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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: 6th August, 2018*

+ LPA 399/2018

AMIT KUMAR

..... Appellant

Through: Mr Vishwendra Verma, Mr Pranav
Verma and Ms Shivali, Advs

versus

BHARATI COLLEGE (UNIVERSITY OF DELHI)
& ORS

..... Respondents

Through: Ms Beenashaw N. Soni, Adv

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

LPA 399/2018 and CM Nos. 29148/2018 (stay) and 30239/2018 (stay)

1. The appellant is aggrieved by the order dated 12.07.2018 passed by a learned Single Judge of this Court.
2. The necessary facts to be noticed for disposal of this appeal are that four complaints of sexual harassment were made against the appellant. Three complaints were made between the period February 2017 and April 2017 and another complaint was made in the month of February 2018. It is the stand of the counsel for the appellant that the first three complaints have been filed beyond the period of limitation and the fourth complaint is also per se bad in law as there is no allegation of sexual harassment at the work place. Reliance is placed on Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter

referred to as 'the Act'). We may note that the learned Single Judge has rejected the prayer made in the writ petition for the reasons as mentioned in paragraphs 7, 8, 9 and 10 of the order, which we reproduce below:-

“7. The plain reading of the order dated 21.05.2018, whereby the petitioner’s writ petition – W.P. (C) 5486/2018 captioned ‘Amit Kumar v. Bharati College New Delhi and Ors.’ – was disposed of clearly indicates that the petitioner had limited his grievance to only two issues. First, the petitioner had urged that the inquiry could not be conducted by a subcommittee and was necessarily required to be heard by the ICC as constituted. Second, he had submitted that the ICC had not taken any steps for exploring the possibility of conciliation in terms of Section 10 of the Act.

8. It is thus apparent that the petitioner had given up his objections for challenging the jurisdiction of ICC to entertain the complaints on the ground that they were barred by limitation. On the contrary, the petitioner had insisted that the inquiry be conducted by the ICC en banc and not by a subcommittee. Mr Nandrajog who was appearing for respondent no.1 in the said proceedings had suggested that as the complainants’ evidence had been concluded, the evidence of the petitioner could be recorded by the ICC. This suggestion found favour with the Court. Further, the learned counsel for the petitioner also concurred with the suggestion that the petitioner’s evidence be recorded by the ICC and not by the sub-committee. He also did not press his objection that since the evidence of the complainants was recorded by a sub-committee, it could not be examined by the ICC. The relevant extract of the said order is set out below:-

“5. There are two principal grievances that the petitioner has raised: First, that the Internal Complaint Committee (in short 'ICC') has delegated its role to the Sub Committee, which is contrary to the provisions of the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereafter referred to as 'Act'). Second, that no attempt was made to take recourse to Section 10 of the Act which provides for conciliation.

6. Mr. Nandrajog, learned senior counsel, who appears for respondent no.1 and 2 says that the ICC had entrusted the task of recording evidence to the Sub-Committee comprising of Members of the ICC and that this was done in line with the recommendations contained in the "Saksham Report" which has, broadly been adopted by the UGC, vide its impugned notification dated 07.05.2016.

6.1 Furthermore, learned senior counsel says that since the complainant's evidence has been concluded grievance, if any, of the petitioner with regard to a delegation by ICC of the aforesaid task to the Sub-committee, can be redressed by having his evidence being recorded by the ICC.

6.2 This suggestion is made by Mr. Nandrajog, learned senior counsel, is constructive as this would prevent revictimisation of the complainants.

6.3 Insofar as the grievance raised by the petitioner qua the failure on the part of respondents to trigger section 10 of the Act is concerned, Mr. Nandrajog, says that this aspect was put to the complainants, who, in turn had declined to take recourse to conciliation.

6.4 However, Mr. Nandrajog, says that this aspect will be put to the complainants, once again, and if, they are so inclined parties the conciliation process could be triggered in accordance with provisions of the Act.

7. Mr. Verma, who, appears for the petitioner says that he is agreeable to the suggestion made by Mr. Nandrajog, Insofar as first aspect is concerned, which is, that the, petitioner's evidence would be recorded by the ICC and not by the SubCommittee. In words Mr. Verma says the petitioner would not press his objection that since the evidence of the complainant was recorded by a Sub-committee it cannot be examined by the ICC.

7.1 As regards the other aspect of the matter is concerned, Mr. Verma says that the petitioner would be satisfied if it is put to the complainants even at this stage that they had an option to take recourse to conciliation.

Mr. Verma's only other request is that the decision of the complainants in this regard should be communicated to the petitioner.

7.2 Mr. Nandrajog states the decision of the complainants would be communicated to the Petitioner.

8. In addition to above, Mr. Verma says that the petitioner would like to engage the services of a defence assistant, who is not instructed in law.

9. Mr. Nandrajog, says that if an application in that behalf is made to the ICC, this aspect of the matter will be considered and in all probability. Permission sought would be granted, subject, though, to objections, if any, of the complaints.

10. Having heard the learned counsel for the parties and perused the record, the writ petition is disposed of with the following directions:-

(i) The evidence of the petitioner will be recorded by the ICC en banc.

(ii) The ICC will put to the complainants as to whether or not they want to take recourse to Section 10 of the Act.

(iii) Upon the Petitioner making an application for engaging a Defence Assistant, who, is not instructed in law, the ICC will consider the same favorable, subject to objections, if any, of the complainants. In case complainants have any objection, ICC will pass a speaking order.

(iii) The ICC will afford similar opportunity to the complainants as well.”

3. As far as the second grievance raised by the learned counsel for the appellant is concerned, that the fourth complaint cannot be construed as sexual harassment at a “work place”, the learned Single Judge has clarified in para 11 of the impugned order that this objection would be considered by the ICC while submitting its final report.

4. We have heard Mr Verma, learned counsel for the appellant and carefully examined the order dated 12.07.2018 passed by the learned Single Judge. The learned Single Judge has while taking note of the sequence of

events noted that when W.P.(C) 5486/2018 was disposed of only two issues were raised. Objection regarding the complaints being barred by limitation was given up. We find no infirmity in the reasons of the learned Single Judge, however, we clarify that it would be open for the appellant to raise the plea of limitation before the inquiry officer. Ms Soni, learned counsel for the respondent, informs us that the inquiry stands concluded on 26.07.2018. We make it clear that the ground of limitation, if raised by the appellant herein before the disciplinary authority or the appellate authority, will be considered before passing any final order. It is also clarified that it would be open for the appellant to raise all legal objections, if entitled in accordance with law before the disciplinary authority or the appellate authority.

5. With these directions, the appeal along with all pending applications stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 06, 2018
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