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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: 31st August, 2018*

+ LPA 452/2017

DIRECTOR IHBAS & ANR

..... Appellants

Through: Mr S.D. Singh, Mr Rahul Kumar
Singh, Mr Kamla Prasad and
Mr.Jitender Singh, Advs

versus

A K ROY & ORS

..... Respondents

Through: Mr Raj Kumar Sharma and
Mr.Narendra Singh, Advs

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM No. 23784/2017 (delay)

1. This is an application seeking condonation of 126 days delay in filing the appeal.
2. Subject to payment of cost of Rs. 10,000/- to be deposited in the Kerala Chief Minister's Distress Relief Fund, the delay is condoned.
3. The application stands disposed of.

LPA 452/2017 and CM No. 23940/2017 (stay)

1. The present appeal is directed against the order dated 20.12.2016 passed by a Single Judge of this Court. The respondent herein had filed a writ petition. Challenge was laid to a Show Cause Notice issued on 22.09.2016 containing articles of charge against the respondent. The respondent herein had challenged the Show Cause Notice on various grounds including the ground that principles of

natural justice had not been followed. Challenge was also laid on the ground that Rule 14 of the CCS(CCA) Rules, 1996 had not been complied with. The learned Single Judge passed an order on 20.12.2016. Paragraphs 2 to 6 read as under:-

2. The second relief which is claimed in the writ petition is for quashing the order of suspension which has been issued against the petitioner.

3. So far as the first prayer/relief claimed by the petitioner is concerned, during the course of arguments, the provision of Rule 14(2) with its proviso of CCS (CCA) Rules was examined along with Section 13(3) of the Act and it was found that the Internal Complaints Committee is deemed to be the enquiry committee and which enquiry committee after preparing the enquiry report on following principles the of natural justice and the relevant rules under CCS (CCA) Rules recommends appropriate action against the employee if found to be delinquent. In the present case it is found that the Internal Complaint Committee with respect to sexual harassment complaint against the petitioner has treated the enquiry before it only as a preliminary enquiry instead of treating the enquiry as an enquiry to be done as an enquiry officer under Rule 14(2) of the CCS (CCA) Rules.

4. From a reading of the proviso to Rule 14(2) of the CCS (CCA) Rules it is clear that the Internal Complaints Committee with respect to the sexual harassment complaint is deemed to be the disciplinary authority as also the enquiry authority when read with Section 13(3) of the Act.

5. Learned counsel for respondent nos. 2 to 4/employer/Institute states that in view of the aforesaid legal position the impugned Show Cause Notice dated 22.9.2016 be allowed to be withdrawn without prejudice to the right of respondent nos. 2 to 4 to initiate appropriate proceedings against the petitioner with respect to the complaint of sexual harassment against the petitioner.

6. The writ petition, therefore, so far as the relief with respect to challenge to the Show Cause Notice dated 22.9.2016 is disposed of in terms of the aforesaid liberty given to the respondents 2 to 4 to initiate appropriate proceedings against the petitioner in accordance with the relevant provisions of CCS (CCA) Rules and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.”

2. It may be noted that an application seeking modification of the order dated 20.12.2016 was filed which was partly allowed by an order dated 15.02.2017. The order dated 15.02.2017 reads as under:-

“C.M. No.6145/2017 (for modification or order by respondent nos.2 and 3)

1. This application is disposed of with the observation that Internal Complaints Committee will not be disciplinary authority but only an enquiry authority and the disciplinary authority which is stated in para 4 of the order dated 20.12.2016 in fact is a typing mistake and the expression ‘disciplinary authority’ in para 4 of the order dated 20.12.2016 will be substituted by ‘enquiry officer/enquiring authority’. It is further stated that entitlement of the respondent nos.2 and 3 is to put up the report of the Internal Complaints Committee before the disciplinary authority and as is envisaged by Section 13(3) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

2. C.M. stands disposed of in terms of aforesaid observations.”

3. Mr Singh, learned counsel for the appellant, submits that the appellant is aggrieved by the direction passed in paragraph 5 of the order dated 20.12.2016 as per which the Show Cause Notice dated 22.09.2016 is to be withdrawn by the appellant herein (respondent before the learned Single Judge) with liberty to initiate appropriate proceedings

against the respondent with respect to the complaint of sexual harassment. Mr Singh submits that once the direction contained in paragraph 4 of this order has been modified and it is held that the Chief Secretary is the disciplinary authority then there would be requirement of issuance of a fresh Show Cause Notice as the earlier Show Cause Notice was also issued by the Chief Secretary. Mr Sharma, learned counsel for the respondents, complains that the respondent No. 1 has been under suspension since 05.07.2016, he is sole earning member in his family. The complaints against him are motivated, false and there is no merit in the same. Mr.Sharma also submits that the matter is being unnecessarily delayed. The fact that the Chief Secretary is the disciplinary authority is not in dispute. Thus, we find no reason for the Show Cause Notice to be withdrawn. Accordingly, the direction issued in paragraph 5 of the impugned order dated 20.12.2016 is modified. The inquiry will be continued on the basis of the Show Cause Notice of 22.09.2016. We direct the Committee to conclude the inquiry within three months positively. Mr.Sharma also submits that in the pending writ petition he would make an application for early hearing.

4. In view of the above, the appeal and pending application are disposed of

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 31, 2018 / SU