

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO.7747 OF 2014**

Priya Gunaji Gaokar

... Petitioner

Vs

Union of India & Ors.

... Respondents

Mr.Uday Warunjikar for the Petitioner
Ms.Jyosthna Pandhi with Mr.D.P. Singh i/b Ms.Purnima Awasthi for
Respondent Nos.1 & 2

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.
DATED: AUGUST 27, 2019**

P.C.:

1. Rule. With the consent of the parties, the Writ Petition is taken up for final hearing forthwith.
2. The petitioner is an employee of Bhabha Atomic Research Centre, Respondent No.2 herein. She had filed a complaint dated 28.5.2012 to the Chairperson of the Women's Cell, the respondent No.3 herein, making complaints against several employees of the said organisation, requesting to take action for what she described as sexual harassment. The Chairperson, who was one of the women's cell of respondent No.2, communicated the decision of the women's cell to the petitioner under letter dated 9.10.2012, which reads as under:

“This refers to your letters dated 13.7.12, 15.6.212, 28.5.12. These complaints were discussed in the Complaint’s Committee meeting of the Women’s Cell.

Your complaints, so far, do not fall within the purview of sexual harassment. In view of this, the matter may be referred to HPD, DEO Transport, CSO Security for further action.”

3. The petitioner has, therefore, filed this petition praying for setting aside the communication dated 9.10.2012 and for further direction to the respondents to take action against the erring officials impugned with the decision of the Supreme Court in the case of **Vishakha & Ors. vs. State of Rajasthan & ors.**¹.

4. The case of respondent Nos.2 and 3 is that the complaint made by the petitioner did not amount to sexual harassment and, therefore, no further steps were required to be taken. The case of the petitioner is two-fold. Firstly, her Counsel submitted that this decision is palpably wrong. The allegations of sexual harassment were included in the said complaint. In any case, the decision has been taken by an incompetent authority. The Counsel submitted that the constitution of Women’s Cell did not conform to the directives contained in the judgment of the Supreme Court in the case of **Vishakha & Ors.** (supra). He submitted that when the

1 AIR 1997 SC 3011

decision was taken, the Supreme Court ruling in the case of **Vishakha & Ors** (supra) held the field. This is now superseded by the law framed by the Parliament, namely, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

5. On the other hand, the learned Counsel for respondent Nos.2 and 3 opposes the petition contending that a properly constituted committee has taken a decision after due deliberations. The complaint did not even prima facie disclose any element of sexual harassment. The same was correctly closed.

6. In the facts and circumstances of the present case, we are not inclined to examine the question whether the complaint and the contents therein amounted to sexual harassment or whether there was any validity in the allegations made by the petitioner. This is so for the simple reason that such complaint must first be examined by a properly constituted committee by the employer for such purpose. Only once this task is completed, the role of the Court in scrutinising such decision would commence. In the present case, we find that the petitioner has correctly pointed out that the Women's Cell constituted, did not conform to the directions

of the Supreme Court in the case of **Vishakha & others** (supra). As is well known, in the said judgment while taking cognisance of widespread occurrence of sexual harassment at workplaces, the Supreme Court laid down guidelines and given directions in exercise of powers under Article 141 of the Constitution of India which will hold the field till the law is framed by the Parliament. In this context, paragraph 6 of the operative portion of the judgment pertained to the complaint mechanism. Paragraph 7 pertained to complaints committee. Relevant portion of paragraphs 6 and 7 of the said judgment reads thus:

“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 member 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.”

7. In terms of para 7, thus, every employer would constitute a complaint mechanism. As per paragraph 7, the complaints committee should be headed by a woman and not less than half of its members should be women. The Committee should also involve a third party either an NGO or other body who is familiar with the issue of sexual harassment. The constitution of women's cell, who dealt with the complaint of the petitioner, is to be found at page 57 of the compilation. The Chairperson of the Committee, of course, is a woman. The Committee also comprises a majority of members, who are women. However, there is no involvement of an outside agency such as an NGO or an organisation familiar with sexual harassment cases. The constitution, therefore, does not conform to the decision of the Supreme Court in the case of **Vishakha** (supra). The entire consideration and communication thereof to the petitioner thus, suffers from material irregularity. The petitioner has taken this contention in the petition which has not

been specifically met with in the reply.

8. Now even the Parliament has stepped in and law is framed which would occupy the field. Consequently, section 4 of the said Act pertains to the constitution of an internal compliance committee. We believe respondent No.2, as a government organisation, must have by now constituted such a committee. In fact, in the facts and circumstances of the present case, therefore, after setting aside the impugned communication dated 9.10.2012, we direct that the petitioner's complaint at annexure A dated 28.5.2012 shall be considered by such committee constituted by respondent No.2 u/s 4 of the said Act after following proper procedure. Though not specifically prayed in the interest of justice, we further direct that any pending complaint on record shall also be simultaneously dealt with by the said Committee alongwith the complaint at Annexure A. The decision will be communicated to the petitioner expeditiously and preferably within three months from the date of the receipt of copy of this order.

9. Petition is disposed of accordingly.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)