

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 796 OF 2015

Vidya Akhave, aged 39	)	... Petitioner.
R/at: 9/301, Perth CHS Ltd.,	)	
Millennium Park, Hari Om Nagar,	)	
Mulund (E), Mumbai-400 081.	)	

Versus

1. Union of India	)	... Respondents.
Department of Women & Children	)	
	)	
2. Mr. Suneet Shukla,	)	
Designation : General Manager,	)	
Address : IFCI Ltd.,, 307, 3 rd Floor,	)	
Amar Neptune, Near Big Bazaar, Baner,	)	
Pune 411 045.	)	
	)	
3. IFCI LTD.,	)	
Address : IFCI Tower, 61, Nehru Place,	)	
New Delhi 110 019.	)	
	)	
4. Ms. Rashmi Kapoor,	)	
Designation : Presiding Officer,	)	
Internal Sexual Harassment -	)	
Complaints Committee,	)	
Address : IFCI LTD, IFCI Tower, 61,	)	
Nehru Place, New Delhi 110 019.	)	
	)	
5. Disciplinary Authority,	)	
Address : IFCI LTD, IFCI Tower, 61,	)	
Nehru Place, New Delhi 110 019.	)	
	)	

6. Amar Dass Kharbanda)
Designation : Dy. General Manager,)
Address : IFCI LTD, IFCI Tower, 61,)
Nehru Place, New Delhi 110 019.)

Ms. Veena Gowda, Advocate a/w. Surabhi Singh, Advocate for the Petitioner.

Mr. Dhanesh R. Shah, Advocate for the Respondent No.1 Union of India.

Mr. Ashish Kamat, Advocate a/w. Mr. Nikhil Rajani i/by M/s. V. Deshpande & Co. for Respondent No.2.

Mr. Sanjay Jain a/w. Mr. Hemant Prabhukar i/by Jurisperitus Mumbai for Respondent Nos. 3, 5 & 6.

**CORAM : V. M. KANADE AND
MRS.SWAPNA JOSHI,JJ.**

DATE : 04th OCTOBER, 2016

ORAL JUDGMENT :

1 Rule. Rule is made returnable forthwith by consent of the parties.

2 Heard the learned counsel appearing on behalf of the Petitioner and the learned counsels appearing on behalf of the respective Respondents.

3 By this Petition, filed under Article 226 of the Constitution of India, the Petitioner is seeking following reliefs :

a. That this Hon'ble Court be pleased to grant a writ of mandamus or a writ, order or direction in the nature of mandamus directing the Respondent No.1 to take steps to ensure that employers comply with the law on sexual harassment, in letter and spirit;

b. That this Hon'ble Court be pleased to grant a writ of certiorari or a writ, order or direction in the nature of certiorari quashing and setting aside the report dated 17.02.2014 of the committee constituted by the Respondent No.3 Company and consequently the order of the Disciplinary Authority dated 01.05.2014 awarding punishment to the Respondent No. 2;

c. That this Hon'ble Court be pleased to grant a writ of certiorari or a writ, order or direction in the nature of certiorari quashing and setting aside the decision of the Board of Directors dated 03.12.2014 refusing to re-look into the punishment given to the Respondent No.2;

d. That this Hon'ble Court be pleased to consider the evidence on record and statement of witnesses and hold that the conduct of the Respondent No. 2 amount to sexual harassment at workplace as defined by the Hon'ble Supreme Court of India in Vishaka vs. State of Rajasthan, AIR 1996 SC 1, as well as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013;

e. That this Hon'ble Court be pleased to impose such penalty on the Respondent No. 2 as is commensurate with the serious allegations made against him;

f. That this Hon'ble Court be pleased to direct Respondent Nos. 2 and 3 to pay the Petitioner compensation as deemed fit by this Hon'ble Court;

g. That this Hon'ble Court be pleased to grant a writ of mandamus or a writ, order or direction in the nature of mandamus directing the Respondent No.3 not to transfer or assign Respondent No.2 to the same office as the Petitioner;

... ..

4 The facts which are germane for the purpose of deciding this writ petition can be briefly stated as under :

5 On 21st July, 2008 the Petitioner joined IFCI (Industrial Finance Corporation of India) which is now known as IFCI Ltd.. Respondent No.2 was also working in the said Company as General Manager and was immediate superior officer of the Petitioner. A complaint was filed by the Petitioner with the then C.E.O. and M.D. of Respondent No.3 on 22nd February, 2013, alleging that she was subjected to sexual harassment by Respondent No.2 - Mr.Suneet Shukla. It was urged that the CEO and MD should constitute a committee, as laid down by the Apex Court in the case of **Vishakha vs. State of Rajasthan** (AIR 1997 SC-301). A second complaint was again filed on 6th June, 2013 by her since no action was taken on her first complaint dated 22nd February, 2013. She also asked the CEO and MD to constitute a Disciplinary Committee and Internal Complaints Committee to inquire into the allegations which are made by her in her complaints. In

view of the said two letters/complaints, which were sent by the Petitioner, a Committee was constituted and a show cause notice was given to the Respondent No.2, asking him to give his explanation. Presiding Officer was also appointed and then the Petitioner presented detailed complaint before the Committee in which she had cited 25 instances of allegations of sexual harassment made to her by the Respondent No. 2. It will be relevant here to mention that initially i.e. from 21st July, 2008 the Petitioner was working at the Mumbai Regional Office of the IFCI Ltd. and that she started working with the Respondent No.2 from April, 2011. According to her, the first incident took place in July, 2011 and last incident took place in February / March, 2012. The Petitioner then was transferred to the another Company known as “IFCI Sycamore Capital Advisors Pvt. Ltd.”, an associate company of Respondent No.3. The Petitioner was working there from March, 2011 for a period of about 11 months and again was posted back to IFCI, MURO, Mumbai on 18th February, 2013. The first thirteen incidents which she has mentioned in the complaint pertain to

the period from April, 2011 to February/ March, 2012. The other allegations pertain to the subsequent period when she joined the Mumbai Regional Office of IFCI.

6 The Committee conducted an enquiry and evidence was led by both the parties and statements of witnesses were also recorded. The Internal Complaints Committee submitted a report dated 17th February, 2014 and after taking into consideration the allegations which were made by the Petitioner against the Respondent No.2 and the evidence which was produced, the committee came to the conclusion that so far as the incidents which had taken place prior to February/ March, 2012 were concerned, no complaint was filed within three months after the last incident or three months thereafter, as prescribed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 (hereinafter referred as “the said Act”, for the sake of brevity) and therefore, it has not considered the said allegations though they had made certain observations and

given their comments on each of the incidents. The Committee has also observed in its report as under :

“Further, the sexual harassment complaints have to be submitted immediately and in time for effective disposal. Since, there is time gap in filing complaint qua allegation in para no. 1 to 13, the same seems to be beyond time limit in terms of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the committee was of the view that the observations of the committee on the issues/allegations in para no. 1 to 13 may be considered by HR Department as per its policy for taking appropriate steps/action even apart/ separate from the provisions under Sexual Harassment Act.”

Thus the committee was of the view that since the allegations in para nos. 1 to 13 were filed beyond time, it was of the view that the observations of the Committee on the issues in para nos. 1 to 13 will be considered by the H.R. Department, as per its policy for taking appropriate steps/action even apart

separate from the provisions under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. In respect of the complaint/ allegations in para-14 onwards, the Committee was of the view that in view of the observations made by the Committee appropriate action in terms of its Service Rules (Rule 9 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, should be taken.

7 Accordingly, the Disciplinary Authority has passed a detailed order dated 1st of May, 2014 in which finding given by the Committee on each allegations made by the complainant were firstly reproduced and thereafter, the final finding of the Committee was noted. The Disciplinary Authority examined the enquiry report and has observed that the enquiry was conducted as per the provisions of the said Act and that the Respondent No.2 was given full opportunity to defend himself. The Disciplinary Authority thereafter, has observed in para nos. 4 , 5 and 6 as under :

“4. I now propose to deal with punishment to be imposed on the accused based on the findings of the Committee's report. I have given careful consideration to the complaint, the submissions of the parties, the statement of witnesses and also the final report of the Committee. I am convinced that instances of this behavior in an organization like IFCI needs to be dealt with firmly and consistent with the behavior i.e. expected of the officials in this organizations, a punishment commensurate with the acts proven needs to be imposed.

5. Considering that the acts accused of are unbecoming of a person holding an important office in IFCI, it is appropriate to impose the penalty as prescribed under Regulation No. 61(f) of the IFCI Staff Regulations, 1974. The penalty which I am imposing is a major penalty and accordingly, I order as under :

“In exercise of the powers vested in me a major penalty by way of reduction to a lower stage by two stages with cumulative effect be imposed.”

6. The order be communicated to the accused with a copy to the complaint and the effect of this order be given from the date of communication of this order.”

The Disciplinary Authority came to the conclusion that some of the allegations against the Respondent No.2 were established and further observed that the acts of the accused were of unbecoming of a person of holding the office and it was appropriate to impose penalty as prescribed under the Regulation No. 61(f) of the IFCI Staff Regulations, 1974 and a major penalty was imposed of reduction to a lower stage by two stages with cumulative effect. As a result of this punishment, the Respondent No.2 was transferred to Chennai, his salary was reduced to Rs. 2500/- per month, according to the Petitioner, and according to the Respondent No.2 his salary was reduced to Rs. 7104/- per month.

8 The Petitioner has approached this court under Article 226 of the Constitution of India, challenging the validity of punishment that is imposed by the Disciplinary Authority on the Respondent No.2. The sum and substance of the submissions of the learned counsel appearing on behalf of the Petitioner is that the higher punishment ought to have been imposed by the Disciplinary Authority on the Respondent No.2. Secondly, it was submitted that the observations of the Committee in respect of the allegations are not correct. It is submitted that the totality of the evidence and the statements of the witnesses have not been considered in its proper perspective and, therefore, the observations of the Internal Complaints Committee of not entertaining the allegations in para nos. 1 to 13 were illegal and incorrect. It was further submitted on behalf of the Petitioner that the Disciplinary Authority has merely felt that the acts of the accused are of unbecoming of a person, holding an important office and no finding has been given that the Respondent No.2 was guilty of committing sexual harassment, as defined under the

provisions of the said Act and as the law laid down in **Vishakha's** case, cited supra. The learned counsel appearing on behalf of the Petitioner has taken us through the entire report of the Internal Complaints Committee and also through the order passed by the Disciplinary Authority. It is submitted that this is a fit case where punishment should be enhanced and that there should have been reduction in the post held by the Respondent No.2. It is submitted that the penalty of reduction to a lower stage by two stages with cumulative effect was inadequate, taking into consideration the conduct of the Respondent No.2.

9 Learned counsel appearing for the Petitioner has also invited our attention to the judgments of the Apex Court. She submitted a compilation of the judgments in the cases of :
(1) Vishakha & Ors. vs. State of Rajasthan & Ors. (JT. 1997 (7) SC 384, (2) US Verma vs. National Commission for Women & Ors. 163 (2009) DLT 557, (3) Medhal Kotwal Lele & Ors. vs. UOI & Ors., AIR 2013 SC 93 (4) Seema Lepcha vs.

State of Sikkim & Ors. (2013) 11 SCC641, (5) Gaurav Jain vs. Hindustan Latex & Ors. 2015 IXAD (Delhi) 569 and (6) L.S. Sibu vs. Air India Limited and Ors.(2016(150)FLR 488).

10 Learned counsel for the Petitioner invited our attention to para 63 of the Judgment of the Delhi High Court delivered in W.P. (C) Nos. 1730, 1731 and 1733 of 2001 in the case of **U. S. Verma, Principal and Delhi Public School Society vs. National Commission for Women and Ors.**, - 163 (2009) DLT 557 decided on 12th October, 2009, wherein the Delhi High Court has relied on the Judgment of the US Supreme Court in the case of **Joseph Oncale vs. Sundowner Offshore Services, Inc.** 523 U.S.75 (1998) Supreme Court in which the US Supreme Court had an occasion to consider the various facets of the complaints of sexual harassment of a woman.

11 Learned counsel for the Petitioner submitted that the observations made by the Internal Complaints Committee

that the complaint was filed by her beyond limitation were not correct. It is submitted on behalf of the Petitioner that since the Petitioner was a subordinate officer, working under the Respondent No.2, she had a reasonable apprehension that if a complaint is filed by her it would have adverse consequences on her career. She submitted that therefore, the findings of the Committee are illegal. It was further submitted on behalf of the Petitioner that the transcript of the record was not given to her and opportunity to cross-examine also was not given to the Petitioner and if this had been done, she would have been in a position to bring further evidence on record.

12 On the other hand, Mr. Ashish Kamat, learned counsel appearing on behalf of the Respondent No.2, firstly submitted that the order of penalty which was imposed by the Disciplinary Authority on the Respondent No.2 was harsh enough by which the Respondent No.2 had suffered physically, financially and he was also transferred to Chennai where he could not stay with his family, which was stationed in Mumbai.

Consequently, it was submitted that the Committee has considered the material on record and has given its findings and it was not open to challenge these findings by re-appreciating the evidence on record. Thirdly, it was submitted on behalf of the Respondent No.2 that the penalty which was imposed by the Disciplinary Authority on the Respondent No. 2 was a major penalty and, therefore, it could not be said that the Disciplinary Authority has exonerated the Respondent No.2 by imposing a minor punishment. It was also submitted that it is well settled that the proportionality of the sentence normally should not be interfered with by the High Courts while exercising its writ jurisdiction under Article 226 of the Constitution of India. Mr. Kamat, learned counsel for the Respondent No.2, relied upon the judgment of the Supreme Court in the case of **Om Kumar and Ors. vs. Union of India**, [(2001) 2 Supreme Court Cases 386) and in particular the paragraphs 24 to 28 and 71 of the said Judgment.

13 After having heard both the learned counsel at length, firstly, we are of the view that it is necessary to examine scope of jurisdiction of this court in examining the proportionality of sentence imposed by the Disciplinary Authority. It is well settled that unless the court comes to the conclusion that the penalty imposed by the Disciplinary Authority is shockingly disproportionate to the misconduct committed by the delinquent employee, this court has to be slow in interfering with the order of punishment which is imposed on the delinquent employee. The Apex Court in the case of **Om Kumar**, cited supra, has very succinctly crystallized the individual issues regarding scope of the High Courts under Article 226 of the Constitution of India or of the Administrative Tribunals. It would be fruitful to reproduce the said observations made by the Apex Court since they are very clear on quantum of punishment as also the language used by the Supreme Court in its said order/judgment. The Apex Court in the said order has succinctly explained the

position and, therefore, it is necessary to reproduce the said paragraphs nos. 24 to 28 as under :

24. We agree that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article [226](#) of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well known principles known as Wednesbury principles. (See Associated Provincial Picture Houses v. Wednesbury Corporation 1948 (1) KB 223). This Court had occasion to lay down the narrow scope of the jurisdiction in several cases. The applicability of the principle of 'proportionality' in Administrative law was considered exhaustively in Union of India v. Ganayutham ([MANU/SC/0834/1997](#) : (2000)IILLJ648SC) where the primary role of the administrator and the secondary role of the Courts in matters not involving fundamental freedoms, was explained.

25. We shall therefore have to examine the cases of Sri Om Kumar and of Sri Virendra Nath from the stand point of basic principles applicable under Administrative Law, namely, Wednesbury principles and the doctrine of proportionality. It has therefore

become necessary to make reference to these principles and trace certain recent developments in the law.

I(a) Wednesbury principle:

26. Lord Greene said in 1948 in the Wednesbury case that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or other of the following conditions were satisfied, -namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in *Council for Civil Services Union v. Minister of Civil Service* 1983 (1) AC 768 (called the GCHQ case) summarised the principles of judicial review of administrative action as based upon one or other of the following - viz. illegality, procedural irregularity and irrationality. He, however, opined that proportionality' was a "future possibility".

(b) Proportionality:

27. The principle originated in Prussia in the nineteenth century and has since been adopted in

Germany, France and other European countries. The European Court of Justice at Luxembourg and the European Court of Human Rights at Strasbourg have applied the principle while judging the validity of administrative action. But even long before that, the Indian Supreme Court has applied the principle of 'proportionality' to legislative action since 1950, as stated in detail below.

28. By 'proportionality', we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the Court will see that the legislature and the administrative authority 'maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve'. The legislature and the administrative authority are however given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the Court. That is what is meant by proportionality.

14 The Apex Court has then examined the issue of proportionality of legislations in UK and India as well as Australia and Canada. It is not necessary to refer to the said observations made by the Apex Court in the latter part of the said Judgment. However, the Apex Court has summarized and crystallized its views in para 71 of the said judgment, which reproduced is as under :

“71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as 'arbitrary' under Article 14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The Court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment.”

There is no dispute to the ratio laid down by the Apex Court on this issue and the Apex Court has taken a consistent view throughout in all the cases where quantum of punishment is challenged.

15 Having observed the settled position of law regarding the scope of the High Court in interfering with the punishment that is imposed by the Disciplinary Authority, next question which falls for our consideration is whether the inquiry was held in a fair and proper manner. We have perused the report submitted by the Internal Complaints Committee and we find that full opportunity was given to both the parties to lead evidence and the Respondent No.2 was also given a fair opportunity of defending himself. It is not necessary to deal with each and every allegation which has been made by the Petitioner in the complaint since we have to examine whether the findings recorded by the Committee can be interfered with by this Court. It is equally well settled that if a domestic enquiry is held, after giving an adequate

opportunity to the parties and the Enquiry Committee comes to a particular conclusion then merely because two views are possible, the High Court while exercising its writ jurisdiction is not expected to re-appreciate the evidence and come to the different conclusion than the one which is arrived at by the Committee. We are, therefore, of the view that the Committee has dispassionately considered all the allegations and have discarded certain allegations which were made after lapse of one year and at the same time held the Petitioner guilty of instances of sexual harassments which had taken place from July, 2011 to 22nd February, 2013. The Committee had also requested the Disciplinary Authority to take action under Rule 9 of the said Rules.

16 We are of the view, therefore, that it will not be possible for us to accept the submissions of the learned counsel appearing on behalf of the Petitioner that the findings given by the Committee should be set aside or interfered with.

17 So far as the order passed by the Disciplinary Authority is concerned, it is not in dispute that the punishment imposed on the Respondent No.2 is a major punishment of reduction in rank to a lower stage by two stages with cumulative effect. It has been urged that this punishment is disproportionate and the Respondent No.2 ought to have been reduced in rank. It is submitted that taking into consideration the statements of witnesses and more particularly, the statements of the women employees, who had in their statements talked about the unbecoming of a person and conduct of Respondent No.2, ought to have been considered as a circumstance for the purpose of establishing the case of the Petitioner. We are of the view that it is not possible to accept this submission of the learned counsel for the Petitioner. The Disciplinary Authority in no uncertain terms has condemned the conduct of the Respondent No.2 and has observed that this part of the behaviour of the Respondent No.2 needs to be dealt with firmly, consistent with the behaviour expected of the official in the said organization. It

must also be noted that even though the Enquiry Committee did not take into consideration the allegations made in paragraphs 1 to 13 of the complaint on the ground of limitation, but it still recommended that the departmental enquiry will have to be made on these allegations but not under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

18 So far as the allegations from February, 2013 onwards are concerned, a major penalty has been imposed. We are of the view that it cannot be said that the punishment which is imposed is shockingly disproportionate to the conduct of the Respondent No.2 and therefore, the ratio of the judgment of the Apex Court in the case of **Om Kumar**, supra, squarely applies to the facts of the present case. We are, therefore, not inclined to interfere with the punishment which is imposed by the Disciplinary Authority.

19 However, we would like to make reference to the observations made by the Delhi High in the case of U.S. Verma, cited supra, wherein the observations made by the US Supreme Court have been reproduced. The Delhi High Court made reference to the observations of the US Supreme Court in paras. 63, 64 and 65, which read as under :

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

we believe that in evaluating the severity and pervasiveness of sexual harassment, we should focus on the perspective of the victim. Courts "should consider the victim's perspective and not stereotyped notions of acceptable behavior." ...Conduct that many men consider unobjectionable may offend many women.... Men tend to view some

forms of sexual harassment as "harmless social interactions to which only overly-sensitive women would object"; the characteristically male view depicts sexual harassment as comparatively harmless amusement.

We realize that there is a broad range of viewpoints among women as a group, but we believe that many women share common concerns which men do not necessarily share. For example, because women are disproportionately victims of rape and sexual assault, women have a stronger incentive to be concerned with sexual behavior. Women who are victims of mild forms of sexual harassment may understandably worry whether a harasser's conduct is merely a prelude to violent sexual assault. Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive. One writer explains: "Their greater physical and social vulnerability to sexual coercion can make women wary of sexual encounters. Moreover, American women have been raised in a society where rape and sex-related violence have reached unprecedented levels, and a vast pornography industry creates continuous images of sexual coercion, objectification and violence.... Because of

the inequality and coercion with which it is so frequently associated in the minds of women, the appearance of sexuality in an unexpected context or a setting of ostensible equality can be an anguishing experience.

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

We note that the reasonable victim standard we adopt today classifies conduct as unlawful sexual harassment even when harassers do not realize that their conduct creates a hostile working environment.... To avoid liability under Title VII, employers may have to educate and sensitize their workforce to eliminate conduct which a reasonable victim would consider unlawful sexual

harassment.... If sexual comments or sexual advances are in fact welcomed by the recipient, they, of course, do not constitute sexual harassment. Title VII's prohibition of sex discrimination in employment does not require a totally desexualized work place....

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

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

65. Article 15 [\(3\)](#) of the Constitution enables the State to legislate special provisions, or frame policies to inter alia,

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

20 From the above observations it is apparent that very often women share common concerns which men do not necessarily share or the concern expressed by women have not been necessarily understood by men in the proper perspective. There is no manner of doubt that women are socially and physically vulnerable and are faced with sense of constant

insecurity while working in any organization and it is the duty of every employer to ensure that the appropriate safeguards are provided by the men in the organization to protect the women from sexual harassment and other types of harassments. The employer should ensure that the duties which are cast upon them by the said Act are complied in neat. It will be relevant to reproduce the duties which have been cast upon the employer by section 19 of the said Act which reads as under :

“Section 19 – Duties of Employer – Every employer shall-

(a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;

(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassment; and the order constituting, the Internal Committee under Sub-section (1) of section 4;

(c) organize workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act and orientation programmes for the members of the

Internal Committee in the manner as may be prescribed;

(d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

(e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

(f) make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of section 9;

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;

(h) cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;

(i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

(j) monitor the timely submission of reports by the Internal Committee.

21 We are of the view that apart from displaying the penal consequences of sexual harassments and organizing the workshops by organizing the programmes at regular intervals, it is necessary to provide the safeguards and assistance to the women in relation to the complaints of sexual harassment. There should be an inbuilt internal mechanism so that any instance of harassment faced by a woman can be conveyed in a confidential manner to the senior women superior officer and, therefore, an Internal Committee should be constituted to ensure that such instances are nipped in the bud at the inception itself. This is particularly important considering the fact that the number of working women has increased in India and they are occupying various post in different sectors and are contributing financially to the economy of the country. The Internal Committee should also act in a free and transparent manner in order to ensure that the complaints of sexual harassment are inquired into seriously and that too without any bias. Very often men may view sexual conduct in a vacuum without full appreciation of the social setting or the

underlying threat of violence that a woman may perceive, as observed in the judgment of the US Supreme Court in the case of Joseph Oncale vs. Sundowner Offshore Services. It is, therefore, necessary to continue to create awareness of the vulnerability of the women to all the men employees.

22 Lastly but not the least, when a complaint is filed by a woman employee, it should be promptly looked into and an enquiry should be made by the Internal Committee within a reasonable period of time.

23 Lastly, the safety mechanism should be evolved to ensure that the women employees can express their concern to a suitable higher officer.

24 Though the Apex Court delivered the judgment in **Vishakha's** case, supra, for almost a period of 11 years no legislation was passed and finally the said Act was passed in 2013. We find that though the said Act was passed in 2013,

yet most of the companies, corporations and government undertakings have not constituted the Internal Complaints Committee. If this is not done, these Committee should be constituted in an expeditious manner.

25 The writ petition is disposed of in the above terms.
Rule is discharged accordingly.

 We express our appreciation to the assistance given
to us by both the learned counsel.

(MRS.SWAPNA JOSHI,J.)

(V. M. KANADE,J.)

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