

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 367/2009 & CMs 828, 11426/2009

Reserved on: 13th August 2010
Decision on: 9th September 2010

DR. PUNITA K. SODHI Petitioner in-person

versus

UNION OF INDIA & ORS. Respondents
Through Mr. A.K. Bhardwaj with
Ms. Jagrati Singh, Advocate for R-1.
Mr. V.S.R. Krishna, Advocate for R-3

with

W.P.(C) 12708/2009 & CMs 13398/2009, 9952/2010

DR. PUNITA K. SODHI Petitioner in-person

versus

UNION OF INDIA AND ORS Respondents
Through Mr. A.K. Bhardwaj with
Ms. Jagrati Singh, Advocate for R-1.
Mr. Somesh Chandra Jha, Advocates for R-5.
Mr. V.S.R. Krishna, Advocate for R-6.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT
09.09.2010

1. The background to these two writ petitions by the same Petitioner is more or less the same. The reliefs sought are different. Writ Petition (Civil) No. 367 of 2009 challenges an Office Order dated 17th June 2008, issued by the Lady Hardinge Medical College ('LHMC'), a hospital

functioning under the Directorate General of Health Services ('DGHS'), Government of India whereby a committee was constituted to enquire into the complaint of sexual harassment made by the Petitioner against Respondent No.6 Dr. K.P.S. Malik. The writ petition also challenges the consequential proceedings of the said Committee including the report submitted by it on the Petitioner's complaint.

2. The second petition, Writ Petition (Civil) No.12708 of 2009, seeks the quashing of an Office Memorandum (OM) dated 25th April 2008 issued by the Ministry of Health and Family Welfare (hereafter 'the MHFW'), Government of India, Respondent No. 1 in the writ petition, constituting a committee of external experts (hereafter 'Experts Committee') "with a view to substantiate the allegations and counter-allegations" between Dr. K.P.S. Malik (Respondent No. 3 in the said writ petition) and the Petitioner. A challenge is also laid to the Report of the said Experts Committee.

The Petitioner's case

3. The Petitioner states that she is an MBBS and MS (Eye) from Delhi University with an excellent academic record. She is presently working as an Assistant Professor in Ophthalmology under the MHFW posted at the LHMC. The Petitioner states that she has three distinctions and three subject awards in the MBBS course, 52 international indexed publications and one Indian indexed publication. The Petitioner states that after completing her MBBS and MS, she joined as a Pool Officer under the Council for Scientific and Industrial Research ('CSIR') at the

Safdarjung Hospital on 1st January 2001. She had initially been working under Dr. R.S. Nanda, the Head of Unit-II of the Safdarjung Hospital. She states that in November 2001 she was suddenly shifted to Unit-I under Dr. K.P.S. Malik.

4. According to the Petitioner, Dr. Malik knew that the Petitioner's husband was on an outstation job. She alleges that Dr. Malik started devising ways to trap her by calling her repeatedly on one pretext or the other. According to the Petitioner, Dr. Malik used to ask her to assist him in surgeries even where such assistance was usually not required, remain close to her and try to touch her. She states that on account of the vitiating atmosphere at the Safdarjung Hospital she left that institution by taking an exemption plea from the pool job and joined the PGIMS at Rohtak as Lecturer in Ophthalmology on contract basis. She states that her children were very small at that time and started passing through stress due to her absence at home, the travel time from Delhi to Rohtak being very long. Her husband then got transferred permanently to Haldia. She had to return and continue on the post of a Pool Officer at the Safdarjung Hospital.

5. According to the Petitioner after her return to Safdarjung Hospital, Dr. Malik adopted all possible means to harass her by posting her outside Safdarjung Hospital and changing the clinics in which she was previously working. He issued a memorandum dated 26th August 2002 stating that she was using immunosuppressive drugs for treating some ocular condition without the approval of the competent authority/technical

committee of the Hospital. The letter included a remark questioning why the Petitioner's full tenure should not be terminated "for such serious lapse" and restricted her work only to pursuing her "approved protocol and no other research." Copies of the memorandum were sent to the Principal and Medical Superintendent, Safdarjung Hospital and the Head, CSIR. The Petitioner states that there was nothing wrong in administering an immunosuppressive drug for the treatment. She spoke to the Medical Superintendent, showed him the relevant literature and was assured that she should not worry. She states that due to the malicious attitude of Dr. Malik, she was under huge stress for three years as Pool Officer at the Safdarjung Hospital.

6. It must be stated at this stage that the Petitioner applied for and was recommended by the Union Public Service Commission ('UPSC') for appointment as an Assistant Professor of Ophthalmology in the teaching sub-cadre of the Central Health Services in 2006. The UPSC recommended three names, namely (1) Dr. Zia Chaudhary (2) Dr. Ruchi Sangal and (3) the Petitioner herein for appointment. The Petitioner stated that she was victimized by being posted out of Delhi while the other two doctors were posted in Delhi. However, the Respondent Union of India submitted that Dr. Chaudhary who was recommended on the basis of an earlier selection and Dr. Sangal who was recommended along with the Petitioner for the same selection, were senior to the Petitioner in the order of merit. According to the Respondents, at the relevant time, i.e., in 2007 there were only two vacant posts in Delhi and, therefore, Dr. Chaudhary and Dr. Sangal were posted in Delhi and the Petitioner was

given a posting at JIPMER, Pondicherry where vacancies were available. Thereafter, on the Petitioner's request she was deployed from JIPMER, Pondicherry to the Vardhman Mahavir Medical College ('VMMC') at Safdarjung Hospital, New Delhi.

7. The Petitioner states that she reported at the VMMC at Safdarjung Hospital on 13th July 2007 but Dr. Malik made it difficult for her to join. He refused to accept her joining letter and misbehaved with her. She then posted a photocopy of the joining letter to the Department of Ophthalmology and also wrote to the Medical Superintendent of the Safdarjung Hospital requesting that she be posted in Unit-I under Dr. V.C. Gupta. On 26th July 2007, the Petitioner received a memorandum dated 23rd July 2007 from Dr. Malik about a patient that the Petitioner had seen on 17th July 2007. The Petitioner was accused of committing negligence by misdiagnosing a simple corneal disease as acute cornea and instituting a patently wrong treatment. Dr. Malik added in the advisory memo "you are advised to please re-educate yourself with the help a basic undergraduate textbook and seek the advice of seniors whenever you find difficulty in handling the patients." The Petitioner pointed out that the said patient was fully cured within a span of six days and yet Dr. Malik had issued the above memorandum.

8. After Dr. Malik was stated to have misbehaved with her on 20th August 2007, the Petitioner gave a written complaint to the Medical Superintendent of the Safdarjung Hospital and also to the MHFW. Her

specific request was that strict action should be taken against Dr. Malik and that he should be transferred out of Safdarjung Hospital. Her complaint was of sexual harassment by Dr. Malik. She specifically stated in her complaint as under:

“The CCS Conduct Rules do not permit such harassment of females in government offices. Additionally, it is written in Swamy’s book that “the concerned female can request for the transfer of perpetrator, who is harassing her.” (Annexure 7) Additionally, I am considering Dr. Malik’s behavior as a total threat and it is creating a “health and safety problem for me”. It is clearly written in the Swamy’s book that to prevent sexual harassment (page 37 3. D. - Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work place and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with employment.”

9. On 26th September 2007 the Petitioner wrote to the Delhi Commission for Women requesting that action be taken on her complaint. A third complaint was made on 11th October 2007.

The counter allegations

10. Dr. Malik who is the Head of the Department (‘HOD’) of Ophthalmology at VMMC, Safdarjung Hospital complained against the Petitioner about her publications where she is alleged to have represented herself as the HOD. On 29th August 2007 Dr. Malik gave a complaint about the unethical conduct of the Petitioner and accused her of committing “academic fraud” and of concocting data. He further accused

her of not taking prior permission from him or the Ethical Committee for the “so called studies” on the basis of which she had prepared and published the papers. The specific allegations were as under:

“In paper No. 7 and 8 of the list, Dr. Punita Sodhi as 1st author is cited to be chairman of Department of Ophthalmology, Safdarjung Hospital. I am Head of this Department since January 1990.

Dr. Lalit Verma is cited as Chairman, Dr. R.P. Centre. I am surprised that Dr. Lalit Verma r/o E-18, HUDCO Palace, Andrews Ganj Extension, New Delhi, a senior office bearer of AIOS, has allowed his name to be used by such dubious character.

In many of her papers Co-authors are Dr. S.K. Ratan and Dr. K. N. Ratan who are Pediatric Surgeons at Medical College, Rohtak.

Many of these papers have no Ophthalmology contents. Still Dr. P. K. Sodhi is the co-author in these papers.”

11. This was followed by another letter dated 6th September 2007 to the Joint Secretary, MHFW in which Dr. Malik alleged that the Petitioner had refused to receive a memorandum dated 17th August 2007 asking for an explanation about a fictitious paper published by her in an international journal.

12. On 11th October 2007 keeping in view the complaints and counter-complaints of the Petitioner and Dr. Malik, and since it was viewed as vitiating the atmosphere at the Safdarjung Hospital, the MHFW issued an order deploying the Petitioner temporarily at the LHMC.

13. It is stated that on 13th December 2007 the MHFW requested the Safdarjung Hospital to investigate the matter and send a report. Safdarjung Hospital constituted a fact-finding team consisting of Dr. M.K. Mohanty, Additional Director General and HOD, Urology and Dr. Sudhir Chandra, Additional Medical Superintendent. The fact-finding team, in its opinion dated 13th December 2007, stated that the complaint and counter-complaint should be examined by an independent team of external experts.

14. The Petitioner filed Writ Petition (C) No. 1336 of 2008 which was disposed of by this Court on 19th February 2008 directing an enquiry into the complaints made by the Petitioner of sexual harassment against Dr. Malik and certain counter allegations made by Dr. Malik against the Petitioner.

Constitution and re-constitution of the Committees

15. Pursuant to the above direction, the DGHS issued an OM dated 25th April 2008 constituting a committee of the following external experts:

- | | |
|---|---------------|
| (i) Dr. Pamela D'Souza, Director, Professor & HOD (Ophthalmology), LHMC, New Delhi | - Chairperson |
| (ii) Dr. B. Ghosh, Director-Professor Prof. & HoD (Ophthalmology) GNEC, MAMC, New Delhi | - Member |
| (iii) Dr. Nalin Mehta, Associate Professor (Physiology & Ethicist) AIIMS, New Delhi | - Member |

16. The terms of reference of the above committee were as under:

- “(i) To substantiate the allegation of Dr. K.P.S. Malik on fraud fictitious publication by Dr. Punita Kumari Sodhi.

- (ii) To verify the veracity of the allegation of sexual harassment made by Dr. Punita Kumari Sodhi on Dr. K.P.S. Malik”

17. The Petitioner protested against the combining of the two complaints and referring them to the same committee. She submitted a representation dated 30th April 2008 to the MHFW in this regard. She also represented to the National Commission for Women (‘NCW’), which in turn wrote a letter dated 8th May 2008 to the MHFW. This letter of the NCW was referred to the Director, LHMC by the MHFW with the request to examine the matter and send a report to the Committee. It was clarified in the letter that “the inquiry should be conducted as per the Supreme Court guidelines in the case of *Vishaka v. State of Rajasthan AIR 1997 SC 3011*.”

18. On 17th June 2008, an office order was issued by the Director, LHMC reconstituting the sexual harassment Committee (hereafter ‘the Committee’) with the following members:

- | | | |
|----|--|-------------|
| 1. | Dr. Manjula Jain
Professor & HOD Pathology | Chairperson |
| 2. | Dr. Chitra R.
Dir. Professor of Obstt. & Gynae. | Member |
| 3. | Dr. Satinder Aneja
Professor of Pediatrics | Member |
| 4. | Dr. Asha Gandhi
Professor & HOD Physiology | Member |
| 5. | Dr. Ram Chander
Professor & HOD Skin & VD | Member |
| 6. | Dr. Dinesh Kataria
Asstt. Professor of Psychiatry | Member |
| 7. | Mrs. Kiran Singh
Chairperson MARG | Member |

19. On 1st July 2008 a memo was issued to the Petitioner requiring her to explain why action should not be taken against her under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 enclosing a statement of the “imputation of misconduct.” The statement of imputation of misconduct enclosed with the above notice was that she, while working as Specialist Grade II under the GNCTD, “threatened over the telephone on 5th January 2007 to Shri Vineet Chaudhary, Joint Secretary that she will approach the media for exposing the alleged harassment to her for not acceding her request of posting in Delhi.”

20. Meanwhile on 11th July 2008, a letter was written by the Minister of State (‘MoS’) for Women and Child Development (‘WCD’) to the Health Minister requesting that MHFW should examine the complaint made by the Petitioner against Dr. Malik and requesting for personal intervention by the Health Minister. The MoS made a further request that the inquiry should be conducted in an impartial way within a specific time frame. The letter further stated that “Dr. Punita K. Sodhi is a renowned Ophthalmologist and her request for transfer back to Vardhman Mahavir Medical College and Safdarjung Hospital New Delhi or Guru Nanak Eye Centre may also be considered sympathetically.”

21. On 23rd July 2008 the Secretary (Coordination and Planning), Cabinet Secretariat wrote to the Secretary, MHFW drawing attention to the OM dated 13th July 1999 of the Department of Personnel and Training (‘DoPT’), in which it had been indicated that in a case of complaint of sexual harassment, the Committee constituted for redressal of the

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complaint should be headed by an officer sufficiently higher in rank to the alleged harasser to lend credibility to the investigation. It was pointed out that the committee had to be chaired by a lady officer of a proper rank in some other Ministry/Department, in case an officer of sufficiently higher rank than the officer against whom the complaint has been made is not available in the Ministry/Department concerned. A request was, therefore, made for reconstitution of the Committee.

22. The Member Secretary of NCW on 24th July 2008 also wrote to the Secretary, MHFW emphasizing the need for an impartial inquiry in terms of the guidelines prescribed in *Vishaka v. State of Rajasthan*. It was pointed out as under:

“Since the matter is about harassment of a woman doctor and the complaints committee consists of those who are senior to her, yet junior to the person complained against this needs to be rectified and proper and impartial enquiry conducted to sort out the matter. There should also be a third party, an NGO. Since it has been considerably delayed, it is requested that the matter may kindly be expedited.”

Report of the Committee of External Experts

23. On 14th August 2008 the Experts Committee headed by Dr. Pamela D’Souza submitted its Report on the allegations made by Dr. Malik against the Petitioner regarding her published articles. The Report noted that the Petitioner did not participate after 22nd May 2008 on the ground that she doubted the fairness of the inquiry. The Report concluded that the patients referred to in the study on the basis of which two of the papers of the Petitioner were published in December 2003 and January

2005, were not from Safdarjung Hospital and the place of study was also not Safdarjung Hospital. Further the Report noted that the Petitioner was referred to as Chairman/Chair, Department of Ophthalmology, Safdarjung Hospital in three publications, which was factually incorrect.

It was concluded as under:

“Based on the above and also in the absence of any statement forthcoming from Dr. P.K. Sodhi, the fact finding committee concludes that the facts submitted in the above paragraphs are in order.”

24. The Petitioner has challenged the above Report by in Writ Petition (Civil) 12708 of 2009.

Report of the sexual harassment Enquiry Committee

25. On 21st November 2008, the Committee which examined the complaint by the Petitioner of sexual harassment against Dr. Malik submitted its Report. The conclusions of the Report were as under:

“After reading the filed complaint of Dr. (Mrs.) Punita K. Sodhi and written reply the submissions of Dr. KPS Malik and going through the records, Sexual Harassment Committee is of the opinion that:

I. Dr. Punita K. Sodhi was given enough opportunity to submit her complaints and bring witnesses but she did not cooperate even once. At the same time, she has been questioning the validity of the Sexual Harassment Committee and threatened to initiate legal action against the Enquiry Committee on 14/9/08.

II. Almost in every opportunity offered to her, Dr. Punita K. Sodhi did not cooperate with the Sexual Harassment Committee rather she kept on raising various questions/issues which were not in preview of Sexual Harassment Committee. However each query of her was referred to MOHFW for clarification, which has resulted in considerable delay.

III. Her complaint of Sexual Harassment date back to year 2001-03. However during this period, no allegations were made and she preferred to come back to Safdarjung Hospital and appealed to Hon'ble CAT against her transfer from Safdarjung Hospital to Lady Hardinge Medical College & Hospital, New Delhi.

IV. There is no case of Sexual Harassment against Dr.KPS Malik as he never worked with her in the Operation Theatre and therefore could not have touched her and there is no record/witness to prove that he used to call Dr. Punita K. Sodhi during odd hours.

CONCLUSION

There is no merit in the case of Sexual Harassment against Dr. KPS Malik.”

Orders in contempt proceedings

26. On 11th December 2008 the Petitioner's Contempt Case (Civil) No. 305 of 2008 was dismissed by this Court after noting that the limited scope of powers of this Court in a contempt petition was only to determine if there was any wilful disobedience of the order of this Court. In relation to the Petitioner's contention that the proceedings of the Committee were not in accordance with law and no minutes were drawn, the Court permitted the Petitioner to avail of “the other remedies as available to her.” An appeal was filed against the said order being Contempt Appeal (Civil) No. 2 of 2009, which was dismissed by the Division Bench on 14th January 2009 with the following observations:

“We see no reason to interfere with the said order of the learned Single Judge. The finding is in accordance with law. The Appellant may have a genuine grievance but the remedy for the same is by filing substantive proceedings to challenge the constitution and process of the Enquiry Committee. We have observed so as the Appellant is appearing in person and has been so appearing without the assistance of a counsel and wants to continue to appear in

person.

The Appellant claims that she requires stay of the proceedings before the Enquiry Committee. Such a relief can be considered only by filing an interlocutory application in the substantive proceedings to be filed by the Appellant. If any, against the process of the Enquiry Committee.”

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27. On 5th January 2009 an OM was issued by the MHFW stating that the Committee had found no merit in the complaint made by the Petitioner against Dr. Malik and asked her to explain “why action should not be taken against her for making a false accusation/charge against Dr. K.P.S. Malik.”

28. On 21th January 2009 while directing notice to issue in Writ Petition (Civil) 367 of 2009, this Court directed that no action should be taken pursuant to the OM dated 5th January 2009.

29. In the meanwhile, on 12th February 2009 the NCW again wrote to the DoPT requesting it to advise the MHFW to constitute a proper internal complaints committee as per the ***Vishaka*** Guidelines. In reply to this letter, the DoPT on 26th February 2009 reiterated its OM dated 13th February 1998, para 5 of which states that victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

30. On 6th May 2009, the NCW also wrote to the Secretary, MHFW expressing its displeasure on the state of affairs of the enquiry into the complaint of the Petitioner, the treatment meted out to the Petitioner by the MHFW officials and the issue of non-grant of permission to the Petitioner to travel abroad to meet her husband.

Proceedings before the CAT

31. On 25th May 2009, the Central Administrative Tribunal (CAT) allowed the Petitioner's OA No. 1235 of 2009 and quashed the vigilance case initiated against the Petitioner. On 15th July 2009 the MHFW issued an order discharging the Petitioner from the services with immediate effect. The Petitioner was referred to as being on probation at the LHMC. The Petitioner challenged the above order dated 15th July 2009 by filing OA No. 1895 of 2009 before the CAT. On 20th July 2009, the CAT stayed the order of discharge dated 15th July 2009. A Contempt Case (Civil) No. 625 of 2009 was also filed by the Petitioner in this Court, in which notice was ordered to be issued on 30th July 2009.

32. Meanwhile on 5th August 2009, Dr. Malik wrote to the Secretary, UPSC alleging that the Petitioner had forged and fabricated publications in her CV submitted to the UPSC while applying for the post of Associate Professor. He also made a complaint to the Medical Council of India ('MCI') which forwarded the complaint to the Delhi Medical Council.

33. On 29th September 2009 Dr. Rajesh Jain, Professor Ophthalmology at LHMC wrote to the Director of the LHMC stating that in spite of termination of her services, the Petitioner was involving herself in departmental work on the basis of the Court's orders. On 5/6th October 2009 a notice was issued by the Director of the LHMC preventing the Petitioner from entering her department and carrying out any patient care. On 16th October 2009, the DMC asked the Petitioner to send her response to Dr. Malik's complaint. The Petitioner, on 28th October 2009, refuted the charges with documentary evidence.

34. On 6th January 2010, the CAT allowed OA No. 1895 of 2009 holding the order dated 15th July 2009 to be bad in law. The CAT found that although the order was innocuously worded, the office note which led to the passing of the said order was replete with allegations against the Petitioner which were "surely stigmatic." Further, it was noticed that the Petitioner was not given an opportunity to answer the charges made against her in the said note. Accordingly, the CAT directed:

"...the Applicant would continue to be a probationer till her probation is confirmed by the competent authority in view of the provisions of Rule 10 of CHS Rules, 1996, she would not be considered to have been automatically confirmed in the post in Teaching Sub-cadre. The Applicant's confirmation in the earlier post in Non-teaching Sub-cadre would not be carried to the fresh post in the Teaching Sub-cadre and she would have to be confirmed afresh in the new post. The Respondents could extend the period of her probation in spite of 'good' Annual Confidential Reports in spite of her good research work according to herself because

the confirmation in probation also depends on her conduct, behaviour, character, aptitude and inter-personal relationships.”

35. The CAT set aside the order dated 15th July 2009 but permitted the MHFW to proceed afresh against the Petitioner by holding a proper enquiry under the provisions of the disciplinary rules applicable to her. It was further held that such fresh disciplinary proceedings “should be completed within 6 months from the date of receipt of certified copy of that order.” It may be noticed that no fresh enquiry has been instituted against the Petitioner in terms of the above order. The period of six months within which such enquiry had to be held has come to an end.

Consequential proceedings

36. The Petitioner filed Writ Petition (Civil) No. 2337 of 2010 in this Court challenging the extension of her probation without confirmation. In an application filed in the said writ petition, an order was passed by the Division Bench on 26th May 2010 directing the Union of India to pay emoluments due to the Petitioner as a probationer, pursuant to the order dated 6th January 2010 of the CAT.

37. On 22nd June 2010, the MHFW passed an order reinstating the Petitioner in service and a consequential order was passed on 1st July 2010 by the Director of the LHMC stating that the Petitioner may resume her duties.

Submissions of the Petitioner

38. The Petitioner, who appeared in person, first submitted that there were two distinct issues involved in the present cases. The issue in Writ Petition (C) No. 367 of 2009 concerned the validity of the constitution of the Committee formed to examine her complaint of sexual harassment against Dr. Malik and the validity of the proceedings conducted by the Committee and of the Report submitted by it. The second issue, raised in Writ Petition (Civil) No. 12708 of 2009, concerned the Report of the Experts Committee on the complaint made by Dr. Malik against her, alleging fraudulent publications and about wrongly describing herself as the Chairman/HOD of Ophthalmology of the Safdarjung Hospital. The Petitioner challenged the constitution of the Experts Committee as well. She questioned both its proceedings and its Report.

39. The principal submission of the Petitioner, as regards the first issue, was that she had throughout been raising the question of proper constitution of the Committee to examine her complaint against Dr. Malik of sexual harassment. She referred to the observations of the Supreme Court in ***Vishaka v. State of Rajasthan*** and to Rule 3-C of the CCS (Conduct) Rules, 1964, and the Government's instructions thereunder which required such committee to be headed by an officer "sufficiently higher in rank than the perpetrator." She also referred to an order passed by the Supreme Court in ***Medha Kotwal Lele v. Union of India*** [W. P. (Crl.) No.173-177 of 1999 dated 26th April 2004]. The Petitioner also referred to the extract of the OM dated 16th February, ***W.P. (C) Nos. 367 & 12708 of 2009***

1961 which required that only an uninterested higher officer should be appointed as an Inquiry Officer in departmental proceedings. Further, she also referred to an OM dated 6th January, 1971 which required that “inquiries should be conducted by an officer who is sufficiently senior to the officer whose conduct is being inquired into, as inquiry by a junior officer cannot command confidence which it deserves.” She pointed out that despite numerous letters written by the NCW, MoS for WCD, the Secretary (Coordination and Planning) in the Cabinet Secretariat to the MHFW insisting on proper constitution of the Committee, no heed was paid to these requests. She pointed out that even the reconstituted Committee was headed by a person who was subordinate to Dr. Malik. The Petitioner submitted that in addition to being the HOD of Ophthalmology, Safdarjung Hospital, Dr. Malik was also holding the charge of Additional DGHS which was administratively a higher post than the HOD in a government hospital.

40. The Petitioner submitted that inasmuch as the Committee enquiring into her complaint against Dr. Malik was not properly constituted, she could not repose any trust or faith in it. Therefore, she did not participate in its proceedings. She submitted that no proper minutes of the meetings of the Committee were maintained. Whatever minutes of the meetings were produced did not bear the signatures of all the members. Although it was claimed that Dr. Malik appeared before the Committee, made a statement and produced certain documents, his signatures did not figure in any of the proceedings to show that he had attended the inquiry

proceedings. The list of documents annexed to the Report of the Committee included a letter written by Dr. Malik against her in a most derogatory language concerning her publications which he alleged were fraudulent. Such document was obviously not relevant for the inquiry into the charges made against him by her about sexual harassment. She, therefore, challenged the manner in which the Committee had proceeded with the inquiry.

41. The Petitioner pointed out that she had listed out as many as 47 instances during the relevant period when she faced harassment by Dr. Malik. She submitted that her initial reluctance to file a complaint soon after the incidents of 2001 was understandable as she was a young woman with two growing children. But later when Dr. Malik made it impossible for her to function, when she returned to VMMC, she had no option but to fight for justice. She criticized the Committee's Report as it restricted itself to the limited aspect of undesired physical contact of Dr. Malik with her in the operation theatre, which was only one of the numerous incidents cited by the Petitioner. She criticized the Committee for failing to address the issue of her repeated and continued harassment by Dr. Malik over a number of years when she had to work under his control. In particular, she referred to the language used in the memos issued by Dr. Malik and a letter written by him against her to the Ministry and more recently to the MCI.

42. The Petitioner questioned the action of the MHFW in transferring her, the complainant, out of VMMC whereas the perpetrator Dr. Malik not only continued throughout this period in the VMMC but held the additional charge of Additional DGHS. This, she submitted, was in the teeth of the *Vishaka* guidelines. She prayed for her transfer back to VMMC.

43. On the second issue concerning the complaint by Dr. Malik against her, she referred to the various e-mails exchanged by her with the publishers of the journal which would show that she was not at all responsible for the erroneous printing of the description of her and other co-authors. She stated that her research papers were based on studies which were not placed before the Experts Committee. She submitted that the Experts Committee also comprised of members subordinate to and subject to the administrative control of Dr. Malik. She characterized the Report of the Experts Committee as perverse and vindictive. She pointed out that by widely disseminating misinformation about her, Dr. Malik and even the MHFW had unfairly maligned her reputation. She referred to the relevant provisions of the Copyright Act, 1957 concerning unauthorized use of copyrighted material to defame a person. She prayed for the quashing of the Report of the Experts Committee.

Submissions of the Respondents

44. In response to the above submissions of the Petitioner, Mr. Bhardwaj, learned counsel appearing for the Union of India pointed out that on 19th

February 2008 an order was passed by this Court in Writ Petition (Civil) No. 1336 of 2008 which reads as under:

“After some arguments, it was pointed out to the petitioner that now a post in Lady Harding Medical College is available in a diverted capacity and she should join the same. Moreover, the interim order dated 22.10.2007 has been extended from time to time at the request of the petitioner. There is no justification for its further continuance or extension as is prayed. The present writ petition wherein petitioner has challenged the vacation of the interim order by which stay of her transfer has been vacated has no merit and is even otherwise not maintainable and as such is liable to be dismissed and is dismissed.

The petitioner has a number of grievances alleging hostile discrimination and others being given preferential treatment in matters of postings and transfers. She says that she has urged these grounds in OA. Her OA is pending before the CAT and will be dealt with by the Tribunal. Petitioner has also made complaint against one Mr. K.P.S. Malik for sexual harassment before the National Commission for Women and Delhi Commission for Women. Mr. Bhardwaj states that the matter is under examination by the Government. The respondents are directed to expedite their process of examination of the allegations against Dr. K.P.S. Malik and counter allegations in reaching a conclusion and take an appropriate action, if so advised, in accordance with law.”

45. It was submitted that in the light of the above order, the action of the MHFW in constituting one Committee to look into both the allegations - those made by the Petitioner against Dr. Malik as well as by Dr. Malik

against the Petitioner - was justified. In any event, by the Office Order dated 17th June 2008, the Committee to enquire into the Petitioner's complaint had been reconstituted. Referring to the Report of the Committee, he submitted that with the Petitioner refusing to participate in its proceedings, the Committee was left with no option but to draw certain inferences in the absence of any proof of allegations made by the Petitioner against Dr. Malik.

46. Mr. Bhardwaj submitted that the Petitioner was in the habit of making such complaints against senior personnel of the MHFW and that under Article 226 of the Constitution this Court ought not to go into the factual aspects of such complaints. He stated that senior medical professionals constituted the Committee and, therefore, there was no occasion to doubt their *bona fides*. He submitted that none of the Committee members harboured any personal enmity against the Petitioner and that their Report could not be criticized as being vitiated by *mala fides*.

47. Mr. Bhardwaj, nevertheless, drew the attention of the Court towards an OM dated 29th July 2010 which suggested that there was a move to again constitute a fresh Committee by the MHFW to examine the complaint made by the Petitioner against Dr. Malik. The said OM read as under:

“No.A. 12034/11/2009-CHS.III
Government of India
Ministry of Health & family welfare
(CHS-Division)

Nirman Bhawan, New Delhi
Dated: 29th July 2010

OFFICE MEMORANDUM

Subject:- Complaint of Sexual Harassment against Dr. K.P.S. Malik, Addl. DGHS alleged by Dr. Punita K. Sodhi.

The undersigned is directed to refer to Cabinet Secretariat's Ends. No.41/3/2009/DPG dated 14.06.2010 on the subject mentioned for nomination as a member of the Complaints Committee to be constituted by Cabinet Secretariat vice Dr. (Mrs.) Rachel Jose, Addl. DGHS, who had retired on 30.06.2010. Further, it is informed that Dr. D.C. Jain is of the equivalent rank to the Secretary to the Government of India and is sufficiently senior in rank to Dr. K.P.S. Malik. The date of entry in Government job in respect of Dr. Jain and Dr. Malik are 26.11.81 and 15.02.82 respectively and both belongs to non-teaching sub-cadre of CHS cadre. The place of posting of Dr. D.C. Jain is Directorate General of Health Services, Nirman Bhawan, New Delhi and Dr. K.P.S. Malik is Safdarjung Hospital, New Delhi.”

48. Mr. Bhardwaj submitted that in view of the fact that a fresh Committee has been constituted, the Petitioner's apprehension about the Committee not being headed by a person sufficiently senior to Dr. Malik should be allayed. He pointed out that the Petitioner cannot complain of her being transferred out of the VMMC, Safdarjung Hospital since such transfer was upheld by this Court's aforementioned order dated 19th February 2008.

49. Appearing for Dr. Malik, Mr. V.S.R. Krishna, learned counsel submitted that the Committee was right in its observation that there was no record of the operation theatre in Safdarjung Hospital to substantiate the allegation of any physical contact of Dr. Malik with the Petitioner

during the relevant time as alleged by the Petitioner. He submitted that the records show that these two had never worked in the same operation theatre at any point of time. He pointed out that for several years after 2001 when the alleged incident took place, the Petitioner did not complain. She made a complaint only after Dr. Malik issued her a memo. According to him, the harassment if any for the past several years was of Dr. Malik and not of the Petitioner and that Dr. Malik had not been able to function in peace. He referred to the minutes of the Committee that had examined the Petitioner's complaint to urge that they proceeded in a manner that was just and fair in the circumstances. He pleaded that the issue had lingered on for several years and that Dr. Malik is now near his retirement and therefore, a quietus should be put to the issue.

OM dated 29th July 2010

50. This Court would like to observe at the outset that it is not clear whether the OM dated 29th July 2010 implies that the MHFW has rejected the Report of the earlier Committee and has constituted a new Committee of which Dr. D.C. Jain the Special DGHS is one of the members. This is because he is stated to be inducted in place of Dr. (Mrs.) Rachel Jose, who nevertheless was not a member of the Committee which submitted its report dated 21 November 2008. With the reasons for and the effect of the above OM dated 29th July 2010 not being apparent, this Court proceeds to address the issues raised by the Petitioner irrespective of the above OM dated 29th July 2010.

Constitution and functioning of Committee that enquired into the Petitioner's complaint

51. One of the first issues to be addressed is the validity of the constitution of the Committee which inquired into the Petitioner's complaint of sexual harassment against Dr. Malik. This had to be, in terms of the CCS (Conduct) Rules and the Government's own instructions, in accordance with the Guidelines laid down by the Supreme Court in ***Vishaka v. State of Rajasthan*** (hereafter '***Vishaka*** Guidelines').

52. In ***Vishaka v. State of Rajasthan*** in order to fill the legislative vacuum, which persists, the Supreme Court resorted to international norms and conventions, particularly the Convention on the Elimination of all forms of Discrimination Against Women ('CEDAW') and laid down detailed Guidelines to deal with complaints of sexual harassment at the workplace which were to be observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These Guidelines were to be binding and enforceable until suitable legislation was enacted to occupy the field. The Guidelines relevant for the case on hand read as under:

“Having regard to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993.

Taking note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time.

It is necessary and expedient for 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.

...

4. Criminal Proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

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, a Complaints Committee, a special counselor 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 report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.”

53. Certain other relevant provisions may also be noticed at this stage. Rule 3-C of the CCS (Conduct) Rules, 1964 was inserted in 1998 and reads thus:

“3-C Prohibition of sexual harassment of working women

- (1) No Government servant shall indulge in any act of sexual harassment of any woman at her work place.
- (2) Every Government servant who is in-charge of a work place shall take steps to prevent sexual harassment to any woman at such work place.

Explanation – For the purpose of this rule, “sexual harassment” includes such unwelcome sexually determined behavior, whether directly or otherwise, as –

- (a) Physical contact or advances;
- (b) Demand or request for sexual favours;
- (c) Sexually coloured remarks;
- (d) Showing any pornography; or
- (e) Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.”

54. As regards the constitution of the Committee, there cannot be a manner of doubt that it was not consistent with the requirements of the law as explained by the Supreme Court in *Vishaka*. It was also contrary to the instructions (Para 25A) issued under Rule 3-C of the CCS (Conduct) Rules, 1964, inserted vide G.I., Dept. of Per. & Trg., O.M. No. 11013/10/97-Estt. (A), dated 13th July, 1999. The said instructions reads thus:

“(25-A) Committee for redressal of complaints of sexual harassment should be headed by an officer sufficiently higher in rank than the perpetrator

Reference is invited to Office Memorandum of even number, dated 13-2-1998 [GID (25) above] *vide* which guidelines and norms to be observed to prevent sexual harassment of working women were issued in pursuance of the judgment of the Supreme Court in the case of *Vishaka and others v. State of Rajasthan and others* [JT 1997 (7)SC384].

2. The above guidelines *inter alia* stipulate for the creation of an appropriate complaint mechanism in every organization for redressal of complaints made by the victims. It has come to the notice of this Department that in one of the Central Government offices, the Committee constituted for the purpose was headed by an official of the rank of Upper Division Clerk. As an official not sufficiently higher in rank may not be able to express views independently/freely, especially when the perpetrator is holding an higher position, the arrangement makes mockery of the system. It is, therefore, required that the Committee constituted for redressal of the complaints by the victims of sexual harassment should be headed by an officer sufficiently higher in rank, so as to lend credibility to the investigations.

3. The Ministries/Departments are requested to note the above instructions for strict compliance. ”

55. More generally, as pointed out by the Petitioner, earlier the Government of India had issued an OM dated 6th January 1971 which emphasised the need for inquiries to be conducted by an officer who is sufficiently senior to the officer whose conduct is being inquired into.

56. Further, by OM dated 13th February 1998 [G.I., Dept. of Per. & Trg., O.M. No. 11013/10/97-Estt. (A)] it was specifically directed that an act of sexual harassment amounts to misconduct and action prescribed under the rules must be initiated against a delinquent officer. The relevant Clause 3 of the said OM reads as under:

“Attention in this connection is invited to Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964, which provides that every Government servant shall at all times do nothing which is unbecoming of a Government servant. **Any act of sexual harassment of women employees is definitely unbecoming of a Government servant and amounts to a misconduct. Appropriate disciplinary action should be initiated in such cases against the delinquent Government servant in accordance with the rules.**” (emphasis added)

57. In *Medha Kotwal Lele v. Union of India* [WP (Crl.) Nos. 173-177/1999 dated 26th April 2004] the Supreme Court accorded the Committee examining a complaint of sexual harassment the status of an inquiry committee under the CCS (Conduct) Rules, 1964. It held as under:

“Several petitions had been filed before this Court by Women Organisations and on the basis of the note prepared by the Registrar General that in respect of sexual harassment cases the Complaints Committees were not formed in accordance with the guidelines issued by this Court in *Vishaka v. State of Rajasthan AIR1997SC3011* and that these petitions fell under clause (6) of the PIL Guidelines given by this Court i.e. "Atrocities on Women" and in any event the Guidelines set out in Vishaka were not being followed. Thereupon, this Court treated the petitions as writ petitions filed in public interest.

Notice had been issued to several parties including the Governments concerned and on getting appropriate responses from them and now after hearing learned Attorney General for UOI and Learned Counsel, we direct as follows:

Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka's Case, will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 (hereinafter called CCS Rules) and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the rules.” (emphasis supplied)

58. Recently, a Division Bench of this Court, in *Dr. Salma Khatoon v. Secretary, Govt. of India, Department of AYUSH [W.P. (C) 9144 of 2009, decision dated 18th May, 2010]*, directed constitution of a proper sexual harassment enquiry committee when the respondent failed to take into consideration the objections raised by the complainant to the constitution and functioning of the committee. After filing of the writ petition, the committee was ‘reconstituted’, but the Court observed, with the same members. The petitioner complained, much like the case on hand, that the chairperson of the committee was a person junior to the accused and that her statements were not being recorded properly. Notably, the petitioner was transferred out of Delhi, placed under an officer junior to her and threatened to settle the dispute and mend her ways or face action. Thus the Court was constrained to direct institution of an enquiry committee under the Secretary of the department which was to consider the complaint of the petitioner in accordance with the guidelines laid down in *Vishaka*.

59. The decision of the MHFW to refer both the complaints - the complaint made by the Petitioner against Dr. Malik, and the one by Dr.

Malik against the Petitioner - to the same Committee was obviously an

erroneous one. The complaint of sexual harassment required to be dealt with strictly in accordance with the *Vishaka* Guidelines. The Committee constituted for that purpose could not be headed by a person not sufficiently senior to Dr. Malik.

60. This Court is not satisfied with the explanation given by the MHFW that the members of the Committee were senior and experienced doctors who had no axe to grind against the Petitioner and therefore, the constitution of the Committee was not vitiated. If the law requires the Committee to be headed by a person sufficiently senior to Dr. Malik, then it had to be that way. The members of the Committee may have been HODs of government hospitals but the fact remains that Dr. Malik also held the charge of Additional DGHS which was administratively a superior post. This position has been subsequently acknowledged by the Government of India itself by issuing the further OM dated 29th July 2010 which notes that Dr. D.C. Jain, the Special DGHS entered Government service on 26th November 1981 whereas Dr. Malik entered it on 15th February 1982. It also noted that the posting of Dr. D.C. Jain is in the Directorate General of Health Services whereas Dr. Malik's posting is at the Safdarjung Hospital.

61. Numerous letters were written by the NCW, the Secretary (Planning and Coordination) Cabinet Secretariat and the MoS for WCD to the MHFW emphasizing that the Petitioner's complaint should be dealt with

by a Committee constituted in terms of the *Vishaka* Guidelines. The MHFW was therefore conscious about the weakness of the constitution of the Committee and yet persisted with it.

62. The Petitioner objected at the very beginning that the Committee examining her complaint of sexual harassment was not properly constituted. She wrote numerous letters to the MHFW and to other authorities. But none of them paid any heed to her repeated requests. She had to approach this Court very often for redress. From her point of view, as a victim of sexual harassment, she was entitled to ask for a Committee that was constituted strictly in accordance with the *Vishaka* Guidelines. The Petitioner could not be expected to be sanguine that her complaint would be enquired into in a fair and impartial way. If she decided not to participate in the proceedings before such Committee, no adverse inference could be drawn against her on that score.

63. The criticism of the Petitioner that the Committee did not conduct its proceedings in a manner expected of a fact-finding body is not unjustified. No regular minutes of the proceedings appear to have been preserved. Whatever minutes have been produced do not appear to have been signed by all the members of the Committee. It is not clear whether a regular attendance register was maintained. Indeed, it is not possible to verify whether Dr. Malik did attend the meeting of the Committee on a

particular date. However, the more serious problem is the manner in which the Committee proceeded with its enquiry.

64. The Committee appears to have gone only by the complaint made by the Petitioner about the undesirable physical contact alleged to have been made by Dr. Malik with her in the operation theatre at the VMMC sometime in 2001. The Committee did not attempt to inquire into any of the other incidents to which the Petitioner referred in her complaint. There were at least 47 incidents cited by her of harassment by Dr. Malik.

Defining sexual harassment

65. At this stage, this Court would like to note the definition of ‘sexual harassment’ as explained by the Supreme Court in *Vishaka* which reads as under:

“Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behavior (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 victim's 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.”

66. It may be recalled that the immediate cause for the above writ petition was an alleged gang rape in Rajasthan by members of the upper caste of a child welfare worker belonging to a lower caste. In the backdrop of that event, Vishaka, a non-governmental organisation, sought the Court’s intervention to protect and enforce the fundamental rights of women at the workplace. A three Judge Bench of the Supreme Court considered an act of sexual harassment to be in violation of Articles 14, 15, 19 (1) (g) and 21 of the Constitution. The Court observed that:

“3. Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty'. It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'... The fundamental right to carry on any occupation, trade or profession depends on the

availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive.”

67. Subsequently, in *Apparel Export Promotion Council v. A.K. Chopra (1999) 1 SCC 759*, the Supreme Court further explained the definition of ‘sexual harassment’ in *Vishaka* as under:

“27. An analysis of the above definition, shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her.”

International law perspectives on what constitutes ‘sexual harassment’

68. In order to understand what constitutes ‘sexual harassment’, recourse is invariably had to the *Vishaka* Guidelines. Those guidelines, issued nearly thirteen years ago, have formed the basis of the definition of ‘sexual harassment’ in the statutory rules governing government servants. However, in order to understand ‘sexual harassment’ as but one form of sex based discrimination, which also stands prohibited, recourse could be

had to the CEDAW to which India is a ratifying party. The General Comments brought out by the CEDAW Committee on Article 11 of the CEDAW offers a further explication:

“17. Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

18. Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”

69. The Directive 2006/54/EC dated 5 July 2006 of the European Parliament and of the Council ‘on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)’ defines ‘harassment’ and ‘sexual harassment’ in Article 2 as follows:

“(c) harassment: where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

(d) sexual harassment: where any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.”

70. To understand the different ways in which the expression is defined elsewhere, reference may be made to the recently enacted Equality Act of

2010 in the United Kingdom which consolidated the various statutes and regulations which operated in the field of anti-discrimination law, including the Sex Discrimination Act of 1975 and the Employment Equality (Sex Discrimination) Regulations of 2005. Besides ‘discrimination’, the Equality Act defines ‘harassment’ and ‘victimisation’ as ‘prohibited conduct’ as follows:

“26. Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection

(1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

- age;
- disability;
- gender reassignment;
- race;
- religion or belief;
- sex;
- sexual orientation.

27. Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

- (a) B does a protected act, or
- (b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

- (a) bringing proceedings under this Act;
- (b) giving evidence or information in connection with proceedings under this Act;
- (c) doing any other thing for the purposes of or in connection with this Act;
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.”

71. In the United States of America, the Code of Federal Regulations distinctly recognizes three kinds of acts of sexual harassment.

“29 C.F.R. 1604.11 Sexual harassment.

(a) Harassment on the basis of sex is a violation of section 703 of title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,

(2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

72. Further, the Equal Employment Opportunity Commission in the U.S.A is to look into the facts of each case as a whole and in proper context to determine whether the act/s complained of amount to sexual harassment.

“29 C.F.R. 1604.11 Sexual harassment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.”

73. In *Janzen v. Platy Enterprises Ltd. [1989] 1 S.C.R. 1252*, two waitresses at a restaurant had complained of sexual harassment and the Human Rights Commission as well as the Court of Queen’s Bench in

Manitoba, Canada had ruled in favour of the complainants. The Court of Appeal held that there was no discrimination on the basis of sex and that the employer could not be liable for the sexual harassment by its employee. The Supreme Court of Canada reversed the Court of Appeal. It noted that Section 19 of the Human Rights Code expressly prohibited sexual discrimination in the workplace. Section 19 of the Human Rights Code in Canada reads:

“19 (1) No person who is responsible for an activity or undertaking to which this Code applies shall

(a) harass any person who is participating in the activity or undertaking; or

(b) knowingly permit, or fail to take reasonable steps to terminate, harassment of one person who is participating in the activity or undertaking by another person who is participating in the activity or undertaking.

19 (2) In this section "harassment" means

(a) a course of abusive or unwelcome conduct or comment undertaken or made on the basis of any characteristic referred to in subsection 9(2); or

(b) a series of objectionable and unwelcome sexual solicitations or advances; or

(c) a sexual solicitation or advance made by a person who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(d) a reprisal or threat of reprisal for rejecting a sexual solicitation or advance.”

74. Discussing discrimination in the context of sexual harassment, the Supreme Court of Canada observed in *Janzen*:

“In keeping with this general definition of employment discrimination, discrimination on the basis of sex may be defined as practices or attitudes which have the effect of

limiting the conditions of employment of, or the employment opportunities available to, employees on the basis of a characteristic related to gender.”

75. After undertaking a detailed discussion of the concept of sexual harassment, the Court observed as under:

“Common to all of these descriptions of sexual harassment is the concept of using a position of power to import sexual requirements into the workplace thereby negatively altering the working conditions of employees who are forced to contend with sexual demands.”

Dickson, C.J. defined ‘sexual harassment’ in the following terms:

“Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined as **unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment**. It is, as Adjudicator Shime observed in *Bell v. Ladas, supra*, and as has been widely accepted by other adjudicators and academic commentators, **an abuse of power**. When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.” (emphasis supplied)

76. In *Ellison v. Brady* [*U.S. Court of Appeals, Ninth Circuit 924 F. 2d 872 (1991)*], the Court of Appeals formulated the ‘reasonable woman’ standard and observed:

“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." If we only examined whether a reasonable person would engage in allegedly harassing conduct, we would run the risk of reinforcing the prevailing level of discrimination. Harassers could continue to harass merely because a particular discriminatory practice was common, and victims of harassment would have no remedy.

We therefore prefer to analyze harassment from the victim's perspective. **A complete understanding of the victim's view requires, among other things, an analysis of the different perspectives of men and women.** Conduct that many men consider unobjectionable may offend many women. A male supervisor might believe, for example, that it is legitimate for him to tell a female subordinate that she has a 'great figure' or 'nice legs.' The female subordinate, however, may find such comments offensive. 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.

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.**" (emphasis supplied) (footnotes omitted)

Decision of our court

77. In *U.S. Verma, Principal, DPS v. National Commission for Women* 163 (2009) DLT 557 this Court, while holding that the NCW did not

have the powers to take over the functions of an internal sexual harassment complaints committee *suo moto*, quashed the report of the sexual harassment enquiry committee appointed by the management, DPS Faridabad where three teachers and a staff member of the school had complained of sexual harassment. An internal report indicted the Principal in all the cases. However, the enquiry committee constituted subsequently by the management gave a clean chit to the Principal. All the complainants had left their jobs as a consequence of the allegations and counter allegations. After discussing the evolution of the law against sexual harassment, the Court observed as under:

“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 *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.”

78. The Court in *U.S. Verma* noted irregularities in the constitution and functioning of the enquiry committee in the case and went on to hold that there should not be any “personal knowledge or interest” of the members of the enquiry committee. The Report of the committee was quashed and the Court directed the DPS Society to pay to three of the complainants Rs. 2.5 lakhs each and to the fourth a sum of Rs.1 lakh.

Flawed approach of the Committee in the present case

79. The above decisions help in appreciating that a complaint of sexual harassment and sex based discrimination requires the body entrusted with the investigation of such complaint to undertake its task with the correct approach and sensitivity. If the entire complaint of the Petitioner is examined in the light of the above discussion, it is clear that the inquiry cannot be limited to the complaint of the Petitioner that Dr. Malik attempted to touch her at wrong places, while in the operation theatre in 2001. Incidents of sexual harassment ought not to be viewed in isolation. The other parts of the complaint are as relevant in determining whether there was any persistent conduct of the perpetrator which could be termed as sex based discrimination or harassment over a prolonged period. The humiliation faced by a victim of sexual harassment could remain with the victim. It is revisited and compounded when the victim and perpetrator have to continue to work in the same establishment. The imbalance in the power equation between the perpetrator and the victim could exacerbate the problem. The impact of such incidents on the continuing working relationship of the perpetrator and the victim will also have to be considered in examining whether the complaint made of sexual harassment, even if belated, is justified. In a complaint of sexual harassment and sex based harassment or discrimination, which persists over a length of time, the defence of limitation or laches may not find relevance.

80. The Committee also appears to have overlooked the numerous other

instances cited by the Petitioner in her complaint which partake of sex based harassment and discrimination. While sexual harassment would be a specie of sex based discrimination, the latter could encompass a whole range of commissions and omissions, not restricted to acts that partake of express unacceptable sexual acts or innuendoes. CEDAW too recognises that harassment can be 'sex based' and take various forms. The use of abusive and abrasive language and a certain imputation of the competence of a person only because such person is of a certain gender are matters that would be covered under the expression 'sex based' discrimination. For instance, the specific case of the Petitioner is that the language used by Dr. Malik in the memos and letters issued by him, questioning the integrity and competence of the Petitioner is plainly abusive. This has not been considered at all by the Committee. To borrow the articulation of the Supreme Court of Canada in *Janzen*, "discrimination on the basis of sex may be defined as practices or attitudes which have the effect of limiting the conditions of employment of, or the employment opportunities available to, employees on the basis of a characteristic related to gender." It is important for committees dealing with complaints of sexual harassment to understand the above dimensions of sex based discrimination at the work place and not narrowly focus only on certain acts that may have been the trigger for a series of acts constituting sex based harassment or discrimination. Also, as pointed out in *Ellison v. Brady*, the Committee was required to "focus on the perspective of the victim." The injunction to Courts that they "should consider the victim's perspective and not stereotyped notions of acceptable behavior" equally

applies to Committees that enquire into allegations of sexual harassment and sex based discrimination.

81. In the considered view of this Court, the approach of the Committee in the present case has been limited and narrow. The Committee has failed to consider the context in which the complaint has been made and the incidents of continued harassment which the Petitioner has alleged to have faced at the hands of Dr. Malik. The Report of the Committee is unsustainable in law and deserves to be quashed.

Scope of the powers of this Court to interfere

82. While Mr. Bhardwaj may be justified in his submission that in exercise of its jurisdiction under Article 226 of the Constitution, this Court is not expected to go into the facts and details of the complaint itself, this Court can, when the Report of such Committee is challenged, examine if the basic approach of the Committee was flawed. If the approach of the Committee is erroneous as in the instant case, it is the duty of this Court to point it out and apply a corrective. It can direct a fresh enquiry by a properly constituted committee which shall follow the procedure in accordance with Supreme Court's mandate in *Vishaka*. It is a well settled proposition, reiterated in *Tata Cellular v. Union of India* (1994) 6 SCC 651 @ 676, that:

“74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for

judicial review is made, but the decision-making process itself.”

83. Keeping in view the above legal position, this Court refrains from expressing any opinion on the merits of the Petitioner’s complaint against Dr. Malik. The Report dated 21st November 2008 submitted by the Committee which examined the complaint of sexual harassment made by the Petitioner against Dr. Malik is set aside for the reason of improper constitution of the Committee and for the basic flaw in the approach of the Committee to its task of conducting a comprehensive enquiry into all the allegations made by the Petitioner. Accordingly, the Office Order dated 17th June 2008 constituting the committee is also set aside. It is made clear that this decision of the Court is not to be construed as a reflection on the professional ability or competence of the members who constituted the Committee. The freshly constituted Committee which will hereafter enquire into the Petitioner’s complaint will do so uninfluenced by either the Report of the earlier Committee or any observation that may have been made by this Court touching on the merits of the Petitioner’s complaint.

The Experts Committee’s Report unsustainable in law

84. As regards the second issue concerning the complaint made by Dr. Malik against the Petitioner, the Experts Committee did not have the benefit of participation of the Petitioner herself in the proceedings. Her request for postponement of its hearing was not accepted. It must be

remembered that initially it was this Experts Committee that was expected to look into both the complaints, i.e., the complaint made by the Petitioner against Dr. Malik and *vice versa*. Later, this Experts Committee's work was restricted to examining the complaint of Dr. Malik against the Petitioner. However, there is nothing to show that there was any consequential notification clarifying the position particularly after the reconstitution of the Committee that enquired into the Petitioner's complaint against Dr. Malik. Although this Court finds merit in the Petitioner's criticism of the constitution of the Experts Committee comprising of members who were under the administrative control of the Additional, DGHS, who was the complainant, since for reasons explained hereafter, this Court finds the Report of the Experts Committee to be legally unsustainable, this point is not discussed further.

85. The Petitioner has pointed out how the mentioning of her name in two of the articles as Chairman and Head of the Department of Ophthalmology at Safdarjung Hospital was not on account of a description given by her, but erroneously given by the journal publishing the articles. She has referred to the e-mails exchanged by her and the editor of the journal. One such correspondence reads as under:

“From: gundlach@med.uni-rostock.de

To: hardeep333@hotmail.com

Sent: Tuesday, January 18, 2005 12:00 PM

Subject: your manuscripts (Journal Cranio-Maxillofacial Surgery)

Dear Dr. Sodhi,

May I report to you on the fate of both your papers:

1. APPRAISAL OF A MODIFIED MEDICAL CANTHAL
TENDON PLICATION TECHNIQUE FOR TREATING THE
LAXITY AT THE MEDAL END OF THE LOWER EYELID

**We need the names of the chairpersons of the 4 institutions
involved**

Is it BOSNAIK or BOSNIAK? And:

Is it CANTISANO ZILKHA (p4) or just ZILKHA (list of
references)?

Is the HURWITZ paper (1983) really on ENTROPION instead of
EKTROPION?

It COLLIN (pp 6 and 9) or COLLINS (List of references)?

What is the last page of the paper by LIN & STASIOR (1983)?

2. TRANSIENT RECURRENCE OF PRESSURE
REGURGITATION FOLLOWING

DACRYOCYSTORHINOSTOMY

Name of the chairpersons are missing.

However, I am happy to be able to tell you, that both your papers
have been accepted for publication and are to be sent to England
for the final linguistic check up.

Thank you for considering the Journal of Cranio-Maxillofacial
Surgery.

Please give us the answers to the above mentioned questions at
your earliest convenience.

Yours sincerely

Karsten K.H. Gundlach”

From: “Hardeep sodhi” hardeep333@hotmail.com

To: gundlach@med.uni-rostock.de

Sent: Tuesday, February 08, 2005 6.30 AM

Subject: Re: Your manuscripts (Journal Cranio-Maxillofacial
Surgery)

Dear Sir,

I am very sorry for a late reply. This is because I have joined a new
job as Specialist in Central Health Services in India and had been

under the initial pressure. I am hereby submitting the answer to your kind queries.

1. APPRAISAL OF A MODIFIED MEDICAL CANTHAL TENDON PLICATION TECHNIQUE FOR TREATING THE LAXITY AT THE MEDICAL END OF LOWER EYELID.

The persons who have contributed to this particular work (including data collection and patient examination, statistics and manuscript framing are only four. These names are included in the first page. I am mentioning them again.

PUNITA KUMAR SODHI*

LALIT VERMA**

RAVINDRA M. PANDEY***

SIMMI K RATAN****

***Department of Ophthalmology, Safdarjung Hospital, New Delhi.**

**** Dr. Rajendra Prasad Centre for Ophthalmic Sciences, All India Institute of Medical Sciences, New Delhi.**

*****Department of Biostatistics, All India Institute of Medical Sciences, New Delhi.**

****** Department of Paediatric Surgery, Post Graduate Institute of Medical Sciences, Rohtak, Haryana, India.**

It is BOSNIAK.

It is just ZILKHA.

The paper of HURWITZ is really on entropion and not EXTROPION.

It is COLLIN.

The last page of paper by LIN & Stasior is 545-51.

2. TRANSIENT RECURRENCE OF PRESSURE REGURGITATION FOLLOWING

DACRYOCYSTORHINSOTOMY

The chairperson of the institution did not have any contribution to the manuscript. I have included the names of only those who have contributed significantly to the paper.

PUNITA KUMARI SODHI*

LALIT VERMA**

RAVINDRA M. PANDEY***

SIMMI K RATAN****

***Department of Ophthalmology: in Safdarjung Hospital, New Delhi.**

**** Dr. Rajendra Prasad for Ophthalmic Sciences: in All India Institute of Medical Sciences, New Delhi.**

*****Department of Biostatistics, All India Institute of Medical Sciences, New Delhi.**

******Department of Paediatric Surgery: in Post Graduate Institute of Medical Sciences, Rohtak, Haryana, India.**

I hope I have been able to answer your queries satisfactorily. Please do convey whether any else information is required.

Thanks,

Yours sincerely,

Dr. Punita K. Sodhi”

86. From the above exchange of e-mails, it is clear that the Petitioner on her part had clarified that she jointly authored the article. She separately indicated the designations of each of the co-authors. The correspondence clearly shows that the Petitioner did not describe herself, at any point of time, as the Chairman or the Head of the Department of Ophthalmology. This is clearly a mistake at the end of the publisher. Unfortunately, no effort was made by the Experts Committee to ask the publisher of the journal whether in fact the Petitioner had described herself as the Chairman or the Head of Department of Ophthalmology at Safdarjung Hospital. This could easily have been done by sending an e-mail to the publisher of the journal. The members of the Committee who were senior medical professionals ought to have been familiar with the manner in which medical professional journals function.

87. Also, the Experts Committee made no effort to find out if there was any truth in the allegation of Dr. Malik that the Petitioner had prepared research papers on the basis of fictitious data. In the absence of any material, it was not open to the Experts Committee to simply accept those allegations as true.

88. The Experts Committee appears to have overlooked the fact that the complaint it was enquiring into was a counter blast by Dr. Malik after the Petitioner complained against him for sexual harassment. Further, the language used by Dr. Malik in the complaint was inappropriate. It needlessly exaggerated the alleged 'error' which was not the doing of the Petitioner. Dr. Malik persisted with this diatribe in a letter to the UPSC on 5th August 2009 and in his complaints to the MCI. This phenomenon, as will appear from the two decisions discussed hereafter, is not uncommon.

89. The High Court of Madras noticed in *S. Chitra v. Director of Fire Services [decision dated 30th September 2009 in W.P. (C) 37598 of 2006]* that the alleged harasser made counter-allegations against the victim. Here, the petitioner, an unmarried woman, who had lost her father and was supporting her entire family was working as a Junior Assistant in the Fire Services Department. She complained of sexual harassment against certain officers of her Department. By the impugned order, a punishment of postponement of increment for a period of three years was imposed on her. The Court noted that:

“Instead of conducting an enquiry in respect of the complaint, which made allegations of sexual harassment, the second respondent framed a charge memo, dated 5.1.96 in PR.1/96. The charges levelled against the petitioner was based upon the counter complaint made by the Divisional Fire Office, Office Superintendent and the Assistant. It was made to appear that she was insulting the DFO in insolent terms and that she compelled the office Superintendent and the Assistant to take her to cinema theater. In addition to the counter complaint, it was also stated that she picked up quarrel with other women employees and adopted a go slow.”

90. The Madras High Court further noted that the victim’s sexual harassment complaints were ignored while the charges against her stood proved. Her appeal was rejected by a one sentence order. The Court observed, “(i)t is a classic case where the complainant has become the accused and the accused became the complainants.” The Court directed a complaints committee to be constituted in accordance with the *Vishaka* Guidelines and the punishment order against the petitioner was quashed.

91. The Supreme Court, in *D.S. Grewal v. Vimmi Joshi (2009) 2 SCC 210*, also noted the phenomenon of retaliatory allegations and inadequacy in following the *Vishaka* Guidelines while enquiring into a complaint of sexual harassment. A school teacher complained of sexual harassment against the Vice Chairman of the school management. Her services were terminated while she was still on probation. “In the meanwhile a purported enquiry was conducted” where “it was found to be not a case of sexual harassment.” However, the Vice Chairman was directed to be counseled. Retaliatory allegations of financial irregularities were made

against the teacher by the school management. The teacher filed a writ
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petition questioning the legality of her termination and alleging sexual harassment. A Division Bench of the Uttarakhand High Court directed disciplinary action against the alleged harasser without getting the matter enquired. The Supreme Court relying on its decisions in *Vishaka* and *AEPC*, partially modified the order directing institution of a three-member sexual harassment enquiry committee and imposed costs of Rs. 50,000/- on the alleged harasser.

92. Reverting to the case on hand, a plainly false complaint by Dr. Malik has resulted in the miscarriage of justice to the Petitioner on account of the failure by the Experts Committee to properly enquire into the matter. To be fair to learned counsel for the Respondent MHFW, he made no attempt to justify the Report of the Experts Committee.

93. The Petitioner also referred to the provisions of the Copyright Act which prohibit dissemination of published articles without the permission of the author. In support of her submission that she has been defamed by such complaint, the Petitioner produced documents showing that Dr. Malik gave very wide publicity to his allegations against her. She has alleged that this unwarranted wide publicity tarnished her reputation. This Court can only observe that dissemination of such unsubstantiated allegations in academic circles is unfortunate. If only the Experts Committee had ascertained the factual position, this situation arising out of the complaint of Dr. Malik, could easily have been rectified. The

Petitioner has needlessly been made to face the trauma of her reputation being tarnished for a plainly false complaint. This Court reserves to the Petitioner the liberty to seek other appropriate remedies, including damages, in civil proceedings in accordance with law.

94. For the aforementioned reasons, this Court is unable to sustain the Report dated 14th August 2008 submitted by the Experts Committee on the complaint of Dr. Malik against the Petitioner. The said Report is hereby quashed.

Petitioner not to be transferred

95. The last aspect that needs to be dealt with is whether there is any justification for transferring the Petitioner out of VMMC while Dr. Malik continues as the HOD of Ophthalmology. For the reasons already noticed, the observations of the Supreme Court in ***Vishaka*** have not been adhered to by the MHFW in directing the Petitioner's transfer from out of the VMMC. In particular, the MHFW has ignored the proviso to Guideline 4 of the ***Vishaka*** Guidelines which reads:

“In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. **The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.**” (emphasis supplied)

96. Although Clause 4 deals with criminal proceedings, the proviso thereto encapsulates a salutary rule of not allowing the perpetrator and

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the complainant to remain in the same place while the enquiry is on. It would equally apply to disciplinary proceedings. In any event, there is nothing in the *Vishaka* Guidelines that permits the involuntary transfer of the complainant even while the perpetrator continues in the same establishment. The Petitioner pointed out that even in the LHMC she has not been permitted to function and she has had to repeatedly approach the CAT and this Court. Although the Petitioner has now been reinstated at the LHMC, given the circumstances described hereinbefore, the Petitioner has faced injustice and has not been able to work peacefully at the LHMC.

97. If indeed Dr. Malik is found to hold two posts, one as the HOD of Ophthalmology at Safdarjung Hospital and the other as the Additional DGHS, and if he cannot continue to hold these two posts simultaneously, then he should be allowed to retain only one of the posts. While the Petitioner ought not be transferred out of the VMMC against her will, the retention of Dr. Malik at Safdarjung Hospital would not be conducive to a fair and impartial enquiry into the Petitioner's complaint against him. It is for the MHFW to now take a fresh decision as regards Dr. Malik continuing to hold the two posts and whether consistent with the *Vishaka* Guidelines he should be permitted to continue as HOD at Safdarjung Hospital during the pendency of the enquiry into the Petitioner's complaint. The MHFW shall take such decision within a period of four weeks from today. However, the order posting the Petitioner back at the

VMMC should be issued by the MHFW within a period of two weeks from today.

Conclusion

98. As already noticed hereinbefore, it is not clear whether the OM dated 29th July 2010 issued by the MHFW implies that a fresh inquiry will now be held into the Petitioner's complaint against Dr. Malik by constituting a new committee. In any event, the MHFW will ensure that such committee is constituted strictly in accordance with the ***Vishaka*** Guidelines as well as the instructions under the CCS Rules which have been extracted hereinbefore. This should be done within a period of four weeks. A definite outer time limit should be fixed for the conclusion of the enquiry.

99. With the above directions, both the writ petitions are allowed in the above terms with costs of Rs. 25,000/- in each petition which will be paid by the Union of India through the MHFW to the Petitioner within a period of two weeks from today. The pending applications are also disposed of.

S. MURALIDHAR, J.

SEPTEMBER 9, 2010

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