

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

WRIT PETITION NO. 1348 OF 2001

Ms.Renuka Mukherjee
V/S

....Petitioner

1. Vodafone Essar Ltd.
2. Sandip Das
3. Steve Correa
4. Rajiv Sawhney
5. Asim Ghosh

....Respondents

Ms.Meena Doshi i/by Amol Doijode for Petitioner.
Mr.P.K.Dhakephalkar, Sr.Advocate with Mr.Punit Anand for the Respondent No.1.
Mr.S.K.Talsania, Sr.Advocate with Mr.Rajesh Begur i/by ARA Law for Respondent No. 2.
Mr.Mukund Jamabulikar with Mr.Rajesh Begur i/by ARA Law for for Respondent No. 3.
Ms.Soma Singh with Mr.Rajesh Begur i/by ARA Law for Respondents No.4 & 5.

CORAM : A.A. SAYED &
M.S.KARNIK,JJ.
RESERVED ON : 13 JUNE 2017
PRONOUNCED ON : 13 OCTOBER 2017

JUDGMENT: (Per A.A.Sayed,J.)

By this Petition filed under Article 226 of the Constitution the
Petitioner has sought following reliefs:

(a) the delay if any in filing this Petition may please be
condoned;

(b) that this Hon'ble Court in its writ jurisdiction be pleased to issue such appropriate writs of certiorari, mandamus, other writs, declarations, orders or directions as may be appropriate, just, necessary, proper and expedient by

(i) holding that the Respondents Nos. 1,2, 3 and 4 have violated the Fundamental Rights of the Petitioner under Articles, 14, 15, 19 and 21 of the Constitution of India;

(ii) that the Respondents Nos.2, 3 and 4 have sexually harassed the Petitioner and acted vindictively with premeditated malice against the Petitioner;

(iii) that the Respondent No.1 have violated the law laid down by the Hon'ble the Supreme Court of India in the case of Vishaka and others versus State of Rajasthan and others reported in AIR 1997 (SC) p.3011 and have deliberately flouted the rules prescribed by the Apex Court and failed to implement the guidelines laid down as law towards protection of women from sexual harassment at workplace and failed to provide grievance procedure for redressal of complaint of the Petitioner against sexual harassment at workplace and by not taking disciplinary action against Respondents Nos.2,3 and 4;

(iv) that the letter of termination of the Petitioner's service dated 1st August 2000 is entirely malicious, bad in law, void, non-est, being in violation of the Fundamental Rights of the Petitioner and against the law laid down by the Hon'ble the Supreme Court;

(c) that this Hon'ble Court in the grave circumstances be pleased to initiate contempt proceedings against the Respondents for willful flouting and/or violation of the law laid by the Hon'ble the Supreme Court of India as above;

(d) that this Hon'ble Court be pleased to order the Respondents Nos.1 to 4 jointly and/or severally to pay substantial compensation of a sum of not less than Rs.1,00,00,000/- (Rupees One Crore only) to the Petitioner for the grievous injury and irreparable damage done to her physically and her psyche by reason of actions complained against them;

(e) that pending the hearing and final disposal of this Writ Petition this Hon'ble Court be pleased to stay the purported letter of termination of the 1st August 2000 of the Respondent No.1 and grant such consequential reliefs that this Hon'ble Court may deem fit, just and proper;

(f) that pending the hearing and final disposal of this Writ Petition this Hon'ble Court be pleased to direct the Respondents jointly and/or severally to deposit such sum as may be just, fit and proper by way of security towards payment of compensation as may be awarded;

(g) that pending the hearing and final disposal of this Writ Petition the Respondents jointly and/or severally be ordered to pay to the Petitioner for and towards expenses a sum of Rs.5,00,000/- (Rupees Five Lakhs only) for prosecuting this Petition;”

2. The case of the Petitioner is as follows:

She was appointed as a Sales Operations Manager in Max India Ltd. wef 2 November 1994 vide appointment letter dated 28 November 1994. Pursuant to a joint venture Max India Ltd. came to be known as Hutchison Max Telecom Pvt.Ltd. and is now known as Vodafone Essar Ltd. On 28 May 1995, she was designated as Manager, Customer Care. She had rendered meritorious service to the Respondent No. 1. In or around late 1997, she was forced to consider the option of living in a separate accommodation with her son as there were differences of opinion with her husband and in-laws. She had applied for being provided for appropriate leased out accommodation as and by way of a perquisite. This proposal of accommodation was sanctioned by the Respondent No.1 upto a limit Rs.20,000/- per month, but could not immediately worked out for want of suitable accommodation being found. On 1 June 1998, the position of the Chief Operating Officer (COO) came to be filled up by the Respondent No.2. Subsequently, Respondent Nos.4 and 3 joined services with effect from April 1999 and 16 February 2000 respectively. Respondent No.2 projected himself as her friend, philosopher and guide in her moment of distress and revived her house perquisite to enable her to find appropriate accommodation. Respondent No.2, thereafter, started making uncalled for gestures and signs indicative of his desire to have sexual favours from the

Petitioner. (In paragraph 8 of the Petition, the Petitioner has given some instances of alleged behaviour of the Respondent No. 2 which according to her were having sexual undertones). By her letter dated 30 November 1998 to Ms.Sandra Muhadwar, the then Head of HR, she specifically complained about the conduct of the Respondent No.2. There were several meetings with Ms.Sandra Muhadwar, but despite these meetings she found that Ms.Sandra Muhadwar was not in a position to be of any help in bringing about any change in the attitude of the Respondent No.2. In these circumstances, she directly wrote a letter dated 11 March 1999 to the Respondent No.2 pleading with him not to mess up her career and not force himself on her and not to misunderstand her approach to Ms.Sandra Muhadwar. Upon the Respondents Nos. 3 and 4 joining the Respondent No.1, Respondent No.2 started to use subtle pressures through these persons who were subordinate to him for canvassing to her the virtues of giving a little sex to achieve substantial progress in the organization. She was getting more and more terrified at the thought that sooner than later she would be thrown out of her job. She was thereafter shifted to pager division from the customer services department. The pager division work is a low profile clerical job, of inferior status and falling within the workmen category. Her supervisory functions were suddenly taken away from 1999. The entire schemata of the Respondents Nos.2, 3 and 4 was either to make

her bend or break. On 12 June 2000, the Respondent No.3 called her to his cabin and peremptorily informed her that she will have to vacate her chair which she presently was occupying as the Company had found a replacement for her. On 13 June 2000, she presented a letter addressed to the Respondent No.3 and stated that she was being victimized and subjected to hostility, harassment and discrimination. She sent a detailed registered letter on 13 June 2000 outlining her hopeless predicament because of the sexual harassment and victimization. On 1 August 2000, she was summoned for a meeting around the closing time of office. On entering the cabin she was surprised to see alongwith the Respondent No.2, the Respondents Nos.3 and 4 and one Ms.Jayashree Ramamurthi. She was told that there was no work for her and she was already given sufficient time to look out for an alternate assignment and she was asked to give her voluntary resignation and accept the discretionary compensation package. She refused to give resignation. Respondent No.2, thereafter, pulled out a dismissal letter already kept ready and signed by him alongwith some cheques. She refused to accept the same. Subsequently, she received the said termination letter dated 1 August 2000 by post from the Respondent No.3 alongwith cheques of Rs.75,585/- and Rs.42,276/-. On receipt of the said letter dated 1 August 2000, she addressed a letter on 4 August 2000. The entire exercise of throwing her out was totally a case of

malafide victimization of the Petitioner. She was put through the traumatic experience by violation of her fundamental rights. In the meantime she filed a Complaint being Complaint (ULP) No.93 of 2001 in the Labour Court at Mumbai on 7 February 2001. Respondents Nos.2,3 and 4 in collusion with one another have palpably indulged in immoral conduct either in seeking sexual favours from her under threats or inducements thereby committing criminal acts of outraging her modesty. Respondent No.1 did not follow the guidelines laid down by the Supreme Court in Vishaka's case by failing to provide the grievance procedure for redressal of her complaints of sexual harassment at workplace.

3. Affidavits in Reply have been filed by the Respondent No.1 and Respondent No.2 denying all allegations of the Petitioner and inter alia asserting that the allegations of the Petitioner of sexual harassment were only made as an afterthought after she was terminated from employment and that the allegations were imaginary, reckless and baseless. Affidavit of Ms.Sandra Muhadwar, the then Head of HRD of Respondent No.1 in support of the case of the Respondent No.1 has also been filed. The Petitioner has also filed Affidavits in Rejoinder.

4. While admitting the Petition on 20 September 2001, this Court had passed the following order:

“Heard the learned counsel for the petitioner and Mr.K.K.Singhvi, learned senior counsel for the respondents.

2. At the outset, the learned counsel for the petitioner submitted that in the writ petition the petitioner does not press prayer b(iv) as the petitioner has already filed the complaint being complaint (ULP) No.93/2000 in that respect before Labour Court. After hearing the learned counsel for the petitioner and the learned senior counsel for the respondents, we are satisfied that rule deserves to be issued.

3. Hence, rule.

4. Mr.Rajesh N.Bagar, Advocate waives service for the respondents.

5. Interim prayers sought for in clauses (e), (f), (g) and (h) are rejected.”

Thus, at the time of admission of the Petition, the Petitioner had not pressed the prayer challenging her termination order dated 1 August 2000 in view of the substantive challenge to the said termination order made by her in her Complaint (ULP) No. 93 of 2000 filed before the Labour Court. It is not in dispute that the said Complaint before the Labour Court was

ultimately dismissed *exparte*. The Learned Counsel for the Petitioner fairly conceded that this Court in the exercise of writ jurisdiction under Article 226 of the Constitution is not expected to adjudicate the disputed question of fact namely whether or not the Petitioner was a victim of sexual harassment alleged at the hands of the Respondent No.2. The learned Counsel states that the limited relief the Petitioner is now seeking is confined to compensation to her for failure of the Respondent No. 1 to constitute the Complaints Committee in terms of the law laid down by the Apex Court in case of **Vishaka and others vs. State of Rajasthan and others, (1997) 6 SCC 241.**

5. Learned Counsel for the Petitioner made the following submissions:

(i) The Petitioner was subjected to sexual harassment at workplace at the hands of Respondent No.2 which violated her fundamental rights under Articles 14, 15, 19 and 22 of the Constitution as has been laid down by the Apex Court in **Vishaka's** case which is to be treated as law under Article 141 of the Constitution as held by the Apex Court by not constituting the Complaints Committee for redressal of the complaints of sexual harassment at work place.

(ii) In paragraph 8 of the Petition, the Petitioner has averred about the sexual overtures and unreasonable demands of sexual favours from the

Petitioner made by the Respondent No.2. The Petitioner was married and having a son and the Respondent No.2 himself was married and residing with his family.

(iii) Inasmuch as the Petitioner did not succumb to the sexual advances of the Respondent No.2 she was victimized and shifted to the Pager Division from the Customers Service Department which is a low profile clerical job and she was ultimately terminated on 1 August 2000. The Petitioner was initially appointed as a Manager, Customer Care and rendered meritorious service and her good work was appreciated even by the Managing Director. She was also deputed to Hong-Kong to look into Customers Services Operation and later to Singapore to attend the Customers Care Workshop.

(iv) The Petitioner's grievances of sexual harassment were not looked into and addressed. Even after the letter of termination dated 1 August 2000, she had immediately addressed a letter on 4 August 2000 to the Respondent No.1 Company wherein the Petitioner had pointed out that the termination of her services was a consequence of her refusal to cave in to sexual advances and carnal overtures of the Respondent No.2 and the Respondent Nos.3 and 4 were all along colluding to pressurize the Petitioner over the last 20 months. In the said letter the Petitioner has

referred to the written complaints made by her and the ill-treatment meted out to her and victimization at their hands.

(v) Despite the communications in the form of inter-office Memos at Exhibits H, I and J of the Petition and the letter dated 13 June 2000 at Exhibit K of the Petition written by the Petitioner which letter was sent by RPAD to the Respondent No.3, her grievances were not considered and addressed. The aforesaid communications were made during the course of her employment and prior to the letter of termination dated 1 August 2000.

(vi) In the Affidavit-in-Reply dated 24 August 2001 of the Respondent No.1 Company, a reference is made to the so called Committee alleged to have constituted comprising of the three persons to enquire into the allegations of the Petitioner. The said Committee made a farce of an enquiry after the termination of the Petitioner without giving any notice to her and behind her back only for the purposes of giving a clean chit to the Respondent No.2.

(vii) Because of the failure of the Respondent No.1 Company to constitute the Complaints Committee relating to sexual harassment at work place (hereinafter referred to as the 'Complaints Committee') in terms of the law laid down by the Apex Court, the Petitioner's fundamental rights under Articles 14, 15, 19 and 21 of the Constitution were violated and she is required to be compensated in terms of money.

Learned Counsel for the Petitioners has placed reliance on the following judgments:

- (I) Vishaka and Others vs. State of Rajasthan and Others, (1997) 6 SCC 241;
- (i) Chairman, Railway Board and Others vs. Chandrima Das (Mrs) and Others, (2000) 2 SCC 465;
- iii) MCD vs. Assn. of Victims of Uphaar Tragedy & Others, (2005) 9 SCC 586;
- iv) B.K. Basu vs. State of W.B., (1997) 1 SCC 416;
- v) R.D. Upadhyay vs. State of A.P. and Ors., (2001) 1 SCC 437;
- vi) Nilabati Behera (Smt) alias Lalita Behera (through the Supreme Court Legal Aid Committee) vs. State of Orissa and Ors., (1993) 2 SCC 746;

6. Learned Senior Counsel for the Respondent No.1 Company invited our attention to the Affidavit-in-Reply of the Respondent No.1 as also the Affidavit-in-Support of Respondent No.1 filed by Ms.Sandra Muhadwar and made the following submissions:

- (i) There was not a single Complaint of sexual harassment or otherwise made by the Petitioner to the Respondent No.1 Company prior to her termination on 1 August 2000. It is only after the termination as and by way

of afterthought that the Petitioner had made these false and baseless allegations for the first time vide her letter dated 4 August 2000. The inter-office Memos at Exhibits H, I, J and the letter at Exhibit L are not on record of the Respondent No.1 Company and they appear to be fabricated by the Petitioner in support of the false case of sexual harassment. The Respondent No.2 throughout his career had enjoyed impeccable reputation.

(ii) The Petitioner had filed a Complaint ULP No.93 of 2001 before the Labour Court at Mumbai on the same facts. Having resorted to that remedy which was more efficacious, she was not entitled to get any relief in this Petition. The Petitioner did not prosecute the said Complaint and remained absent and the same was dismissed by passing a reasoned order.

(iii) Though the Petitioner was terminated on 1 August 2000, the present Petition was filed only on 24 May 2000, nearly after nine months after her termination and the Petition therefore suffers from delay and laches.

(iv) After the termination, the Petitioner was gainfully employed in the Company known as Pagepoint and holding a very high position wherein she was provided for accommodation and car also.

(v) The services of the Petitioner were found to be average and she was given repeated opportunities to work in different positions to improve her

performance. Hence, since 1998, the performance of the Petitioner had deteriorated and she had almost stopped doing of any substantial work possibly because of her marital issues also. For the years 1998-1999 and 1999-2000 the Petitioner did not even fill up her self batch appraisal forms which every employee is required to fill up in order to demonstrate the work plan and achievement. There were several counselling meetings relating to the Petitioner's indifferent performance between Ms. Sandra Mahadwar who was then heading the Human Resource Department (HRD) of the Respondent No. 1 and the Petitioner. After Ms. Sadra Mahadwar resigned from the Respondent No. 1 in November 1999, the Respondent No. 3 was appointed as Vice President, Head of the Human Resources Department. Several meetings took place between the Respondent No. 3 and the Petitioner wherein the Petitioner was repeatedly cautioned and advised to improve her performance. Apart from this she had number of counseling meetings between her immediate superior i.e. the Respondent No.4 and the Petitioner, however the Petitioner had not shown any sign of improvement. The Respondent No.4 therefore being immediate superior of the Petitioner and the Respondent No.3 being Head of the Human Resources Department, recommended termination of the contract of employment of the Petitioner. The Respondent No.2 in his capacity as Chief Operating Officer (COO) considered and accepted the said recommendation made by

the Respondent Nos.3 and 4. The proposal was put up before the Respondent No.5 Managing Director as is customary. The Respondent No.5 after considering all the relevant aspects concurred with the said proposal and accordingly letter dated 1 August 2000 was issued to the Petitioner terminating her contract of employment.

(vi) In reply to the letter dated 4 August 2000 of the Petitioner, the Respondent No. 1 by their letter dated 14 August 2000 specifically recorded that the allegations of sexual harassment and sexual overtures by the Respondent Nos.2 to 4 were made for the first time by the Petitioner after her termination. The Petitioner then sent a legal notice dated 22 August 2000 through her Advocate, wherein imaginary, reckless and false allegations were again made. There was no reference to any of the four alleged communications (Exhibit H, I, J and L) in the said letter as the said communications did not exist at that time and were fabricated thereafter.

(vii) In the Affidavit of Ms. Sandra Muhadwar (affirmed in USA on 27 August 2001) in support of the case of the Respondent No. 1 she has pointed out that she was in the employment for the period 18 September 1995 to 27 September 1999 and at the relevant time she was working as Head of HRD. She has specifically stated that at no point of time, during her interaction with the Petitioner she had ever mentioned or hinted anything

whatsoever about any sexual harassment by the Respondent No.2 or any other officer of the Respondent No.1 Company and she had never received any inter-office memo dated 30 November 1998 (Exhibit H to the Petition). The Petitioner had never approached her with a grievance that the Respondent No.2 was sexually harassing her and there was no question of her taking up the matter to the Respondent No.2 as alleged by her in the Petition. Even personally as a former employee of the Respondent No.1 Company and co-worker of Respondent No.2 she found the Respondent No.2 to be a thorough gentleman having an absolutely professional approach to work and all employees and at the relevant time there were about 200 female employees working for the Respondent No. 1 and she was heading the Human Resource Department and no female employees ever made any Complaint against the Respondent No.2 and the allegations made by the Petitioner against the Respondent No.2 were totally false and fabricated.

(viii) In any event, the communication dated 13 June 2000 (Exhibit K to the Petition) clearly shows that the Petitioner was aware that a new recruit was likely to come in her place. The Respondent No.2 joined service with Respondent No. 1 on 1 June 1998, the Respondent No.3 joined service on 16 February 2000 and Respondent No.4 joined service sometime in April

1999. The termination of the Petitioner was on 1 August 2000 which demonstrates that the allegations of the Petitioner were not true and the services of the Petitioner were terminated only based on her performance. The Petitioner ought to have made a Complaint first to her higher authority which she had not done. The entire story of the Petitioner was an afterthought.

(ix) The question of any compensation to the Petitioner does not arise as the Petitioner had never written to the Respondent No. 1 for constitution of the Complaints Committee prior to her termination. Moreover, even in the present Petition, there is no prayer for constitution of the Complaints Committee. Even at the time of admission of the Petition no such oral prayer or directions were sought for constitution of the Complaints Committee at that stage to look into her alleged grievances of sexual harassment.

(x) Not having a Complaints Committee would not entitle the Petitioner for compensation, particularly when there was no complaint made at any time by her to the Respondent No.1 during her employment. Even in the first letter dated 4 August 2000, after her termination, there is no specific reference to the Exhibits H, I, J and L to the Petition. There is no foundation laid down for any such mandatory prayer for compensation. Due to passage

of time and because of the conduct of the Petitioner in not pursuing her Complaint before the Labour Court no reliefs can now to be granted to her.

(xi) The allegations made were serious and amounted to outraging the modesty of a women and even after her dismissal, the Petitioner has not chosen to file any criminal complaint which was always open to her.

(xii) There was never a demand made to the Respondent No.1 Company for formation of the Complaints Committee.

Learned Counsel for the Respondent No.1 Company in support of the contentions placed reliance on the following judgments:

- i) Seema Lepcha vs. State of Sikkim & Ors., 2012 LawSuit (SC) 376;
- ii) Medha Kotwal Lele & Ors. vs. Union of India & Ors., 2012 LawSuit (SC) 720.

7. Learned Senior Counsel for the Respondent No.2 took us through the Affidavit-in-Reply of Respondent No.2 and made the following submissions:

- (i) No fundamental rights of the Petitioner were violated as alleged by her.
- (ii) The first complaint of sexual harassment alleged to have been made by the Petitioner was on 30 November 1998 (Exhibit H) and she was

terminated after about two years on 1 August 2000. This shows that there was no victimization as sought to be alleged.

(iii) Even assuming that there was no Complaints Committee, no prejudice can be said to have been caused to the Petitioner as there was never any complaint by the Petitioner during her employment period.

(iv) It was more of a revenge story by the Petitioner as she was disgruntled because of her termination and she wanted to target senior officers of the Respondent No. 1. There are no dates or places or particulars of the alleged incidents of sexual harassment mentioned against the Respondent No.2. The Petitioner never approached the Respondent No.1 or sought appointment of any Complaints Committee during her employment, and it was only after termination and by way of afterthought, the Petitioner has sought to level all types of false, baseless and defamatory allegations.

(v) No complaint was made much less about constitution of a Complaints Committee and therefore there was no occasion to investigate any Complaint. The Petitioner had filed a Complaint (ULP) No. 93 of 2000 before the Labour Court under the provisions of MRTU and PULP Act and in particular Schedule IV, item 1, (a), (b), (c) and (f). 1(a) particularly

speaks of dismissal of employee by way of victimization which amounts to unfair labour practice on part of the employer. The Labour Court was fact finding court. Despite 112 adjournments, the Petitioner did not remain present before the Court even once and the Respondent No.2 was subjected to those proceedings which ultimately came to be dismissed only on 6 May 2008 by a reasoned order. It was calculated game played by the Petitioner to seek revenge as she was terminated.

(vi) The prayer clause 28(d) speaks of compensation of Rs.1 Crore to the Petitioner “for grievous injury and irreparable damage done to her physical and her psych by reason of action complained against them”. There is no prayer for compensation for failure to constitute a Complaints Committee in the Petition and the Petition is really speaking infructuous and it is only by way of an afterthought that the Petitioner is now twisting the prayers to extract something out of this Petition.

(vii) The Respondent No.2 is a family man and has held very high positions in various Companies and has now retired. He has impeccable reputation in the field in which he has worked and because of the false and frivolous allegations his reputation has suffered in the Respondent No. 1 Company. The Respondent No.2 was in employment of the Respondent No.1 Company for many years thereafter.

8. Learned Counsel for the Respondent No.3 submitted that the Respondent No.3 was appointed in the Respondent No. 1 Company only on 16 February 2000 whereas the termination of the Petitioner was on 1 August 2000. He submitted that the Petitioner had made contrary statements in the letter at Exhibit L to the Petition which is letter dated 13 June 2000 (at running page 55 of the Petition) allegedly written by the Petitioner to the Respondent No.3 and the letter dated 22 August 2000 addressed by the Petitioner through her Advocate and therefore the Petitioner cannot be believed. There is no material against the Respondent No.3 and merely because the Respondent No.3 had recommended the termination of services of the Petitioner, he was sought to be roped in by her.

9. Learned Counsel for the Respondent No.4 and 5 submitted that no such compensation was sought against the Respondent No.5 even in the prayer seeking compensation in paragraph 28 (d) of the Petition, as the Respondent No.5 was never concerned. The Respondent No.5 was unnecessarily made a party to the Petition as also in the Complaint before the Labour Court. The Respondent No.5 has retired from Company on 31 March 2009. Learned Counsel pointed out that so far as the Respondent No.4 is concerned the only allegations made are found in paragraph 10 of

the Petition. She also pointed out at page 79 of the Petition which is a letter dated 22 August 2000 written by the Advocate for the Petitioner wherein the only allegations made against the Respondent No.4 was that he had some meetings with the Petitioner but they were in the nature of promoting the Respondent No.2's base interest and projecting him as a good person and that it would be impudent to defy him and that she should tow the establishment line. It is contended that the Respondent No. 4 was sought to be roped in unnecessarily and there was no material against him.

10. Learned Counsel for the Petitioner in her arguments in rejoinder adverted to the provisions of section 26 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013, which came into force w.e.f. 09-12-2013. She pointed out that even the new enactment provides for punishment with fine which may extend to Rupees fifty thousand in case of non-constitution of the Complaints Committee in terms of section 4 of the said Act. She submitted that there was no necessity of demand to be made by her for constitution of the Complaints Committee. She submitted that the letter of termination was direct consequence of the refusal of the Petitioner to succumb to the sexual advances of the Respondent No.2.

11. It needs to be reiterated that the only issue pressed before the Court by the learned Counsel for the Petitioner is with regard to the grant of compensation to the Petitioner for non-constitution of the Complaints Committee by the Respondent No.1 in terms of the law laid down by the Apex Court in **Vishaka** in respect of the Complaints alleged to have been made by the Petitioner of sexual harassment at the hands of the Respondent No.2 and alleged to be indirectly supported by the Respondent Nos.3 and 4. According to the learned Counsel for the Petitioner by not constituting the Complaints Committee the Respondent No. 1 had failed to provide the procedure for redressal of the complaints of the Petitioner against sexual harassment at workplace. In **Vishaka**, the 3-Judge Bench of the Supreme Court has laid down the guidelines in respect of the protection of women from sexual harassment at work places. The Supreme Court interalia noted that in absence of any legislative measures there was a need to find an effective alternate mechanism for prevention of working women who may be exposed to sexual harassment which results in violation of fundamental rights of “gender equality” and “right to life and liberty”_for women workers under Article 14, 15, 19(1)(g) and 21 of the Constitution. In paragraph 17 and 18 of the judgment in **Vishaka**, the Supreme Court has laid down the guidelines and issued directions in the following terms:

“17. The GUIDELINES and NORMS prescribed herein are as under:-

HAVING REGARD to the definition of “human rights” in Section 2(d) of the Protection of Human Rights Act, 1993.

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

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

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

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

2. Definition:

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

- a) physical contact and advances;*
- b) a demand or request for sexual favours;*
- c) sexually coloured remarks;*

- d) *showing pornography;*
- e) *any other unwelcome physical, verbal or non-verbal conduct of sexual nature.*

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

3. Preventive Steps:

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

(a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

(b) The rules/regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to

include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal Proceedings:

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

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

5. Disciplinary action:

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

6. Complaint mechanism:

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

7. Complaints Committee:

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

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any under pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Workers' Initiative:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

9. Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. *Third-party harassment:*

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. *The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector.*

12. *These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.*

18 *Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of, accordingly.”*

12. We have given our due consideration to the submissions of the learned Counsel. In paragraph 3 of the judgment of the Supreme Court in **Vishaka** it is observed as under:

“When, however, instances of sexual harassment resulting in violation of fundamental rights of woman workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.”

(emphasis supplied)

Thus, it is only when there is/are instance/s of sexual harassment that it can be said that there is violation of fundamental rights under Articles 14, 19 and 21 of the Constitution. In other words, unless it is established that there was sexual harassment, there can be no violation of fundamental rights under Articles 14, 19 and 21. In the present case, as conceded before us by the learned Counsel for the Petitioner, this Court in the exercise of writ jurisdiction under Article 226 of the Constitution is not expected to adjudicate the disputed question of fact whether or not the Petitioner was a victim of sexual harassment. In our view, therefore, the non-constitution of the Complaints Committee by the Respondent No.1- Company in its work place may not ipso facto mean that the fundamental rights of the Petitioner have been violated.

13. From a bare perusal of the prayer clauses of the Petition, it would be apparent that there is no prayer made by the Petitioner for compensation for non-constitution of Complaints Committee by the Respondent No.1. The prayer for compensation made in prayer clause 28(d) is in relation to seeking compensation from the respondents Nos. 1 to 4 “for grievous injury and irreparable damage done to her physical and her psych by reason of action complained against them”. Thus, this prayer clause 28(d) proceeds on the basis that the injury and damage is established, which is not so in

the present case.

14. There is a serious dispute in respect of inter-office Memos dated 30-11-1998 (alleged to have been written by the Petitioner to Ms.Sandra Muhadwar, the then Head of HRD), dated 11-03-1999 (alleged to have been written by the Petitioner to the Respondent No.2) and dated 13-10-1999 (alleged to have been written by the Petitioner to the Respondent No.4) annexed at Exhibits H, I & J to the Petition as also the letter dated 13-06-2000 (alleged to have been written by the Petitioner to the Respondent No.3 and alleged to have been sent by the Petitioner by RPAD) annexed at Exhibit "L" to the Petition. On one hand it is claimed by the Petitioner that inter-office memos at Exhibits H, I & J were sent by her (though it is fairly conceded before the Court that there was no custom of obtaining acknowledgment in respect of inter-office memos) including the letter dated 13-06-2000 (in respect of which the Petitioner claims to have an acknowledgment of the postal department). On the other hand, the case of the Respondents is that there was no such inter-office memos or letter dated 13-06-2000 in the records of the Respondent No.1 and the said inter-office memos and the letter dated 13-06-2000 are forged and fabricated documents and it is only after her termination on 01-08-2000 as and by way of afterthought that the Petitioner has for the first time vide her letter dated

04-08-2000 made these false, imaginary and reckless allegations and the same was merely to seek revenge and to malign and target the top brass of the Management. We are not inclined to go into this disputed question of fact whether Exhibits H,I,J & L were on record of the Respondent No.1 or they were false and fabricated documents. Indeed, it is not possible for us in the exercise of our writ jurisdiction to rule on the above disputed question of fact and come to a positive finding in this regard. It is required to be noted that the Petitioner had filed a Complaint before the Labour Court being Complaint (ULP) No.98 of 2000 under the provisions of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act (MRTU & PULP Act) prior to the filing of the present Petition. The pleadings in the said Complaint before the Labour Court were on the same lines as that of the present Petition. In the said Complaint, the Petitioner had claimed victimization and had also sought a declaration that the Respondent No.1 had committed unfair labour practice under the MRTU & PULP Act apart from seeking setting aside of her termination and reinstatement. The Petitioner had asserted that she was a victim of sexual harassment and since she did not cave into the demand of the Respondent No.2, she came to be terminated. The Labour Court is a fact finding Court and could have gone into the issues threadbare including the issue whether or not the said Exhibits H,I,J & L were on record of the Respondent No.1 or

whether they were false and fabricated documents. The Petitioner, however, chose not to pursue the said Complaint and after about 112 adjournments the Complaint ultimately came to be dismissed exparte by the Labour Court on 06-05-2008. It is not disputed before the Court that the Petitioner had not attended the Labour Court even on a single occasion. In our view, the Petitioner ought to have taken the said Complaint to its logical conclusion and subjected herself to cross-examination. The contention on behalf of the Petitioner that she did not prosecute the said Complaint because she was not a 'workman' and her Complaint before the Labour Court may not have been entertained, is merely stated to be rejected. In her Complaint before the Labour Court, she has specifically pleaded that from June 1999 she was shifted to pager division from the customer services department, where the work assigned to her was clearly clerical and she was relegated to a workman status till she was terminated on 01-08-2000. As a matter of fact, even in the present Petition, the Petitioner has reiterated in paragraph 9 that she was doing low profile clerk job of inferior status, which falls in the category of workman. The Petitioner cannot be allowed to take a stand contrary to her pleadings in this Petition. She cannot approbate and reprobate to suit her convenience. In any event, nothing prevented the Petitioner from withdrawing her Complaint before the Labour Court if she felt that her Complaint before the Labour Court may not

be entertained on technical grounds. We find substance in the submission of the learned Counsel for the Respondent that the Complaint was kept pending by the Petitioner merely to harass the Respondents knowing fully well that she would not be appearing before the Labour Court.

15. It is also required to be noted that in the present Petition there is no prayer seeking direction from the Court to constitute a Complaints Committee on sexual harassment. Pertinently, even at the time of admission of the Petition, the Petitioner through her Counsel did not press for the constitution of the Complaints Committee to look into her Complaint on sexual harassment. It is an admitted position that during the course of her employment there was no letter written by the Petitioner to the Respondent No.1-Company seeking constitution of Complaints Committee to look into her grievance on sexual harassment. As a matter of fact even in the letter dated 04-08-2000 of the Petitioner as also her Advocate's letter dated 22-08-2000 addressed to the Respondent No.1-Company (for the first time), no such request was made. Merely to test the bonafides of the Petitioner, during the course of hearing, we suggested to the learned Counsel for the Petitioner that if the Petitioner was serious about her Complaint even at this stage we can explore possibility of directing the Respondent No.1-Company to have the Complaint of the Petitioner atleast

to the extent of veracity of her Complaint examined by the Complaints Committee which is now stated to be in place in the Respondent No.1- Company. However, the learned Counsel for the Petitioner, after taking instructions, stated that the Petitioner is now settled in Australia and does not wish to appear before any Committee. The other judgments cited on behalf of the Petitioner were cases where compensation was awarded because the injury was established/accepted and therefore the said judgments do not help the case of the Petitioner. Though the Petitioner claims that her fundamental rights were violated and claims compensation relying upon the judgment of the Supreme Court in the case of **Vishaka**, she has given up prayer clause 28(b)(iv) of the Petition as discussed in paragraph 4 hereinabove. The said prayer clause 28(b)(iv) reads as follows:

“(b)(iv) that the letter of termination of the Petitioner's service dated 1st August 2000 is entirely malicious, bad in law, void, non-est, being in violation of the Fundamental Rights of the Petitioner and against the law laid down by the Hon'ble the Supreme Court.”

(emphasis supplied)

16. In view of the aforesaid discussion, we do not find that this is a fit case to grant compensation to the Petitioner for non-constitution of the Complaints Committee by Respondent No.1. It is an admitted position that at the relevant time there was no Complaints Committee constituted by the

Respondent No.1 despite the law laid down by the Supreme Court in **Vishaka**. To that extent it can be said that the Respondent No.1-Company had not implemented the directions of the Supreme Court in **Vishaka**. We are informed by the learned Senior Counsel for the Respondent No.1 that the Complaints Committee was constituted later and is presently in place. It is no doubt true and as rightly pointed out on behalf of the Respondent No.1 that there were several establishments even in the Government Departments and other Institutions where the Complaints Committee were yet to be constituted even in the year 2012. As a matter of fact, in **Medha Kotwal Lele** (supra) and **Seema Lapcha** (supra) directions have been issued by the Apex Court in the year 2012 to constitute Complaints Committee in terms of **Vishaka**. Even assuming that there was no Complaint of the Petitioner on record of the Respondent No.1 making grievance of sexual harassment during the course of her employment and it was only after she was terminated that she had made allegations of sexual harassment as contended by the Respondents, we find that nothing prevented the Respondent No.1 from inquiring into her grievance even after her termination. However, there was no Complaints Committee in place to inquire into Complaint of sexual harassment made by the Petitioner. In our view, some preliminary inquiry also could have been undertaken by the Complaints Committee to determine the veracity of the Complaint and

whether the same was bonafide and genuine, had such Complaints Committee been in place. It is noticed that the Respondent No.1 did constitute an Inquiry Committee consisting of three persons, which shows that they were conscious of the fact that the Complaint of the Petitioner was required to be look into. However, curiously that Inquiry Committee has admittedly not issued any notice to the Petitioner pertaining to her Complaint and she was not examined and no opportunity of hearing was given to her. That inquiry therefore was no inquiry in the eyes of law.

17. Though we are not inclined to direct payment of compensation to the Petitioner by the Respondent No.1 as indicated earlier, we do note here that the Respondent No.1 had not followed the guidelines laid down by the Supreme Court in **Vishaka** as there was no Complaints Committee constituted by the Respondent No.1 at the relevant time. Taking a cue from section 26(1)(a) of the new enactment of 2013, we deem it appropriate to direct the Respondent No.1-Company to pay a sum of Rs.50,000/- to the War Widow's Association, New Delhi, within a period of six weeks from today for its failure to constitute the Complaints Committee at the relevant time in terms of the judgment of the Apex Court in **Vishaka**.

18. The Petition is disposed of in the aforesaid terms. Rule to stand disposed of accordingly. There shall be no order as to costs.

19. List the matter on 28 November 2017 for reporting compliance.

(M.S.KARNIK,J.)

(A.A.SAYED,J.)