

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

LPA No. 1276 of 2018 (O&M)

Date of Decision: 20.08.2018

Union of India and others

.....Appellants

versus

Arjun Singh

.....Respondent

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL, JUDGE.**

Present : Mr. Arun Gosain, Advocate, for the appellant.

KRISHNA MURARI, C.J.(oral)

CM No. 3454-LPA of 2018

Heard. For the reasons mentioned in the application, delay of 205 days in filing the present appeal is condoned. Application stands disposed of.

LPA No. 1276 of 2018

This intra-court appeal under Clause X of the Letters Patent is filed by the Union of India questioning the judgment and order of the learned Single Judge dated 20.12.2017 setting aside the punishment of compulsory retirement awarded to the respondent-petitioner on the ground of not following the procedure prescribed under the rules for inflicting the said punishment.

2. Learned counsel for the appellant vehemently contends that in view of the allegations of the charge of sexual harassment at workplace against the respondent-petitioner, action was taken against him in view of the guidelines laid down by the Hon'ble Apex Court in case of *Vishaka and*

others v. State of Rajasthan and others AIR 1997 (SC) 3011, and accordingly after the preliminary enquiry, Sector Level Complaint Committee looked into the matter and found the petitioner guilty and a show cause notice was issued to him. Thereafter a major penalty of compulsory retirement was imposed.

3. We are afraid that a bare perusal of the guidelines laid down by the Hon'ble Apex Court in Vishaka's case (supra), which was directed to be treated as law under Article 141 of the Constitution of India, itself provides in clause 5 pertaining to disciplinary action, which reads as under:-

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

4. During the course of the arguments, learned counsel for the appellant candidly admitted before us that the procedure prescribed under the Central Reserve Police Force Rules, 1955, which prescribes a procedure for awarding punishment, has not been followed. Rule 27 of the said Rules provides compulsory retirement as one of the major penalties and the under the same rule it can be inflicted only after formal departmental enquiry.

5. Reading the guidelines of the Hon'ble Apex Court in Vishaka's case (supra) and rule 27 of the Central Reserve Police Force Rules, 1955, it is more than clear that when an employee is found to be guilty of having committed any such act, which may tantamount to sexual harassment, disciplinary action is to be taken against him in accordance with the provisions contained in the service rules.

6. It is an admitted case of the appellant that the procedure prescribed by the service rules has not at all been followed and thus the punishment inflicted upon the petitioner-respondent being dehors the Rules is rendered illegal.

7. In view of the above facts and discussion, we do not find any fault or illegality in the judgment of the learned Single Judge which may require any interference.

8. Appeal is devoid of merits and accordingly stands dismissed.

9. It shall, however, be open to the respondents to take action denovo against the petitioner-respondent in accordance with law and the procedure prescribed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ANIL KSHETARPAL)
JUDGE

20.08.2018

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Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√