

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

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Judgment reserved on: 14.5.2012
Judgment pronounced on: 21.05.2012

+ **W.P.(C) 4427/2008**

Dr. B.N.Ray

..... Petitioner

versus

Ramjas College & Ors.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Yashoband Das, Sr. Advocate with Mr. Arun Srivastava and
 Mr. Arunav Patnaik along with Petitioner-in-person

For the Respondent : Mr. Anurag Mathur for R-1, Mr. Amit Bansal for R-2
 Ms. Maninder Acharya for R-3 (DU)

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. The petitioner before us is teaching in Ramjas College of Delhi University and took over charge as its Vice-Principal in January, 2007. 04 male students of the College submitted complaints alleging sexual harassment at the hands of the petitioner, to the College Complaints Committee (hereinafter referred to as the Committee), constituted under Ordinance XV-D of the University of Delhi which prohibits and provides for punishment in cases of sexual harassment. Charges based upon the complaints of the students were served upon the petitioner. However, the copies of their complaints were not provided to him. The Committee conducted its proceedings in 05 sittings on 05 different dates. The Committee met 04 of the complainants in person and interacted with them. On the basis of the

written complaints and interaction with the complainants, the Committee concluded that there was a prima facie case of sexual harassment against the petitioner and therefore an inquiry into those complaints was required to be held in terms of provisions contained in Ordinance XV-D.

2. A Sub-Committee was set up in terms of Clause 2.7 & 8 of the Ordinance to conduct the inquiry. The Sub-Committee consisted of 05 members of the Committee. The following 06 charges were framed by the Sub-Committee against the petitioner and were communicated to him in writing on 5.11.2007.

- Abused his position as a teacher to cause the sexual harassment of xxxxx, B.A.(H) Pol. Sc.III, through inappropriate physical contact over a period of two years, including non-consensual sexually explicit physical contact in a hospital/nursing home in September 2006, intimidating him when he resisted such contact, and causing the intimidation of Adeel Ahmed after he had complained to the College Complaints Committee.
- Abused his position as the Convenor, Admission Committee, to cause the sexual harassment of xxxxx, B.A.(H) History II through inappropriate non-consensual physical contact on the 19th and the 20th October, 2007 in his Model Town residence, including hugging, kissing and physical contact with genitalia.
- Abused his position as a teacher as the Convenor, Admission Committee, to cause the sexual harassment

of xxxxx, B.A.(H) Pol. Sc.II, through inappropriate non-consensual physical contact over a period of more than one year, including kissing and physical contact with genitalia, in Delhi and elsewhere.

- Abused his position as a teacher and as the Vice-Principal to cause the sexual harassment of Abdullah Nasir, B.A.(H) Pol. Sc. III, through non-consensual inappropriate physical contact and verbal conduct of a sexual nature over a period of more than one year, including hugging and kissing in his residence and in a hospital/nursing home in September 2006, and by promising rewards for sexual compliance by awarding high marks in the Internal Assessment in papers taught by him and by others in the Department of Political Science, Ramjas College.
- Abused his position as a teacher by using his interpretations of classical Greek philosophy and of the lives of Greek Philosophers as a pre-meditated preface to the sexual harassment and abuse of his students in the Department of Political Science, Ramjas College.
- Caused the intimidation of the complainants and others and thus interfered in the proceedings of the College Complaints Committee in the instant case.

(names omitted by us)

3. The Sub-Committee declined to supply copies of the complaints to the petitioner despite the request made by him and informed him that he would get an opportunity to rebut the charges in his deposition before the Sub-Committee. The

main reasons given for not providing the copies of the complaints to the petitioner were that the complainants had requested that their complaints should not be shown to the petitioner and there was no provision in the Ordinance to provide such copies to the person charged with sexual harassment. The complainants deposed before the Sub-Committee on 15.11.2007 and 16.11.2007 whereas the petitioner deposed on 17.11.2007, 26.11.2007 and 27.11.2007. Some persons named by the complainants were also examined by the Sub-Committee. On 14.2.2008, the Sub-Committee recorded the answers of the petitioner to the questions put to him. The Sub-Committee also read out relevant parts from the deposition of the witnesses and the letter it had received. It also disclosed the names of the persons whose depositions and letters were being quoted by it to the petitioner. The Sub-Committee asked the petitioner as to whether he would like to examine any person who had information, relevant to the inquiry. The petitioner named 04 persons, out of which 02 were examined by the Sub-Committee. The remaining 02 persons expressed their inability to appear on the day the other two witnesses of the petitioner were examined. The Sub-Committee, therefore, decided to elicit their response by conveying the questions to them in writing. The written replies submitted by those two witnesses were then considered by the Sub-Committee which submitted its report to the Committee on 18.3.2008. On considering the report of the Sub-Committee, the Committee concluded that the petitioner be

dismissed from service without prejudice to his financial benefits and the Governing Body of the College should ensure further action in this regard in accordance with the provisions of the Ordinance.

4. On receipt of the copy of the Inquiry Report, the petitioner filed this writ petition seeking a writ or order declaring the inquiry procedure contemplated under the Ordinance as violative of Article 14 of the Constitution of India being unfair and arbitrary, declaring the composition of the College Complaints Committee as well as the manner in which the inquiry was conducted, under the above-said Ordinance as unconstitutional and contrary to law. He also sought quashing of the findings of the Committee and the recommendation made by it for dismissal of the petitioner. This Court permitted the respondents to go-head with the passing of the final order but directed that the said order shall not be given effect to. The decision of the Governing Body on the report of the Inquiry Committee was produced before this Court in a sealed cover on 7.10.2010

5. During the course of arguments, the learned senior counsel for the petitioner assailed the recommendations of the Committee on the following grounds:-

(i) Ordinance XV-D under which inquiry was conducted against the petitioner does not apply to the allegations of sexual harassment of a male and is confined to sexual harassment of females; (ii) the composition of the Committee was bad since it was headed by a teacher who was inferior to the petitioner in rank and consisted

of representatives of students as well as of non-teaching staff of the college; (iii) the copies of the complaints made by the boys were not supplied to him, which prejudiced the petitioner in making his defence; (iv) the witnesses were not examined in the presence of the Petitioner (v) the petitioner was not given an opportunity to cross-examine the witnesses; (vi) the petitioner was not allowed to himself examine the defence witnesses;

It was also the submission of the learned senior counsel that unless the requirements of supplying copies of complaints made and statements of witnesses recorded during preliminary inquiry, giving an opportunity to the delinquent to cross-examine the witnesses and giving him an opportunity to examine witnesses in his defence are read as implicit in the Ordinance, it would be unconstitutional, being violative of Article 14 of the Constitution.

6. We will first deal with the submission that the Ordinance in question applies only to the cases of sexual harassment of females and, therefore, the inquiry against the petitioner could not have been held under the provisions of the said ordinance.

Ordinance XV-D, to the extent it is relevant, provides as under:

“Scope of the Ordinance:

This Ordinance shall be applicable to all complaints of sexual harassment made:

- (i) By a member of the University against any other member of the University irrespective of whether the harassment is alleged to have taken place within or outside the campus.
- (ii) By a resident against a member of the University or by a member against a resident irrespective of whether the sexual harassment is alleged to have taken place within or outside the campus.
- (iii) By an outsider against a member of the university or by a member of the University against an outsider if the sexual harassment is alleged to have taken place within the campus.
- (iv) by a member of the university, against an outsider if the sexual harassment is alleged to have taken place outside the campus. In such cases the Committee shall recommend that the University college authorities initiate action by making a complaint with the appropriate authority. Further the committee will actively assist and provide available resources to the complainant in pursuing the complaint.”

7. **Definitions**

- i. “Students” includes regular students as well as current ex-students of Delhi University.
- ii. ‘Teaching staff’ include any person on the staff of the Delhi University or any colleges or institution affiliated to it, who is appointed to a teaching and/or research post, whether full time, temporary, ad-hoc, part-time, visiting, honorary, or on special duty or deputation and shall also include employees employed on a casual or project basis.

iii. ‘Non-Teaching Staff’ includes any person on the staff of the Delhi University or of any colleges or institutions affiliated to it, who is not included in the teaching staff. It includes employees who are full-time, temporary, ad-hoc, part-time, visiting honorary, or on special duty or deputation, and employees employed on a casual or project basis.

iv. “Member of the University” includes all those included in categories i-iii above.

v. xxx xxx xxx xxx
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vi. xxx xxx xxx xxx
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vii. xxx xxx xxx xxx
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viii. “Sexual harassment” includes any unwelcome sexually determined behavior, whether directly or by implication and includes physical contact and advances, a demand or request for sexual favour, sexually-coloured remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Explanation: “Sexual harassment” shall include, but will not be confined to, the following:

- a. When submission to unwelcome sexual advances, request for sexual favours, and verbal or physical conduct of a sexual nature are made, either implicitly or explicitly, a ground for any decision relating to employment, academic performance, extracurricular activities, or entitlement to services or opportunities at the Delhi University.

- b. When unwelcome sexual advances, and verbal, non-verbal and/or physical conduct such as loaded comments, remarks or jokes, letters, phone calls or e-mail, gestures, exhibition of pornography, lurid stares, physical contact, stalking, sounds or display of a derogatory nature have the purpose and/or effect of interfering with an individual's performance or of creating an intimidating, hostile, or offensive environment.
- c. When a person uses, with a sexual purpose, the body or any part of it or any object as an extension of the body in relation to another person without the latter's consent or against the person's will, such conduct will amount to sexual assault.
- d. When deprecatory comments, conduct or any such behavior is based on the gender identity/sexual orientation of the person and/or when the classroom or other public forum of the University is used to denigrate/discriminate against a person or create a hostile environment on the basis of a person's gender identity/sexual orientation."

8. It would thus be seen that the Ordinance includes, in its ambit, all complaints of sexual harassment made by 'a member of the University' against any other 'member of the University'. It is not restricted to the complaints made by a female member of the University. Member of the University has been defined to include students as well as teaching staff. Student can be male as well as female. The definition given to the expression "students" does not exclude male students either expressly or by implication. Admittedly, the petitioner is included in the teaching staff of the Ramjas College which is a college, affiliated to Delhi University having

been appointed to a teaching post. In fact, even the non-teaching staff is included in the definition given to the expression “member of the university”. Hence, there is no escape from the conclusion that a complaint of sexual harassment made by a male student against a teacher, including a Vice Principal of a college affiliated to University of Delhi, can be inquired into, under the said Ordinance. The definition given to the expression “sexual harassment” is wide enough to include an unwelcome sexually determined behavior, physical contact and advance, demand or request for sexual favour or any other unwelcome physical, verbal or non-verbal conduct of a sexual nature by a teacher qua a male student of the college. Considering the charges served on the petitioner, it can hardly be disputed that the allegations made in the complaint of male student of the college constitute sexual harassment within the meaning of Ordinance XV of the University.

9. The learned senior counsel for the petitioner, in support of his contention that the Ordinance is confined to cases of sexual harassment of a woman, relied upon the policy which led to the promulgation of the said Ordinance and which, in its preamble refers to the decision of the Supreme Court in **Vishaka & Others v. State of Rajasthan & Ors.** (1997) 6 SCC 241. He pointed out that **Vishaka** (supra), was dealing with cases of sexual harassment of women and it was for inquiring into complaints of sexual harassment of women, that the Supreme Court had directed setting up of the Complaints Committee to be headed by a woman and

had also directed that 50% of members of the Complaints Committee should be female and exactly same is the composition of the Committee set up in Ordinance XV-D of the University which provides that the Chairperson, to be elected from amongst the members, would be a woman and at least 50% of the members in each of the categories specified in the Ordinance should be women. This, according to the learned senior counsel for the petitioner, indicates that the Ordinance was intended to apply only to the cases of sexual harassment of women and inquiry into the allegations of sexual harassment of males was not envisaged when the Ordinance was promulgated. We are unable to accept the contention. If the provisions of the Ordinance unambiguously include the cases of sexual harassment of a male within its ambit, it is not necessary for the Court to look into the policy which led to the issuance of the Ordinance. It would have been useful to refer to the policy on sexual harassment had the Ordinance been ambiguous or had there been any scope for more than one interpretation with respect to the scope of the Ordinance. That, however, is not the position in the case before us.

Moreover, even if we look at the policy, we cannot accept the contention that it was intended to apply only to the case of sexual harassment of females working/teaching/studying in the University and its colleges. Para 2 of clause 1.2 of the Policy under the heading “Social Context of Sexual Harassment” reads as under:-

“1.2 SOCIAL CONTEXT OF SEXUAL HARASSMENT

Though violent conduct is prohibited both by law and by University rules, a specific policy defining sexual harassment is required to address the specific form and extent of sexual harassment in the University. The policy recognises that sexual harassment is not an offence merely amounting to disruption of law and order. Sexual harassment is an act of power, and a public and collective violation that is often trivialised by labelling it an interpersonal transgression. It is therefore a violation of gender equality and also, of the right to a safe education and work environment for all. Sexual harassment not only affects a few individuals but reinforces gender-based discrimination for everyone.

It, therefore, becomes imperative that various educational institutions, and civil society as a whole, should take adequate measures to ensure the safety, security, dignity, rights and equality of women as much as of men. Such measures will strengthen social and professional relationships in the work place.

The University of Delhi, in evolving this policy, has borne in mind that the institution functions within a social context. Given the social stigma associated with sexual harassment, a majority of instances of sexual harassment go unreported or even unmentioned. The policy, therefore, has evolved mechanisms that are accessible and will ensure confidentiality. It has also attempted to ensure fair, accountable and representative procedures for redressal and resolution.”

(emphasis supplied)

The above-referred para of the Policy is a clear indicator that the policy was intended at taking adequate measures to ensure safety, security and dignity, etc. of both, female as well as male studying/teaching/working in the University and its colleges. In any case, even if two interpretations in the matter are possible, we

should lean in favour of an interpretation which will protect and safeguard the safety, dignity and honour not only of females but also the males studying/teaching/working in University and its colleges. We, therefore, find no merit in the contention that Ordinance in question does not apply to allegations of sexual harassment of a male student of the college.

10. We, now, come to the next contention that composition of the Complaints Committee as well as the sub-Committee was bad on account of the Chairperson being inferior in rank to the petitioner and on account of inclusion of the representatives of the students and of non-teaching members of the staff as their members. In the case before us, we are concerned with the College Complaints Committee and its sub-Committee. The Ordinance provides as under with respect to constitution of the Committee:-

**“ORDINANCE XV(D): APPENDIX
I. CONSTITUTION OF THE COMMITTEES
(a) COLLEGE COMPLAINTS COMMITTEE
(CCC)**

1. *Two teacher representatives to be elected/nominated by the procedure outlined in Clause 4 (Procedure for the Constitution of First Committee).
2. *Two non-teaching Staff representatives of the College (of which one must be from Group D) to be elected/nominated by the procedure outlined in Clause 4.

3. *Three student representatives to be elected from a Gender Sensitising Committee of students comprising one elected representative of each class. At least one of the three representatives should be a second year graduate student. The details of this procedure are outlined in Clause 4.
4. *Two persons with known contribution to women's issues, to be co-opted by the Committee from outside the College. One of these may preferably have a legal background.
5. The Chairperson (woman) to be elected from amongst the members.
6. The Member Secretary to be elected from amongst the members.”

As regards the sub-Committee, the Ordinance provides that in case a prima facie case is established, the Complaints Committee shall set up an Inquiry Committee, consisting of 3-5 members with at least one member of the complainant's category as well as a member from outside the University.

It would thus be seen that the College Complaints Committee is a broad based committee having representation from all categories, including teaching staff, non-teaching staff and students. At least two outsiders are required to be members of the Committee and one outsider must necessarily be a member of the sub-Committee which inquires into the complaint once a prima facie case of sexual harassment is found by the Committee.

Admittedly, the petitioner is not a Government servant. Hence, the rules made and instructions issued by Government of India from time to time, with respect to inquiries to be held against its employees, do not *per se* apply to complaints of sexual harassment by a teacher of the college, affiliated to the University which is an autonomous body having its own rules and regulations. Hence, the instructions of the Government, stipulating that the Inquiry Officer should be higher in rank to the charged officer, do not apply to the case of the petitioner. When questioned as to how the constitution of the Committee/sub-Committee is illegal or unconstitutional, the learned senior counsel for the petitioner submitted that the composition, as envisaged in the Ordinance, violates Article 14 of the Constitution. We, however, find no merit in this contention. The petitioner being a teacher in a college affiliated to Delhi University and governed by the rules and regulations of the University and the college, in which he is working, is not similar to the Government servants who form a class in themselves. The plea of hostile discrimination is available only to those who are similarly situated and not to those who are placed in an altogether different class of persons. There can be no equality amongst unequals. Teaching staff, non-teaching staff and students of a University and/or a college affiliated to the University constitute a class which is altogether different from the class constituted by Government servants. Therefore, it cannot be said that fundamental right of the petitioner,

guaranteed under Article 14 of the Constitution, is violated on account of the Chairperson and/or members of the Committee/sub-Committee being inferior in rank to the petitioner. We also fail to appreciate how inclusion of students or representatives of students or non-teaching employees, including the representative of Group 'D' employees, can be said to be violative of Article 14 of the Constitution. It was very much in the domain and competence of the University to provide, by way of Ordinance, that the members of the Committee would include representatives from all the sections of the college community. In our view, such a composition also meets the objective of ensuring that all sections of the college community have full faith in the functioning of Committee on account of presence of their representatives on it. The findings of such a broad based Committee are likely to be better received and accepted by all the sections of the college community. In fact, inquiry by a Committee, as against inquiry by an individual, which normally is the case in case of Government servants, is likely to be more fair, objective and impartial, particularly when all the sections are represented in it. We would like to note here that representatives of the teaching community, to which the petitioner belongs, are also included in the Committee as well as the Sub-Committee. In any case, it is for the University to decide what the constitution of such Committees should be and so long such a composition is not shown to be

illegal or without jurisdiction, it is not open to the Court to interfere with the decision of the University in this regard.

11. We now come to the other submissions made by the learned Senior Counsel for the petitioner. It is an admitted position that the witnesses were not examined in the presence of the petitioner and he was not given an opportunity to cross-examine the witnesses. It is also not in dispute that the petitioner was not allowed to examine witnesses in his defence. The procedure adopted by the Committee with respect to the witnesses of the petitioner was that he was asked to give the names of the witnesses he wanted the Sub-Committee to examine and thereafter, those witnesses were examined by the Sub-Committee, not by the petitioner. The procedure adopted by the Sub-Committee was based upon the following provisions of the Ordinance:

The sub-committee must inform the accused in writing about the charges made against him/her and she/he should be given a period of five days from the date of receipt of the notification to respond to the charges.

During the enquiry procedure, the complainant and the accused will be called separately so as to ensure freedom of expression and an atmosphere free of intimidation. The complainant will be allowed to be accompanied by one representative during the enquiry.

12. The issue with respect to the examination of witnesses, their cross examination and examination of defence witnesses in an inquiry held under

Ordinance XV-D came up for consideration before this Court in **Bidyug Chakraborty (Prof.) v. Delhi University & Ors.: 2009 VI AD (Delhi) 1.** In that case, on complaints of sexual harassment being made against the petitioner before this Court, who was working in University of Delhi, an Inquiry Committee was set up to investigate the complaints. The Committee submitted its report holding the petitioner guilty of sexual harassment. Pursuant to the report of the Committee, the Executive Council of the Committee warned the petitioner and also debarred him from holding any administrative post in the University for a period of 03 years. The petitioner filed the aforesaid writ petition seeking quashing of the Memorandum, whereby warning was given to him and he was debarred from holding any administrative post in the University for a period of 03 years as well as the report of the Inquiry Committee. The Committee did not give an opportunity to the petitioner for verbal cross-examination of the witnesses examined by it and copies of their statements were not supplied to him. After completion of examination of the witnesses, no opportunity was given to the petitioner to produce defence witnesses, though at the time of supplying the charge-sheet to him he was given an opportunity to give names of the witnesses whom he wanted the Committee to examine. Allowing the writ petition a Division Bench of this Court, inter alia, held as under:

“As noted earlier, no opportunity was given to the petitioner for verbal cross examination of the complainant. A perusal of the inquiry report shows that the committee informed the petitioner that he could cross examine the complainant by giving written questions to the committee. In our opinion, mere permission to give written questions to the committee for cross examination of the complainant does not fulfil the legal requirement on the part of the Inquiring Authority, to give opportunity to the delinquent to cross examine her. Cross examination by giving written questions to the inquiring authority can never be as effective as verbal cross examination and cannot be its proper substitute. While putting questions to a witness the examiner does not know what answer the witness would give to the questions put to him/her. It is, therefore, not possible for him to formulate the next question without taking into consideration the answer given by the witness. The answer given by the witness to one question may lead to further questions from the examiner on the same line, in order to elicit truth from the witness and to impeach his/her trustworthiness. Moreover, asking the petitioner to give written questions for cross examination was confined in respect of the complainant alone. No opportunity was given to the petitioner even to give written questions for cross examination of other witnesses examined by the committee. It was imperative on the part of the Inquiring Authority to give opportunity to the petitioner for her cross examination not only of the complainant but also of the other witnesses examined by it. Denial of opportunity to cross examine the complainant and other witnesses examined by the committee constitutes gross violation of principles of natural justice.

x x x x In the present case, though at the time of serving charge sheet upon the petitioner, the committee asked him to give list of witnesses whom he wanted to be examined by the committee, no such

opportunity was given to him after the committee had examined the complainant and other witnesses in support of the complaint. The committee was required not only to give an opportunity to the petitioner to produce his witnesses but those witnesses were to be cross examined by the petitioner and not by the committee, though, it would have been open to the committee to examine them after they had been examined by the petitioner and had also been subjected to cross examination.”

This Court held that it was obligatory to follow at least the fundamental norms for conducting inquiries and unless such a requirement was held to be implicit in the Ordinance, it may not be possible to sustain the validity of the inquiry procedure prescribed therein. The Court was of the view that the inquiry conducted without giving an opportunity to the delinquent to cross examine the witness and without giving him an opportunity to produce the witnesses in his defence would not conform to the basic principles of natural justice and a procedure which does not contain even these minimum safeguards for the delinquent cannot be said to be a fair and reasonable procedure for conducting an inquiry.

The decision of this Court was challenged by University of Delhi before the Supreme Court, vide SLP No. 23060/2009. The Supreme Court was of the view that the respondent before it was entitled to a hearing and to cross examine the witnesses produced by the University. However, considering that it was a case of sexual harassment, the Supreme Court directed that the identity of witnesses need

not be revealed to the respondent or to his Counsel and for this purpose the respondents would be entitled to submit a questionnaire which will be put to the witnesses for their answers in writing. The learned Counsel for the University undertook to supply the statements of witnesses, without disclosing their names to the respondents and a Local Commissioner was appointed by the Supreme Court for the purpose of getting answers to the questions to be supplied by the respondents. The Local Commissioner was directed to ensure the anonymity of the witnesses. It was also stated by the learned Counsel for the University that the respondents would be entitled to produce their entire defence evidence in addition to the questionnaire and all annexures to the respondent without revealing the identity of the witnesses.

In view of the decision of this Court in **Bidyug Chakraborty (Prof.)** (supra) as modified by the Supreme Court, it was not obligatory for the Sub-Committee to examine the complainants and other witnesses who were to depose against the petitioner, in his presence. Though the identity of the witnesses was disclosed by the Committee/Sub-Committee to the petitioner, that, in our opinion, does not by itself mean that these witnesses were required to be examined in his presence. In a recent decision **Dr. Pushkar Saxena v. Govt. of NCT of Delhi & Ors.** WP(C) No. 7592/2001 decided on 16.5.2012, the petitioner before this Court was working as PGT (English) in Government Girls Senior Secondary School, Gandhi Nagar. He

was charge-sheeted on 2.12.1996 on the allegation of misbehaviour with the female students studying in the school. The Inquiry Officer reported that the indecent behaviour on the part of the petitioner had been proved. The Disciplinary Authority imposed penalty of dismissal from service upon the petitioner which was also to be a disqualification for future employment under the Government. The Appellate Authority, however, reduced the penalty from dismissal of service to compulsory retirement of the petitioner from the service. It was also directed that he would not be entitled to any benefit for the period from the date of the order of the Disciplinary Authority till the date of his compulsory retirement. The orders passed by the Disciplinary Authority and the Appellate Authority were challenged by the petitioner by way of an OA which was dismissed by the Tribunal. The petitioner assailed the decision of the Disciplinary Authority and the Appellate Authority as well as the view taken by the Tribunal on the ground that the Inquiry was conducted in utter disregard of the mandatory provisions of CCS (CCA) Rules, which were applicable to the inquiry held against him as also in contravention of the fundamental and mandatory principles of natural justice. The names of the complainants had been disclosed in the charge-sheet, which was served upon the petitioner before this Court. It was held by this Court that in the case of an inquiry into allegations of sexual harassment, cross examination need not necessarily be in the presence of the delinquent since sometimes his very presence may result in

putting pressure upon the witnesses and may discourage them from coming out with the truth. With respect to the application of principles of natural justice, this Court, in **Dr. Pushkar Saxena** (supra), inter alia, observed as under:

“It was observed by Supreme Court in **Apparel Export Promotion Counsel v. A.K. Chopra** (1999) 1 SCC 759, in the context of sexual harassment at the place of work, that such incidents result in violation of the fundamental right to gender equality and the right to life and liberty, the two most precious fundamental rights guaranteed by the Constitution of India. It was further observed that the contents of fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the Courts are under a constitutional obligation to protect and preserve those rights. The observations made by the Supreme Court in the context of sexual harassment at the work place apply with a greater vigour in respect of sexual harassment of students, who, on account of their tender age and impressionable mind are at a greater disadvantage in resisting such advances.

In **Avinash Nagra v. Navodaya Vidyalaya Samiti and Ors.** (1997) II LLJ 640 SC, the Supreme Court, referring to our ancient text and teachings, observed that a duty is cast on the teachers to take such care of the pupils as a careful parent would take of his children. It was further observed that since middle class people are now sending girls to co-educational institutions, a greater responsibility is thrust on the management of the school and colleges imparting co-education to protect the young children and, in particular growing up girls in a disciplined and dedicated pursuit of excellence. The Court observed that the teacher, who is kept in charge of such added responsibility, should conduct himself more like a *Rishi* and as *loco parentis*.

In our opinion, all the rules and principles of natural justice, which apply to service jurisprudence in respect of disciplinary proceedings between master and servant, need not necessarily be applied to the disciplinary proceedings taken against a teacher on the basis of complaints made by students, if the allegations made against him constitute misconduct, founded on sexual harassment. It must, however, at the same time be ensured that the teacher concerned is afforded a fair opportunity to controvert the allegations and defend himself and the explanation given by him along with the evidence which he may choose to tender in his defence are duly considered before a decision is taken in respect of the allegations made against him.

In *Hira Nath Mishra and Ors. Vs. The Principal, Rajendra Medical College, Ranchi and Anr.* (1973) II LLJ 111 SC, the Supreme Court held that principles of natural justice are not inflexible and may differ in different circumstances. The Court was of the view that the principles of natural justice did not require that the statements of girl students should be recorded in the presence of male students against whom the enquiry was held in that case. The principles of natural justice will, therefore, depend upon the facts and circumstances of each case. “

13. As regards cross examination of the witnesses, the learned Counsel for the respondents, stated that in view of the order passed by the Supreme Court in the case of **Bigyug Chakraborty (Prof.)** (supra), they have no objection to the witnesses answering the questions of the petitioner through a Local Commissioner, and for this purpose, the petitioner may submit a questionnaire as was directed to be done in the case of **Bidyug Chakraborty (Prof.)** (supra). They also stated that

as was done in the case of **Bidyug Chakraborty (Prof.)** (supra), the Sub-Committee would allow the petitioner to produce defence witnesses and examine them himself, instead of their examination by the Committee subject, of course, to those witnesses being cross-examined by the Presenting Officer/Department representative.

We take note of the fact that in **Bidyug Chakraborty (Prof.)** (supra), the Supreme Court upheld the right of the delinquent to cross examine the witnesses produced by the University and the delinquent was asked to submit a questionnaire to be put to the witnesses, so that the identity of the witnesses was not revealed to him or to his Counsel. It was precisely for this reason that the learned Counsel for the University undertook to supply the statement of witnesses to Professor Bidyug Chakraborty without disclosing their names. The Local Commissioner was also directed to ensure the anonymity of the witnesses. However, in the case before us, the Committee/Sub-Committee has already disclosed the names of the witnesses to the petitioner and has thereby revealed their identity to him. No useful purpose will, therefore, be served by asking the petitioner to submit a questionnaire, to be answered by the witnesses in writing. Had the University not disclosed the identity of the witnesses to the petitioner as was done in the case of **Bidyug Chakraborty (Prof.)** (supra), the University would have been perfectly justified in asking for adopting the same procedure, which it was directed to adopt in the case of **Bidyug**

Chakraborty (Prof.) (supra). But, no useful purpose from adopting such a course of action would be served in a case where the identity of the witnesses has already been disclosed. However, even while in requiring the petitioner to submit a questionnaire containing questions to be answered by the witnesses, we have to ensure that there is no possibility of the witnesses getting influenced on account of the presence of the petitioner at the time of their cross-examination. In the case of **Dr. Pushkar Saxena** (supra), we had directed that the witnesses may be cross-examined through a female defence assistant, and that the petitioner would submit a questionnaire, giving the questions he wanted the witnesses to answer and the answers to the questions will be obtained by the Inquiry Committee. We also directed that the petitioner would not be present at that time, if such a course of action is adopted. In the case before us, we were informed, during the course of the arguments, that all the witnesses, who have yet to depose against the petitioner, are male witnesses. Hence, instead of a female defence assistant, they should be cross examined by a male defence assistant but the petitioner should not be present at the time of their cross-examination.

14. As regards supply of the previous complaints and statements of witnesses, the learned Counsel for the respondents fairly stated that in view of the order of this Court in **Bidyug Chakraborty (Prof.)** (supra), as modified by the Supreme Court, they would supply copies of all such complaints/statements, in case, the same have

already not been supplied and this would be done, before the petitioner is called upon to cross examine the witnesses.

15. For the reasons stated hereinabove, we dispose of the writ petition with the following directions:

1. The findings recorded and the recommendations made by the Enquiry Committee/Sub-Committee are hereby quashed.
2. The respondents will supply copies of all previous complaints and statements of witnesses, to the petitioner, within 04 weeks, unless such complaints/statements have already been supplied to him. This would include the statements recorded by the Committee as well as the statements recorded by the Sub-Committee.
3. Further inquiry in the matter would begin from the stage of cross-examination of the witnesses, who were earlier examined by the Sub-Committee through a male defence assistant of his choice. The petitioner, however, would not be present at the time of their cross examination. If the petitioner does not avail the services of a male defence assistant, he will submit a questionnaire giving the questions, he wants the witnesses to answer and the answers to those questions will be obtained by the Sub-Committee. If such a course of action is adopted, the petitioner will not be present at the time the witnesses answer to the questionnaire.

4. After cross-examination of their witnesses, the petitioner would be given an opportunity to examine witnesses in his defence. It is made clear that examination-in-chief of the defence witnesses shall be conducted by the petitioner or by his defence assistant. Those witnesses may then be cross examined by the Presenting Officer/Departmental Representative.
5. A Fresh report will be submitted by the Sub-Committee after completing the inquiry in terms of this order within 06 months from the date of the order. On submission of the inquiry report, the respondents shall proceed further in the matter in accordance with Ordinance XV-D of the University.

The writ petition stands disposed of in terms of directions contained hereinabove. No order as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

MAY 21, 2012

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