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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11384 OF 2017

1. The State of Maharashtra

2. Dr. Bhushan K. Upadhyay

3. Smt. Swati Sathe

4. Shri N.B. Vaichal

...Petitioners

vs.

Shri Hiralal Rama Jadhav

...Respondent

.....

Mr. A.Y. Sakhare, Senior Advocate along with Mr. Rohan S. Mirpury & Mr. O.M. Kulkarni, AAGP for the State/Petitioner in Writ Petition No.11384/2017.

Mr. A.V. Anturkar, Senior Advocate i/by Mr. Prashant Bhavake, Advocate for the respondents in Writ Petition No.11384/2017.

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**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

RESERVED ON : 7th DECEMBER, 2017.

PRONOUNCED ON : 22nd DECEMBER, 2017.

JUDGMENT (PER : M.S. KARNIK, J.) :-

Rule. Rule heard forthwith by consent of parties.

2. The challenge in this petition filed under Article 226 of the Constitution of India by the petitioner – State of Maharashtra is to an order passed by the Maharashtra Administrative Tribunal, Mumbai ('Tribunal' for short) in O.A.No. 919 of 2016. The Tribunal interfered with the order of suspension dated 2/9/2016 and directed the petitioners to reinstate the respondent within a period of four weeks and give him an appropriate posting in the post of Superintendent of Jails or equivalent post.

3. The facts in a nutshell are thus :-

The petitioner was posted as Superintendent of Jails, Central Jail, Thane. One lady employee subordinate to the petitioner, made a complaint against him levelling allegations of sexual harassment. The complaint was initially made to the petitioner No.3 who at that relevant point of time was DIG,

Prisons at Pune. Thereafter, the order of suspension dated 2/9/2016 was issued against the respondent by petitioner No.2. The order of suspension was passed under provisions of Rule 4 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter called as “D & A Rules”). Having regard to the nature of the complaint, the provisions of the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as “the said Act” for short) were also invoked.

4. The record indicates that by an order dated 2nd September, 2016, the petitioner came to be suspended invoking the power conferred by Rule 4 (1)(a) of D & A Rules. The charge-sheet was issued on 15th November, 2016 and accordingly for the alleged incident of sexual harassment the petitioner was charged for committing misconduct under Rule 3 and Rule 22 (A) (1) of the Maharashtra Civil Services (Conduct) Rules, 1979 (hereinafter referred to as “the conduct rules” for short).

5. It is a matter of record that initially internal committee was to be chaired by the petitioner No.3, later on however the constitution of the committee was changed and it was ordered to be chaired by Mrs. Ashwati Dorje, Additional Commissioner of Police, Mumbai. In so far as the present petition is concerned, the issue as regards the legality of the suspension order dated 2/9/2016 arises for consideration.

6. To decide the controversy the admitted facts are these :-

(a) On the alleged complaint of sexual harassment, by an order dated 2nd September, 2016, the respondent was suspended as the inquiry against him was contemplated. By memorandum dated 15th November, 2016 an inquiry was initiated against the respondent in exercise of the powers conferred by Rule 8 of D & A rules.

(b) In respect of the allegations of the sexual harassment, the respondent was charge-sheeted for violating Rule 3 and Rule 22 (A)(1) of the Conduct Rules.

(c) For conducting a departmental inquiry against the respondent, by a Government Resolution dated 23rd December, 2016 a committee was constituted under the chairmanship of Smt. Ashwati Dorje, Additional Commissioner of Police, Mumbai to hold a departmental inquiry.

(d) By a corrigendum dated 28th February, 2017 to the Government Resolution dated 23rd December, 2016, it was clarified that the Internal Complaints Committee is formed to inquire into the allegations of sexual harassment under the chairmanship of Smt. Ashwati Dorje. The Committee thus was only to inquire into the allegations of sexual harassment under the said Act and the issue of disciplinary enquiry was separated. The respondents have taken a stand that the disciplinary enquiry is kept in abeyance awaiting the report of the Internal Complaints Committee so constituted.

7. It is thus seen that by the corrigendum dated 28th February, 2017, Government Resolution dated 23rd December, 2016 came to be modified. Thus, Internal Complaints

Committee was constituted to conduct detailed inquiry into the allegations of the sexual harassment against the respondent.

8. Nothing has been brought on record to indicate that the respondents have revoked the charge-sheet dated 15th November, 2016.

9. Learned Senior Counsel Shri Sakhare appearing for the petitioners assailed the order of the Tribunal. In his submission, after placing the respondent under suspension by an order dated 2nd September, 2016, the departmental inquiry was initiated by an order dated 19th November, 2016 and charge-sheet was thereby issued against the respondent. Learned Senior Counsel Shri Sakhare relying upon the relevant provisions of the D & A Rules and the Conduct Rules pointed out that the petitioners invoked the provisions of Section 4 of the D & A Rules for suspending the respondent. In his submission, the provisions of the said Act and the provisions of the D & A Rules as well as the Conduct Rules operate in distinct and different

fields. He submits that a charge-sheet has been issued against the respondent for alleged misconduct under Rule 3 and 22 (A) of the Conduct Rules. Relying upon the Section 28 of the said Act, Shri Sakhare contended that the provisions of the said Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. In his submission, the D & A Rules framed under Article 309 of the Constitution of India is “law” for the time being in force. In his submission, the provisions of the said Act do not override the provisions of the Rules. He therefore submits that the power of suspension is in addition to the interim measures provided under the said Act.

10. Per contra, the learned Senior Counsel Shri Anturkar appearing on behalf of the respondent invited our attention to the order passed by the Tribunal and advanced his submissions in support of the said order. In his submission, once by the corrigendum dated 28th February, 2017, the Government having taken a decision to constitute the internal committee as per Section 4 of the said Act, then in respect of the inquiry into the

alleged sexual harassment, the field is occupied by the central statute viz. the said Act. In his submission, the departmental inquiry itself cannot proceed with. Learned Senior Counsel would submit that once the central statute is holding the field the general provisions of D & A Rules will not apply. In his submission, the corrigendum dated 28th February, 2017 is very clear as the same specifically refers to the constitution of the committee for conducting detailed inquiry under the said Act. In his submission, a detailed procedure is provided under the Act for holding an inquiry and the committee has thereby been constituted for holding the inquiry under the said Act. Learned Senior Counsel would, therefore, submit that the inquiry into the complaint has to be conducted in consonance with the procedure laid down under the said Act. Relying upon the provisions of the said Act, learned Senior Counsel submits that if detailed provisions are made for interim arrangements during the pendency of the inquiry conducted under the said Act then the powers under the D & A Rules cannot be invoked. According to him, during the pendency of the inquiry under the said Act

only the interim measures provided under the said Act can be resorted to. The order of suspension would thereby lose its efficacy and the same would render itself inconsequential and inoperative. He would submit that the rules framed under “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (hereinafter referred to as “Rules of 2013” for short) provide for an inbuilt safeguard as regards the other relief to be granted to the complainant during the pendency of the inquiry. This according to the learned Senior Counsel would go to show that the Act which is a central legislation will prevail over the rules which are framed under Article 309 of the Constitution of India.

11. Learned Senior Counsel would, therefore, submit that the Tribunal upon considering the relevant provisions of the Act has rightly come to the conclusion that the order of suspension has to be set aside. Learned Senior Counsel submits that suspension is not one of the measures contemplated by Section 12 of the said Act and therefore, so long of the inquiry is

conducted under the provisions of the said Act, the suspension made under D & A Rules cannot continue.

12. We may now proceed to analyze the submissions advanced by the learned Counsel. To appreciate the controversy it would be material to quote the relevant provisions of the said Act, the Preamble of which reads thus :-

“ An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.”

Definition Clause **2(a)** defines “aggrieved woman” means – (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent ;
(ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house ;

2(b) - “appropriate Government” means - (i) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or

indirectly -

(A) by the Central Government or the Union territory administration, the Central Government ;

(B) by the State Government, the State Government ;

(ii) in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government ;

2(f) “employee” means a person employed at a workplace for any work on regular, temporary, ad-hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name ;

2(g) “employer” means -

(i) in relation to any department, organization,

undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, the head of that department, organization, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

Explanation :- For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organization ;

(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees ;

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number,

time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker ;

2(h) “Internal Committee” means an Internal Complaints Committee constituted under section 4 ;

2(i) “Local Committee” means the Local Complaints Committee constituted under section 6 ;

2(n) “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely :-

- (i) physical contact and advances ; or
- (ii) a demand or request for sexual favours ; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography ; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

13. Section 4 provides for “Constitution of Internal Complaints Committee”. Section 9 of the said Act provides for

“Complaint of sexual harassment”, the relevant provision of Section 9(1) reads thus :-

“9. Complaint of sexual harassment – (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident :

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing :

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint with the said period.”

14. Section 11 makes provision for inquiry into the complaint. The relevant provision of Section 11(1) reads thus :-

“11. Inquiry into complaint – (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent

is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall if *prima facie* case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable.”

15. Section 12 provides for “action during pendency of inquiry” which reads thus :

“12. **Action during pendency of inquiry** – (1) During the pendency of an inquiry on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to -

(a) transfer the aggrieved woman or the respondent to any other workplace ; or

(b) grant leave to the aggrieved woman up to a period of three months ; or

(c) grant such other relief to the aggrieved woman as may be prescribed.

(2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

(3) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section

(1), the employer shall implement, the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.”

16. Section 13 provides for “Inquiry report”. The relevant portion of which reads thus :-

“13. **Inquiry report** – (1) On the completion of an inquiry under this Act, the Internal committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be -

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed ;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:”

17. Chapter VI provides for “Duties of employer”. One of the duties of the employer provided by Section 19 is every employer shall (i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct.

18. Section 28 provides for the act to be not in derogation of any other law. Section 28 reads thus :-

“28. Act not in derogation of any other law. - The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”

19. In exercise of powers conferred by Section 29 of the said Act, the Central Government has made “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013. Rule 7 and 8 which are relevant for determination of the present controversy read thus :-

“Rule 7. Manner of inquiry into complaint – (1) Subject to the provisions of section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.

(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).

(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.

(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an *ex parte* decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer as the case may be :

Provided that such termination or *ex parte* order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

(6) The parties shall not be allowed to bring in any legal

practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present.

Rule 8. Other relief to complainant during pendency of inquiry – The Complaints Committee at the written request of the aggrieved woman may recommend to the employer to -

- (a) restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer ;
- (b) restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.”

20. In exercise of the powers conferred in proviso of Article 309 of the Constitution of India, the Government of Maharashtra has made the Conduct Rules of 1979. The relevant portion of Rule 3 is as under :-

“3. Duty of Government servant to maintain integrity, devotion to duty, etc. - (1) Every Government servant shall at all times -

- (i) maintain absolute integrity ;
- (ii) maintain devotion to duty ; and

(iii) do nothing which is unbecoming of a Government servant.”

21. Rule 22-A of the said Conduct Rules provides for prevention of sexual harassment of working woman. Rule 22-A reads thus :-

“22-A – Prevention of sexual harassment of working woman – (1) No Government servant shall indulge in any Act of sexual harassment of any women at her work place.

(2) Every Government servant who is in charge of a work place shall take necessary steps to prevent sexual harassment to any workmen at such work place.

Explanation - For the purpose of this rule,

(a) “sexual harassment” includes any one or more of the following acts or behaviour (whether directly or by implication) namely : -

(i) physical contact and advances ; or

(ii) a demand or request for sexual favours ; or

(iii) making sexually coloured remarks ; or

(iv) showing pornography ; or

(v) any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.

(b) the following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment -

(i) implied or explicit promise of preferential treatment in her employment ; or

(ii) implied or explicit threat of detrimental treatment in her employment ; or

(iii) implied or explicit threat about her present or future employment status ; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her ; or

(v) humiliating treatment likely to affect her health or safety.

(c) “workplace” includes, -

(i) any, department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Government ;

(ii) hospitals or nursing homes ;

(iii) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto ;

(iv) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.

(v) a dwelling place or a house.”

22. It would also be material to refer to Rule 4 of the D & A Rules which provides for suspension of a Government servant where a disciplinary proceeding against him is

contemplated or is pending. The relevant portion of Rule 4 (1) reads thus :-

“4. Suspension – (1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order may place a Government servant under suspension -

(a) where a disciplinary proceeding against him is [contemplated] or is pending, or

(b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial :

Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.”

23. Rule 8 of the D & A Rules provides the procedure for imposing major penalties. Rule 8 reads as under :-

“Rule 8. Procedure for imposing major penalties -

(1) No order imposing any of the major penalties shall be

made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 9, or where such inquiry is held under the Public Servants (Inquiries) Act 1850 (37 of 1850), in the manner provided in that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

[Provided that, where there is a complaint of sexual harassment within the meaning of rule 22A of Maharashtra Civil Service (Conduct) Rules, 1979, the Complaints Committee established in each Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.]”

24. Placing reliance on the above mentioned provisions, it is the contention of the learned Senior Counsel Shri Anturkar that as the respondents have constituted a committee to examine the complaint as provided under the said Act and as a

decision has been taken to conduct an inquiry under the said Act, the respondents can resort to only the interim measures as provided under Section 12 of the said Act. In his submission, as the Central legislation viz. the said Act holds the field, continuing the suspension under Rule 4 of D & A Rules is not at all permissible and sustainable.

25. In our opinion, the view taken by the Tribunal that resort to the provisions of D&A Rules can be taken at only after the inquiry under the said Act results in the conclusion that the allegations against the respondent are proved, is unsustainable. The D & A rules and the Conduct Rules which are framed under the proviso to Article 309 of the Constitution of India is “law” for the time being in force within the contemplation of Section 28 of the said Act. Section 28 of the said Act clearly provides the provisions of the said Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

26. We do not find Rule 4 of the D & A rules is in any manner in derogation of the provisions of the said Act. It is not in dispute that the charge-sheet has already been issued and the disciplinary inquiry into said charge for violating the rule 3 and rule 22(A)(1) of the Conduct Rules is pending. By way of corrigendum dated 28/2/2017 the issue of disciplinary inquiry came to be separated from the complaint of sexual harassment under the said Act. The disciplinary inquiry was kept in abeyance by the petitioners awaiting the report of the committee.

27. A reading of Section 12 of the said Act would go to show that it is upon the written request made by the aggrieved woman that the local committee may recommend to the employer to adopt one of the interim measures mentioned therein. Even Rule 8 of the said Rules of 2013 provides for the interim recommendations to be made during the pendency of the inquiry upon written request of the aggrieved woman. Sub-

section (i) of Section 19 provides that every employer shall (i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct. In fact sub-section (3) of Section 13 clearly provides that when the internal committee or local committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer and the District Officer, as the case may be to take action for sexual harassment as a misconduct in accordance with the provisions of Service Rules applicable to the respondent.

28. The provisions of the said Act, therefore, make it abundantly clear that it is upon a conclusion reached by the committee that the allegation of the sexual harassment is proved that it has to recommend to the employer for taking action under the Service Rules for the misconduct of sexual harassment.

29. Insofar as the provisions of D & A Rules are concerned, Rule 22-A of the Conduct Rules itself provides for sexual harassment as a misconduct for which action has already been initiated under the D & A Rules. The said Act of 2013 on one hand and the Conduct Rules as well as the D & A Rules on the other hand clearly operate in different and distinct fields. In our opinion, the petitioners can always proceed under the D & A Rules independent of a complaint made under the said Act of 2013. The power of suspension under Rule 4 of the D & A Rules or the power to proceed with the inquiry under the said Rules cannot in any manner be restricted only because a complaint of sexual harassment is being inquired into by the committee under the said Act of 2013. The interim measures provided under Section 12 of the said Act and Rule 8 of the said Rules of 2013 enure to the benefit of the complainant and it is only upon the written request made by the aggrieved woman that the interim measures can be resorted to.

30. The power under Rule 4 of the D & A Rules is a power to be exercised by the appointing authority to place the Government servant under suspension where the disciplinary proceeding is contemplated or is pending. The exercise of this power under Rule 4 of the D & A rules is not dependent on the complaint that is being inquired into under the 'said Act'. Any restraint put on this power under Rule 4 as a result of pendency of complaint under the 'said Act' would completely defeat Section 28 of the said Act. In our opinion, the provisions of the 'said Act' are in addition to or not in derogation of the provisions of the D & A Rules.

31. As is evident from the provisions of the said Act, the purpose of the said Act is to inquire into the complaint of sexual harassment by a committee duly constituted and if the allegation so made is proved then the recommendation is to be made to the employer to take action for sexual harassment as a misconduct in accordance with the provisions of the Service Rules applicable to the respondent.

32. In the present case, the petitioners have already initiated the disciplinary proceedings against the respondent and even the charge-sheet has been issued for the misconduct of sexual harassment. The petitioners have invoked the power of suspension under Rule 4 of the D & A Rules pending inquiry. The petitioners have taken a decision to keep the disciplinary inquiry in abeyance awaiting the report of the committee on the complaint made under the said Act. The order of suspension made under the D & A Rules is not open to challenge on the ground that the disciplinary authority is awaiting the report of the committee in the inquiry conducted under the said Act.

33. In our opinion, the Tribunal was in error in coming to the conclusion that the order of the suspension was premature. The impugned order passed by the Tribunal, therefore, calls for interference. The order of the Tribunal is quashed and set aside. The Writ Petition is allowed.

34. We make it clear that it would be open to the respondent to challenge the order of suspension on any other ground as permissible in law as we have only dealt with the legality of the suspension order on the ground raised in this petition. If the order of suspension is challenged before the Tribunal on any other grounds, the same will obviously be considered by the Tribunal on its own merits.

35. Rule made absolute in terms of prayer clause (a) and (b) with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)