, and exonerate Verma, which ultimately happened in the report submitted by Sharda Nayak.

71. The above discussion would show that the teachers' grievance against the Sharda Nayak committee and its report is premised on three elements: its composition (lack of an NGO member and predominance of members of management); perceived bias; improper procedure.

72. The *Vishaka* guidelines are clear about membership of the complaints committee; it is to be headed by a woman, and not less than half its composition are to be women. One NGO from a woman's organization with experience in regard to complaints of sexual harassment also should be a member. As recorded previously, the society did not dispute that one of the members – Ms. Vasudev, was drafted in as a member of the committee, and attended the hearings after 17th June, 1999. This is apparent from the extracted portion of one of the documents on the record. Another curious aspect is that the Sharda Nayak committee recorded the versions of various witnesses and persons, including one of its members, Shri Narender Kumar (Ref Annexure P-69, page 337, WP 1733/01- DPS' petition). Yet, the same report later records that:

"The Committee felt a final chance should be given to the women who had sent their written complaints of sexual harassment. It was also decided that Ms. Khader, Headmistress, and Ms. V. Lakshmi, supervisor, who were then on vacation, should be asked to meet the committee as soon as possible after their return and letters were sent to them.....

....The three complainants came to the venue of the meeting and told the Chairperson they would not meet Dr. Nanda and Mr. Narinder Kumar as they were associated with Mr. Verma and they felt they would not get a fair hearing. The Committee carefully deliberated on this and in the interest of justice visibly to be perceived by the Complainants, requested Dr. Nanda and Mr. Narinder Kumar to consider this request. They very gracefully accepted and withdrew from the committee...."

The complainants did not depose; they refused to do so and requested to appear through an NGO, jointly. They ultimately refused to participate, objecting to the competence of the committee members *"with regard to their ability to look into matters of sexual harassment."*

73. The report and materials on record disclose that the school's *Vishaka* committee did not have an NGO representative; she was included later; this is also corroborated by the report of the Commission, which mentions that during Mrs. Nayak's deposition this

aspect was brought to her notice. Ms. Vasudev, who joined the committee, belonged to “Development Alternatives”; the society makes no attempt to show how that organization had any association with gender concerns, or had experience in sexual harassment issues. Besides, Ms. Vasudev attended only two hearings. These hardly measure up to the standard mandated by *Vishaka*, where the court’s concern was to instill confidence in the female employees in all organizations that their employer would take objective and serious measures to address issues of sexual harassment at the workplace.

74. It was noticed previously that Mr. Narender Kumar and Dr. Nanda recused themselves, when the complainants objected to their presence, as they were known to be associated with Verma. This substantiated the allegation of a possible bias. Yet, the report nowhere shows that the said individuals stayed away entirely. On the contrary, it records their participation, and their having signed the report. In the body of the report, Mr. Narender Kumar’s version, about what transpired when one of the complainants approached him, is recorded. This, in the opinion of the court, can hardly inspire confidence in the objectivity or impartiality of the committee.

75. One of the cardinal rules of natural justice is that a person hearing a case or cause should not only be impartial but should have no personal knowledge or interest. The recusal of two members including Mr. Narendra Kumar when the complainants were present and their subsequent participation and even signature upon the report completely erodes the objectivity of the *Vishakha* Committee in dealing with issues before it. To compound this further; the committee takes into account the version of Mr. Narendra Kumar, in the capacity as a Member. This Court recollects the decision in AIR 1993 SC 2155 titled *Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School & Others*, where, in a domestic enquiry, concerning the conduct of an employee in a school, the deposition of the member of the committee was also considered. The Supreme Court commented that such a conduct vitiated the entire proceedings stating as follows :

“One of the cardinal principles of natural justice is: 'Nemo debet esse judex in propria causa' (No man shall be a judge in his own cause). The deciding

authority must be impartial and without bias. It has been held by this Court in Secretary to Government Transport Department v. Manuswamy 1980 (Suppl) SCC 651 that a pre-disposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of personal bias was revealed in the decision of this Court in State of U.P. v. Mohd. Nooh [1958] 1 SCR 595 . In the said case, a departmental enquiry was held against an employee. One of the witnesses against the employee turned hostile. The officer holding the enquiry then left the enquiry, gave evidence against the employee and thereafter resumed to complete the enquiry and passed the order of dismissal. This Court quashed the order of dismissal by holding inter alia that the rules of natural justice were grievously violated.

11. In the instant case, Charge No. 12 states that a particular sum on account of amalgamated fund for the month of." December was given to the appellant by Shri Mam Ram who was teacher incharge of the amalgamated fund. In the enquiry committee comprising of the three members, the said Shri Maru Ram was taken as one of the members and the himself deposed to establish the said Charge No. 12 and thereafter again joined the enquiry committee and submitted a report holding the appellant guilty of some of the charges including the said Charge No. 12. Shri Maru Ram was interested in establishing the said charge. From the charge itself, it is apparent that he had a pre-depositor to decide against the appellant. It is really unfortunate that although the appellant raised an objection before the enquiry committee by clearly indicating that the said Shri Maru Ram was inimical towards him and he should not be a member in the enquiry committee, such objection was rejected on a very flimsy ground, namely, that since the said Sri Maru Ram was one of the members of the Managing Committee and was the representative of the teachers in the Managing Committee it was necessary to include him in the enquiry committee.

12. In the facts of the case, there was not only a reasonable apprehension in the mind of the appellant about the bias of one of the members of the enquiry committee, namely, the said Shri Maru Ram but such apprehension became real when the said Shri Maru Ram appeared as a witness against the appellant to prove the said charge and thereafter proceeded with the enquiry proceeding as a member of the enquiry committee to uphold the correctness of his deposition as a Judge. The learned Single Judge considering the aforesaid facts came to the finding that the participation of Shri Maru Ram as a member of the enquiry committee has vitiated the enquiry proceeding because of flagrant violation of the principles of natural justice..... In our view, the learned Single Judge has very rightly held that the Deputy Commissioner was under an obligation to consider the correctness and propriety of the decision of the Managing Committee based on the report of the enquiry committee which since made available to him, showed on the face of it that Shri Maru Ram was included and retained in the inquiry committee despite objection of the appellant and the said Shri Maru Ram became a witness against the appellant to prove one of the

charges. It is really unfortunate to prove that the Division Bench set aside the decision of the learned Single Bench by taking recourse to technicalities that the plea of bias on account of inclusion of Shri Maru Ram in the enquiry committee and his giving evidence on behalf of the department had not been specifically taken by the appellant before the Deputy Commissioner and the Commissioner. The Division Bench has also proceeded on the footing that as even apart from Charge No. 12, the Deputy Commissioner has also considered the other charges on consideration of which along with Charge No. 12, the proposed order of dismissal was made, no prejudice has been caused to the appellant. Such view, to say the least, cannot be accepted in the facts and circumstances of the case. The learned Single Judge, in our view, has rightly held that the bias of Shri Maru Ram, one of the members of the enquiry committee had percolated throughout the enquiry proceeding thereby vitiating the principles of natural justice and the findings made by the enquiry committee was the product of a biased and prejudiced mind. The illegality committed in conducting the departmental proceedings has left an indelible stamp of infirmity on the decision of the Managing Committee.”

For the above, this Court is of the opinion that the report of the Vishaka Committee headed by Dr. Sharda Nayak cannot be sustained.

76. Apart from the issue of conflict and bias discussed above, this Court also views with concern, the procedure adopted by the Sharda Nayak Committee. In all the Committee appears to have held four hearings. Some of the complainants presented themselves on 17.05.1999 and 17.06.1999 but refused to participate due to lack of clarity of the Committee's constitution and its competence. During the intervening stages the Committee had strangely enough proceeded to record the statements of Verma and all those staff members as well as others who supported him. The DPS Society and the Committee set up by it, in following this procedure appears to have completely lost sight of the objectives of the *Vishaka* guidelines. The need to frame the guidelines and emphasis on their binding nature, was lack of legal structure whereby complaints of sexual harassment could be looked into. The entire thrust of the complaints Committee procedure and its underlying premise is that the complainant employees are assured objectivity and neutrality in the inquiry. The Court went to great lengths in this regard, even mandating that not less than half of the membership of the Committee were to be drawn from amongst women employees and at least one of its members were to be drawn from amongst an NGO with suitable experience. The task of the Committee therefore was to enquire into the allegations leveled by the complainants/female staff or employees. This in turn pre-supposed that complainant's version was first considered either by recording it suitably and if needed, by preparing

charges. The gist or summary of such allegations were to be thereafter put to the accused employee. In essence the procedure was to broadly mirror that of enquiry committee's or domestic tribunal, who takes upon itself the task of framing the charges and putting it to the accused/employee, in the case of a departmental enquiry, such a procedure was not followed in this case at all. The Sharda Nayak Committee proceeded to record the statements of all others who wished to clear Verma's name.

77. While the Court cannot be unmindful of the concern of the DPS Society to have its name and reputation cleared or of Verma's anxiety, the fact remains that the accuser/ complainants concern were to be primarily addressed by the complaint mechanism directed to be put in place in terms of Vishaka. This meant that charges were to be framed and evidence led on the premise that such complaints existed and had to be enquired into. If, for some reason the complainant/alleged victims did not present themselves, even for the reason of their lack of confidence in the Committee, the latter should not have transformed its role into the one whereby the so called name and reputation of an employee would become the matter of its primary concern.

78. In other words the Vishaka Committee was perceived as a Complaint Centric Mechanism and not one whereby the accused/alleged harasser was to be afforded a forum to clear his name. In one sense the complaint mechanism is species of domestic tribunal or information gathering process about the misconduct of an employee. If the basis of the misconduct is not made good, by the complainant or those leveling allegations against the employee, the enquiry Committee or domestic Tribunal is expected to draw a report stating that either the departmental representative could not give or furnish material or record that the complainant did not step forward to substantiate his (or her) allegations. Such a procedure would have been understandable; even reasonable. But to proceed further, in the absence of the complainants and record exoneration of an accused/harasser without the benefit of the actual allegations, is a process unknown to law. After all the duty cast on the Vishaka Committee was merely to enquire into the complaints. If the complainants go forward the Committee would have been within its jurisdiction to record so and close the matter at that stage itself. It not only did not do so but went further and recorded statements of several other employees of the school who spoke in Verma's favour.

79. The other serious aspect which this Court cannot ignore is the tenor of the Sharda Nayak report and as even DPS society's writ petition which appears to discredit

the teachers. This emerges even from a facial reading of the petition – of the 45 pages or so 20 pages are devoted to allegations leveled against the teachers/respondents who were impleaded as parties by the society. Similarly the evidence which the Sharda Nayak Committee chose to consider and record the perceived misbehavior of the teachers and complainants or their deficiencies in employment. That the Committee went into these in great detail, in this Court’s opinion betrays its ignorance about the nature of sexual harassment which can arise in myriad circumstances. Harassers typically can take advantage of their position and with a view to obtain favours from female employees, threaten them with adverse consequences in the work place if their wishes are unfulfilled; equally an employee not too diligent to his or her job could be taken advantage of through predatory behavior. While the employee’s profile or the complainants could be relevant, at best it would be only marginal. The effort of the Society and the tone of the Committee’s report, in the Court’s opinion barely conceals its attempt to trivialise the complainants’ concerns and at the same time extol the virtues of Verma and exonerate him. Even the language of the report is patronizing, as the allusion “to give the women a chance” shows betraying the Committee’s mindset in somehow going through a necessary ritual but with a view to clear the air and Verma’s reputation.

80. In view of the above discussion, the Court is of the opinion that the Sharda Nayak Committee report did not comply with the directives in *Vishakha* and the subsequent judgments of the Supreme Court either as regards its constitution or the procedure adopted. Its composition was defective, and two of its members participation, were improper due to their concededly perceived closeness to Verma – a fact substantiated by their recusal on 17.06.1999, notwithstanding which they participated later, and signed the report. The procedure adopted in recording statements without even the complainants’ participation, shows an anxiety to exonerate Verma, and was also contrary to *Vishaka*.

Point No.3

81. Some of these writ petitions originally were filed before the Supreme Court; the Society appears to have approached this Court simultaneously and later all these matters came to be taken up by this Court in 2001. Eight long years have passed; Verma has since retired. Some of the teachers who complained have taken up alternative employments. Yet this Court is of the opinion that with the findings recorded above,

that the Commission's report cannot be deemed an adjudication and at the same time holding that Sharda Nayak Committee was not constituted and did not conduct its proceedings in accordance with law; the conclusions can only provide cold comfort to the complainants. In the normal circumstances a finding that the disciplinary or enquiry proceedings were vitiated would have led to the Court remitting the matter to the employer to take suitable steps for constituting another Committee in accordance with law. That course too however, is inappropriate having regard to the length of time and the situation of the parties now. The teacher-complainants' concerns therefore would have to go unredressed, with no further scope of enquiry into the truth or otherwise of their allegations. DPS society – which is known for the quality of education it imparts through its several schools, in the country, unfortunately, in this instance, does not emerge with a role that a model employer should have displayed, and was expected of it. The *Vishakha* guidelines are to be taken seriously, and not followed in a ritualistic manner. Had that been the position, the teachers' could not have complained – regardless of whether their allegations were justified, or not borne out. The DPS Society's initial reluctance, and later faulty compliance has led to this sorry state of affairs, due to which the Court is constrained to enjoin an entirely unsatisfactory closure to the matter.

82. Having regard to the overall conspectus of the facts of this case, the Court deems it appropriate in the circumstances that the DPS Society should pay a sum of Rs.2.5 lakhs to each of the petitioners namely Ms. Jayshri Kannan, Ms. Shayista Jabeen Raza and Ms. Shrini Kaul in WP(C) No. 1731/2001 (they were also impleaded as respondents in the matter filed by DPS society) . It should also pay a sum of Rs.1 lakh to the fourth employee/ teacher impleaded by it i.e. Ms. Anju Gupta.

83. The writ petitions being WP(C) Nos.1730/2001, 1731/2001 and 1733/2001 are disposed in terms of the above findings and directions. The amount so awarded shall be paid by the DPS society within four weeks from today.

October 12, 2009

(S.RAVINDRA BHAT)
JUDGE