

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-22684-2018 (O&M)
Pronounced on:15.10.2019.

Madam X

... Petitioner

vs.

Chancellor, Panjab University and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R.S.Cheema, Sr. Advocate with
Mr. R.Kartikeya, Advocate, for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India with
Mr. Argun Gosain, Advocate, for respondents No. 1 and 5-UOI.

Mr. Subhash Ahuja, Advocate with
Mr. Karan Veer Ahuja, Advocate, for respondent No.2.

Respondent No.3 present-in-person.

Mr. Navdeep Singh, Advocate, for respondent No.4.

ARUN MONGA, J.

Impugned herein, *inter alia*, are Punjab University (for short PU) Senate proceedings dated 21.01.2017 and 29.01.2017; Syndicate proceedings dated 10.01.2018 and 17.02.2018; and letters dated 20.03.2018 and 19.07.2018 being Annexures P-20, P-21, P-24, P-25, P-27 and P-31, respectively. The same are stated to be in violation of provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short 'the Act').

2. A consequential relief for issuance of a writ in the nature of *mandamus* and/or otherwise has been sought directing respondent No.1 the Chancellor of the University to constitute/nominate a Committee to inquire into the complaint of the petitioner, as per the provisions of the Act.

3. The case in hand pertains to a complaint of sexual harassment

by a lady Professor, perhaps, one of the Senior most Professors in the country against the then Vice Chancellor of the University with an underline thread that such a harassment creates an unequal work field for women in India. The petitioner is stated to have more than 03 decades of teaching experience to her credit as a Professor and also has been a Senator and remained a Syndic (Member of the Syndicate) of the University. The memo of parties filed originally in the writ petition cited the name of the complaint (petitioner)/victim and the alleged perpetrator (respondent No.3) of sexual harassment. But taking notice of serious nature of allegations levelled by the petitioner against respondent No.3, it was felt that the veracity and the outcome of the adjudication would have the potential of harming the reputation of either of parties, depending upon eventual outcome of the adjudication of the complaint filed by petitioner. In the premise, given that the right to privacy and right to live with dignity are inherent under Article 21 of Constitution of India, vide an order passed by this Court, it was directed to change the title of the case by stating the petitioner as Madam 'X' and respondent No.3 as Mr. 'Y'.

4. The increasing issue of sexual harassment at work places was taken up by Hon'ble the Supreme Court of India by way of public interest litigation, leading to, what is now a celebrated judgment in this field, known as “**Vishaka**” (*Vishaka vs. State of Rajasthan, (1997) 6 SCC 241*). The Apex Court noticed that the incidence of sexual harassment results in violation of Fundamental Rights of 'Gender Equality' and 'Right to Life and Liberty'. The same, therefore, impinges upon Articles 14, 15 and 21 of the Constitution of India. Stressing upon 'Right to Life to be Life with dignity', Hon'ble the Apex Court laid down certain guidelines under Article 142 of

Constitution of India by invoking the concept of judicial legislation in order to provide protection to the working women from sexual harassment at their work places.

5. Some of the guidelines laid down in the *Vishaka's* judgment are extracted as under:

“1. Duty of the employer or other responsible persons in workplaces and other institutions:

*It shall be the **duty of the employer** or other responsible persons in workplaces 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 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.

5. *Disciplinary action:*

*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.*

(Emphasis supplied)”

6. While the “workplace” in the “Vishaka” guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Central Government, perhaps, taking a cue from the directions issued by Hon'ble the Supreme Court enacted a statute which goes much farther to include a wider spectrum to be construed as work place and even include any place visited by the employee during the course of employment including the transportation. The said statutory enactment is known as “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act which came into force with effect from 09.12.2013.

7. The controversy herein, *inter alia*, pertains to the word “employer” as contained in Section 4 of the Act. For ready reference, the relevant of Section 4 of the Act is reproduced hereinbelow:

“4. Constitution of Internal Complaints Committee.-- (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”.

Provided that where the offices or administrative

units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committee shall consist of the following members to be nominated by the employer, namely--

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.”

8. The petitioner submitted complaints dated 15.04.2015 (Annexure P-1) and dated 18.04.2015 (Annexure P-2) to respondent No. 1 alleging misbehavior of and the acts of sexual harassment committed by respondent No. 3. She requested that reports from/through Intelligence Bureau be collected and inquiry be vested with the CBI or similar

independent agency of the Government of India. Following steps/action taken by the respondents in this connection have been assailed by the petitioner:

(i) Resolution dated 21.01.2017 (Annexure P-20) passed by the Syndicate of the University as under :

“RESOLVED: *That the earlier Sub-Committee headed by Professor Shelley Walia becomes null and void and it be recommended to the Senate that the following Committee, which should be in accordance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, be constituted:*

*1. Mrs. Meenakshi Anand Chaudhary Chairperson
Former Chief Secretary, Haryana.*

2. Professor Pam Rajput (Fellow)

3. Principal (Dr.) Anita Kaushal (Fellow)

4. Dr. Devi Sirohi, Chairperson

Chandigarh Commission for Protection of Child Rights.

5. Justice (Retd.) Harbans Lal (Fellow), Former Justice Punjab & Haryanas High Court.

6. Justice (Retd.) Jasbir Singh, Former Acting Chief Justice (Retd.) of Punjab & Haryana High Court.

7. Shri Gurjot Singh Malhi (Fellow)

8. Nominee of the U.T.Administration.”

(ii) Resolution dated 29.01.2017 (Annexure P-21) passed in a Special Meeting of the Senate which is as under:

“RESOLVED: *That the Senate considered the recommendation of the Syndicate (Appendix) and decided to forward it to the Chancellor for final decision in his capacity as the employer of the Vice Chancellor. The deliberations of the Senate meeting to be made available to the Chancellor.*

The following members desired that their views against

above be also made available to the Chancellor, viz., no specific names be forwarded to the Chancellor for the Committee to be formed as per Sexual Harassment of Women at Workplace, Prohibition and Redressal Act of 2013:

- 1. Shri Ashok Goyal*
- 2. Madam 'X'*
- 3. Professor Keshav Malhotra*
- 4. Shri Naresh Gaur*
- 5. Shri Harpreet Singh Dua*
- 6. Professor Shelley Walai”*

(iii) Resolution dated 10.01.2018 (Annexure P-24) passed in a special meeting of the Syndicate, which is as under:

“RESOLVED: *That-*

(1) it be recommended to the Senate that the Committee recommended by Syndicate on 21.01.2017 to look into the specific complaint(s) of a Senate member against Vice-Chancellor, Panjab University be reconstituted by substituting the Chairperson of the Committee, Mrs. Meenaxi Anand Chaudhary, Former Chief Secretary, Haryana, by any one of the following senior women IAS officers from Haryana Government:

- (iii) Mrs. Navraj Sandhu, Additional Chief Secretary (Departments of Cooperation and Vigilance), Government of Haryana, Chandigarh; and*
- (iv) Mrs. Jyoti Arora, Principal Secretary, Higher Education, Government of Haryana, Chandigarh.*
- Further, following two additional women members be included in the above Committee:*

- (i) Senior most woman Professor of the University namely, Professor Meenakshi Malhotra, Dean of University Instruction, Panjab University; and*
- (ii) Current Chairperson of Panjab University Committee Against Sexual Harassment*

(PUCASH) namely, Professor Manvinder Kaur, Department-cum-Centre for Women's Studies & Development.

Rest of the members as recommended by the Syndicate dated 21st January, 2017 may remain the same, except Justice (Retd.) Jasbir Singh, who had expressed his inability.

(2) The reconstituted Committee as proposed, be sent to the Chancellor for approval with any deletion or further inclusion, as may be deemed appropriate by the Hon'ble Chancellor.

(3) a copy of the letter to be sent to the Chancellor be also forwarded to the Ministry of Human Resource Development for information.

Shri Ashok Goyal and Professor Keshav Malhotra recorded their dissent, as in their opinion, the names suggested for the Committee were not in consonance with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. They reiterated their stand articulated in the Senate meeting of 29.01.2017 that Chancellor should appoint the Committee to look into the specific complaint(s) in this case.”

(iv) Resolution dated 21.01.2018/17.02.2018 (Annexure P-25) was passed by the Senate as under:

“RESOLVED: *That the recommendation of the Syndicate dated 10th January, 2018 be approved and one member from the National Commission for Women or an existing Chairperson of Internal Committee against Sexual Harassment from any other University be added to the list of the persons already recommended to preside the Committee and the same be sent to the Hon'ble Chancellor along with their bio-data for approval. The Hon'ble Chancellor may delete or include any person as*

may be deemed appropriate.

Seven members namely Shri Ashok Goyal, Professor Keshav Malhotra, Shri Harpreet Singh Dua, Professor Shelley Walia, Professor J.K.Goswamy, Dr. Parveen Goyal, Shri Naresh Gaur were of the opinion that the Hon'ble Chancellor should constitute an independent Committee."

(v) Letter dated 20.03.2018 (Annexure P-27) issued by Under Secretary, Vice-President's Secretariat to the Registrar, Panjab University informing that the Hon'ble Vice President of India/Chancellor, Panjab University has approved the composition of Independent Internal Committee for inquiry into the allegations made by the petitioner against the Vice-Chancellor consisting of the members (named in the order/letter) and requesting him to convey the composition of this Independent Internal Committee constituted for enquiry into all aspects of the case to all concerned and the report of the Committee should be submitted to the Ministry of Human Resource Development:

"I am directed to refer to your letter No. 292/R/DS/DRG dated 14th March, 2018 on the subject cited above and to inform you that Hon'ble Vice-President of India/Chancellor, Panjab University has approved the composition of Independent Internal Committee for enquiry into the allegations made by Madam 'X' against Vice-Chancellor, Panjab University consisting of the following members:

Chairperson:

1. Mrs. Navraj Sandhu, IAS, Additional Chief Secretary, Department of Cooperation and Vigilance, Government of Haryana.

Members:

2. Professor Pam Rajput, Fellow

3. *Principal (Dr.) Anita Kaushal, Fellow*
 4. *Dr. Devi Sirohi, Chairperson, Chandigarh Commission for Protection of Child Rights*
 5. *Justice (Retd.) Harbans Lal, Fellow, Former Justice Punjab & Haryana High Court*
 6. *Shri Gurjot Singh Malhi, Fellow*
 7. *Smt. Navjot Kaur, PCS, Director, Public Relation, U.T. (Nominee of U.T. Administration)*
 8. *Professor Meenakshi Malhotra, Dean of University Education, Panjab University*
 9. *Professor Manvinder Kaur, Department-cum-Centre for Women's Studies & Development, Chairperson of Panjab University Committee Against Sexual Harassment).*
- Convener:**
10. *Mrs. Poonam Chopra, Deputy Registrar (Estt.), Panjab University."*

(vi) Letter dated 19.07.2018 (Annexure P-31) issued by Under Secretary, Vice-President's Secretariat to the petitioner informing her that the reconstitution of the Independent Internal Committee has been done by the Hon'ble Vice-President of India/Chancellor, Panjab University based on the recommendations of the Syndicate/Senate in compliance of the provisions of the Act.

9. Opening his arguments, Mr. R.S.Cheema, learned Senior counsel assisted by Mr. R.Kartikeya, Advocate, appearing for the petitioner argued that the word "employer" qua respondent No.3 (Vice Chancellor), against whom the complaint has been filed, would without any manner of doubt in the present case, be the Chancellor of the University i.e Hon'ble the Vice President of the country. He elaborately took me through the various Senate and Syndicate proceedings to establish that the Committee envisaged

under the Act had, therefore, to be necessarily constituted by the Chancellor.

The Senate and Syndicate proceedings clearly defy the said statutory mandate. He further argued that at best in the present case, the Chancellor, had ratified/'approved' Constitution of Committee which had been pre-constituted by the Senate on the recommendation of the Syndicate and forwarded to him for his approval.

10. Learned Senior counsel appearing for the petitioner further argued that even the order/letter dated 20.03.2018 vide which the Constitution of Committee has been conveyed to the petitioner does not say that the Chancellor had constituted the said Committee. It merely states that the Chancellor has 'approved' the Committee wherein the Members of the Committee have been named. He argued that the very word "approval" would mean that there has been no independent application of mind by the Chancellor and he has simply given his stamp of approval based on the recommendation of the Senate on a pre-constituted Committee. He pointed out that the Members of the Committee, pre-constituted by the Senate, are same as those who are on the Committee approved by the Chancellor.

11. Per contra, learned Additional Solicitor General of India assisted by Mr. Arun Gosian, counsel for respondent No.1 and 5, strenuously refuted the arguments of learned Senior counsel appearing for the petitioner. He submits that one has to bear in mind the pre-occupation of the Chancellor of the University. In his capacity as Hon'ble the Vice-President of India, he is simultaneously the Chancellor in all the Central Government Universities in the country, apart from being Chairman of Rajya Sabha.

12. In this background, he argued that 'approval' is not to be read so

as to mean an ordinary approval in the normal parlance. The same is in effect constitution of the Committee.

13. On the issue of Chancellor being the employer within the meaning of Section 4 of the Act, learned Additional Solicitor General of India, is in agreement with the interpretation of the learned Senior counsel appearing for the petitioner that in the case of Vice Chancellor of Central University, the Chancellor would necessarily be the employer and the Senate or the Syndicate cannot assume the role of an employer qua Vice Chancellor. In this context, it is thus a conceded position that neither the Senate nor the Syndicate are empowered to constitute the Committee under the Act.

14. Learned Additional Solicitor General further argued that Hon'ble the Vice President of India/Chancellor, due to his pre-occupation, has no direct and personal control over the management of the University and/or Superintendence over its affairs/concerns and/or its property and/or the employees of the University. He has, therefore, necessarily to depend on certain inputs, which in his wisdom, he may obtain from whosoever he may deem fit.

15. Learned Additional Solicitor General further submitted that in the present case, the Chancellor has rightly taken a decision by applying his independent mind after taking into consideration the recommendations of the Syndicate which for the purpose of day to day administration of the University acts as an Executive Government of the University. He further points out that the Chancellor has filed his return to the writ petition, wherein, he has in no uncertain terms stated that the Independent Internal Committee has been duly constituted by respondent No.1 i.e. the Hon'ble

Vice-President of India/Chancellor, Panjab University, Chandigarh (being the appointing authority of the Vice-Chancellor) by applying his mind and has taken judicious decision of formulating the Independent Internal Committee after taking into consideration the valuable inputs given by the Syndicate and the Senate. The same is, therefore, in perfect consonance with the provisions of the Act. Besides, it was also in consultation with the Ministry of Human Resource Development and Department of Personnel and Training.

16. I have gone through the pleadings/record and heard rival contentions of both sides.

17. Conceded position that emerges is that respondent No. 1, the Hon'ble Vice-President of India/Chancellor of the University is the employer of respondent No. 3 (the Vice-Chancellor). Respondent No. 1 is thus the competent authority to constitute/appoint an Internal Complaint Committee for enquiry into the allegations levelled against respondent No. 3.

18. The appointment/constitution of the Internal Committee by respondent No. 1 vide letter dated 20.03.2018 (Annexure P-27) with a mandate for holding enquiry into all aspects of the case clearly shows that the said Committee is to hold the complete/whole inquiry into the allegations. Letter/order dated 19.07.2018 (Annexure P-31) was issued by respondent No.1, after due consideration of and in reply to the petitioner's objections, informing her that that the reconstitution of the Internal Committee had been done by respondent No. 1 based on the recommendations of the Syndicate/Senate, which have the entire management of and superintendence over the affairs, concerns and property

of the University and act as the Executive Government of the University.

Further, the petitioner was informed that that the said Committee is in compliance with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

19. In other words, the orders passed by respondent No. 1 dated 20.03.2018 (Annexure P-27) constituting the Committee and dated 19.07.2018 (Annexure P-31) issued after considering the petitioner's objections and re-affirming the order/letter dated 20.03.2018 (Annexure P-27) for constitution the Internal Complaint Committee over-rided, superseded and rendered ineffective the aforesaid earlier impugned Resolution dated 21.01.2017 (Annexure P-20) of the Syndicate and Resolution dated 29.01.2017 (Annexure P-21) of the Senate. It is, therefore, not really necessary for disposal of the writ petition, to examine and adjudicate upon their legality or otherwise.

20. For record, succinctly though, following grounds, *inter alia*, have been raised by the petitioner to assail orders/letters issued by respondent No. 1 dated 20.03.2018 and 19.07.2018 (Annexures P-27 and P-31) respectively:

(a) They are based on incorrect and concocted foundation. Respondent No. 1 has not been apprised of the complete proceedings and was only given information qua some part of the Senate's proceedings dated 17.02.2018, while withholding vital information about the dissent recorded by the other members of the Committee. Respondent No. 1 was also not informed that the complete house had not attended the proceedings and the agenda had been passed in haste meeting.

The alleged ratification of by respondent No. 1 would not confer any legality on the committee constituted by such officials who were functionaries subordinate to respondent No. 3.

(b) The constitution of the committee is not as per mandate of the Act in terms of number and representation. No parallel can be drawn between the impugned constitution of the committee and the one prescribed by the Act.

(c) The Act provides that the employer is to nominate the members of the ICC. Powers to nominate the members of the Committee cannot be delegated to any authority. The proposal sent by the Senate/Syndicate is without jurisdiction.

(d) Impugned order dated 19.07.2018 reflects an illegal and arbitrary approach, as respondents failed to appreciate and consider that Senate/Syndicate are not the “employer” of respondent No. 3 and could not exercise the powers of the employer/Chancellor.

(e) When the petitioner is apprehensive of bias and lack of jurisdiction, she cannot be required to appear before the same Committee and submit her objections there. Guidelines dated 16.07.2015 (Annexure P-34) issued by the Department of Personnel & Training mandate the inquiry proceedings are to be stayed if allegations of bias are made even against one member of Committee.

(f) The impugned orders/letters suffer from the vice of complete non-application of mind.

(g) There is malice evident and writ large from the facts.

21. Irrefragably, the Act does not bar/prohibit an employer from obtaining and/or considering inputs from any sources while considering names for inclusion in and for the constitution of the Internal Complaints Committee. There seems no warrant for implying and reading any such prohibition/bar in the same, for it is a self contained code in itself.

22. Respondent No. 1 being the Vice President of India and Chairman of the Council of States/Rajya Sabha, is ex-officio Chancellor of all the Central Universities in the country. There is no gain saying about importance of his functions and responsibilities for country as the high Constitutional dignitary and his extreme pre-occupation with the same. The Syndicate acts as the Executive Government of the University for its administration and affairs while the Senate is the Supreme body of the University. For taking decisions in his capacity as the Chancellor, respondent No. 1 has, therefore, necessarily to obtain such information from sources at his disposal, as in his wisdom may be necessary, and/or consider or ignore such inputs, once taken.

23. In the instant case, for constitution of the Internal Complaints Committee, respondent No. 1, took into consideration the inputs from the Syndicate and the Senate of the University, being the proposals/recommendations contained in the Resolutions dated 10.01.2018 (Annexure P-24) and dated 21.01.2018/17.02.2018 (Annexure P-25). As noted above, the Act does not bar/prohibit the employer from obtaining and/or considering inputs from any sources, including Senate/Syndicate, while considering names for inclusion in and for the constitution of the

Internal Complaints Committee. I am, therefore, not persuaded to accept the contention of the learned Senior Advocate for the petitioner that respondent No. 1 could not have taken into consideration the proposals/recommendations initiated and made by University's Syndicate and Senate.

24. Even otherwise, assumption of any such non-existing bar/prohibition, besides being against the provisions of the Act, would cause greater mischief. That would simply paralyse and adversely affect the functioning of not only the high Constitutional office of respondent No. 1 but also the administration and functioning of the Central Universities in the country. A rational and pragmatic view of the affairs has to be taken. In my opinion, there was/is nothing wrong or illegal in the initiation and submission of recommendations/proposals by the Syndicate and the Senate of the University and the same being taken into consideration by respondent No. 1 for constitution of the Internal Complaint Committee.

25. Based on the aforesaid Senate/Syndicate proposals/resolutions, the impugned order/letter dated 20.03.2018 (Annexure P-27) was addressed to respondent no.2 relevant thereof, at the cost of repetition, is as under:

"I am directed to refer to your letter No. 292/R/DS/DRG dated 14th March, 2018 on the subject cited above and to inform you that Hon'ble Vice-President of India/Chancellor, Panjab University has approved the composition of Independent Internal Committee for enquiry into the allegations made by Madam 'X' against Vice-Chancellor, Panjab University consisting of the following members.....XXXX"

26. The language of the letter, read in the background of the facts and circumstances of the case, clearly shows that the Internal Complaint

Committee has actually been first approved and thereafter, as a necessary consequence, constituted by and under the orders of respondent No. 1 after application of mind. The language of the impugned order/letter dated 20.03.2018 is in consonance with the usual official pattern for such letters/orders. It would be against the language, real meaning, import, intent and spirit of the letter to say that it does not amount to constitution of the Committee by respondent No. 1. Further, this reality would not be negated merely because of the absence of words 'Chancellor had constituted the said Committee' and instead of them, by the use of words 'approved the committee'. I, therefore hold that it is respondent No. 1 who has actually constituted the Internal Complaint Committee vide the impugned order/letter dated 20.03.2018 in exercise of his powers under section 4 (1) of the Act after due application of mind.

27. The fact that the ICC was constituted and not merely approved by respondent No.1 is also borne out from the correspondence preceding impugned order dated 20.03.2018. Adumbrating the same, it all began with the petitioner's complaint dated 15.04.2015 submitted against misbehavior by respondent No.3 to respondent No.1 through proper channel i.e. the Vice-Chancellor (respondent No.3 himself). The said complaint was placed before Punjab University Committee Against Sexual Harassment (PUCASH) and also the Syndicate of the University to be taken up in its next meeting. Pursuant thereto, PUCASH vide its letter dated 06.05.2015 requested the petitioner to appear before it on 11.05.2015. The petitioner objected to the complaint being taken up by PUCASH stating that she never submitted any complaint before it and, in any case, PUCASH was not competent to entertain the same as ICC could only be constituted by

respondent No.1. PUCASH was since not constituted by respondent No.1, therefore, it had no competency.

28. In the proceedings of the Meeting of PUCASH held on 24.08.2015, it was resolved to write to the Registrar of the University in the following terms:-

- “i) There is a need to write a letter to the MHRD informing that enquiry, if held, will be according to the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and not merely according to the DOPT guidelines and the Policy of Panjab University.*
- ii) The committee members feel it imminent to suggest that there is a need for major corrections in the Policy provisions regarding Protection of Women from Sexual Harassment at the Workplace adopted by the Panjab University.*
- iii) The committee members are of the view that in case the above mentioned lacunae are removed, still it needs serious consideration that when the enquiry was conducted by the PUCASH after receiving complaint from the Vice-Chancellor's office, the complainant had vehemently mentioned in one of her letters during the course of enquiry that her complaint be enquired into by an “independent competent authority”. She had through out the enquiry questioned, the competency and jurisdiction of the committee. She had stated that she wishes to take the complaint before an “independent competent authority” which is not under the domain and control of the Respondent. Further, section 9 read with rule 6 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, states that “Any aggrieved woman may make in writing, a complaint of sexual*

harassment at workplace to the Internal Committee, if so constituted....”

29. In the aforesaid premise, University wrote to the Ministry of Human Resource Development (MHRD) and in response thereto vide letter dated 18.09.2015 addressed to the University, MHRD opined as below:-

“A bare reading of the policy laid down in such cases [Visakha Judgment + Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 + DoPT guidelines dated 16th July, 2015] would lead to the following:-

a) The 'Employer [as per the Vishakha Judgment and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013] and the 'Disciplinary Authority' [as per the CCS (CCA) Rules, 1965], is to be treated as one and the same in the present matter. This is affirmed by the DoPT guidelines. The Disciplinary Authority of the Vice Chancellor is the Chancellor.

b) The Complaints Committee, as stipulated in the DoPT guidelines regarding CCS (CCA) Rules, 1965 and the 'Internal Complaints Committee' as per the Vishakha Judgment and the Sexual Harassment Prevention Act are to treated as one. This is also affirmed by the DoPT guidelines. The proceedings, including the composition of the PUCAS, have to be with the concurrence of the 'Employer'/Disciplinary Authority' i.e. The Chancellor. In view of the above, you are therefore, requested to take up the matter of constitution of the complaint Committee with the Chancellor, Panjab University for a resolution of the matter at the earliest. You are also directed to make necessary corrections in the Policy in light of the provisions of the Act and guideline/instructions issued by the Govt. of India/DOP&T time to time.”

30. The matter was thereafter taken up by the University with respondent No.1 and after deliberating on the issue in hand vide letter dated 20.01.2016, respondent No.1, *inter alia*, stated as below:

“The PU Senate, under the PU Act, has the statutory authority to constitute any committee, including the PUCASH, in accordance with the provisions of the applicable statute, to enquire into allegations of sexual harassment against Vice Chancellor and to receive such an enquiry report from committees constituted by it.

In view of the above, the Governing bodies of PU are requested to kindly act accordingly for taking required action in this regard.

This issues with the approval of the Secretary to Hon'ble Vice President of India/Chancellor, PU.”

31. Once again the matter stood relegated to PUCASH. However, in its meeting held on 28.04.2016 (Annexure P-15), PUCASH resolved that the Senate had no power under the University Act, to which it owes its origin, to take any action against Vice-Chancellor in case he is found guilty. It was further resolved that Senate is not an employer of the Vice-Chancellor and, therefore, a Committee constituted by Senate will make the potent provision of the Act to constitute a Committee by respondent No.1, the employer, totally redundant.

32. In the premise, vide letter dated 12.12.2016, Chairman of PUCASH resolved that it would not be possible for Committee to proceed further in the matter until the legal issues were addressed.

33. In this background, MHRD in its letter dated 09.01.2017 once again reiterated that Chancellor (respondent No.1) is the employer of the Vice-Chancellor (respondent No.3). Subsequently, vide letter dated

19.06.2017, in response to one of the representations of the petitioner, MHRD stated as below:

“The Ministry, then, directed that Panjab University to form a separate Committee with a Chairman who is sufficiently senior to the complainee i.e. the Vice Chancellor with the approval of the Chancellor, Panjab University i.e. the Hon'ble Vice President of India. The Registrar, Panjab University, then, forwarded the constitution of the Committee as approved by the Senate for approval of the Chancellor.

In this regard, the OSD to the Vice-President of India, with the approval of Hon'ble Vice-President of India, requested MHRD to issue necessary instructions pursuant to the directives of the National Commission for Women, for the existing Committee formed under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 to take up enquiry into the matter and submit its report to the appropriate authorities in the Government and Panjab University. The Ministry, then, again requested the Hon'ble Vice President of India, being the Chancellor, Panjab University and therefore, employer of the Vice-Chancellor, to consider constituting an Internal Committee to inquire into the allegation made by Madam 'X' against the Vice Chancellor of Panjab University.

The Ministry is pursuing the matter of constitution of a separate Internal Committee exclusively for this case alone with the office of the Vice-President of India.”

34. It was in this entire cantankerous exchange of correspondence that the matter was referred to Syndicate/Senate for making appropriate recommendations to be considered by the Chancellor (respondent No.1) for

approving/constituting the ICC. Once the Senate/Syndicate passed the resolutions making the necessary recommendations, respondent No.1 vide letter dated 20.03.2018 conveyed to the University that the Chancellor had approved the composition of independent Internal Committee for inquiry into the allegations made by the petitioner against respondent No.3 constituted by the Members as stated in the said letter.

35. Petitioner this time was though aggrieved against constitution of the Committee by respondent No.1, but not on the ground that the same was not constituted by the Chancellor or was constituted on the recommendation of the Senate/Syndicate or otherwise. Her grievance was that the Members of the Committee were handpicked without following proper procedure, as would be borne out from the following contents of her objections/letter dated 07.07.2018 (Annexure P-28) addressed to Hon'ble Vice-President of India.

*“ In the facts and circumstances of the case it is humbly prayed that, **I once again register my strong objection to the Constitution/Reconstitution of this Committee, which consists of mostly handpicked members and that too without following proper procedure. Most of the Members are completely biased and are close aides of Vice Chancellor himself. Further Committee has been got approved fraudulently by Col. Chadha from Hon'ble Chancellor. In this regard my earlier representations, e.g., inter alia, dated 29.1.17; 30.1.17; 5.2.17; 15.3.18; 18.3.18; 24.3.18; 19.4.18; 3.5.18; 9.5.18, etc. etc., still pending for disposal may be treated part and parcel of this representation, please.**”*

36. Finally, vide impugned order/letter dated 19.07.2018, respondent No.1/Chancellor intimated the petitioner that she can place all

her grievances before the newly constituted Committee. Relevant extract of the same is reproduced here-in-below:-

“Based on the recommendations of the Syndicate/Senate, Hon'ble Vice-President of India/Chancellor, Panjab University has approved the constitution of the Independent Internal Committee and nominated Mrs. Navraj Sandhu to be the Presiding Officer of the said Committee on 20th March, 2018. The same has been conveyed to the Registrar, PU vide letter No. VPS-15/1/2016-Vol.III dated 20.03.2018 (Annexure-II).

Subsequently, three communications dated 20.04.2018 (Annexure-III), dated 01.05.2018 (Annexure-IV) and 23.05.2018 (Annexure-V) have been received from Registrar forwarding the letter dated 19.04.2018 given by Dr. Devi Sirohi, the recommendations of the Independent Internal Committee dated 20.04.2018 and the letter dated 21st May, 2018 received from Mrs. Navraj Sandhu (Chairperson, Independent Internal Committee) respectively. Hon'ble Vice-President of India/Chancellor, Panjab University, on 25.05.2018, had included Shri Alok Rawat in place of Dr. Devi Sirohi and Prof. Nishta Jaswal (the senior most woman Professor of the University) in place of Prof. Meenakshi Malhotra and the same has been communicated to the Registrar, PU vide letter dated 25.05.2018 (Annexure-VI).

Again, the Registrar, vide communication dated 20.06.2018 (Annexure-VII), has forwarded the letter dated 19.06.2018 given by Prof. (Dr.) Nishta Jaswal wherein she requested to convey her recusal from being a member of the Independent Internal Committee to the competent authority. After perusal, Hon'ble Vice-President of India/Chancellor, Panjab University, has nominated Dr. (Mrs.) Sumita Bhutani, Department of Geography (the next senior most woman Professor in

Panjab University) in place of Prof. Nishta Jaswal on 27.06.2018. This was communicated to the Registrar, PU vide letter dated 29th June, 2018 (Annexure-VIII).

It is hereby informed that the Re-constitution of the Independent Internal Committee has been done by the Hon'ble Vice-President of India/Chancellor, Panjab University based on the recommendations of the Syndicate/Senate which have the entire management of, and superintendence over the affairs, concerns and property of the University and act as the Executive Government of the University. Further, it is to inform you that the said Committee is in compliance of the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Hence, you are requested to place before the Committee your grievances for their examination and submission of their report without any further delay.”

37. Having threadbare perused all of above, I am unable to persuade myself that the ICC has not been constituted by the employer i.e. respondent No.1/Chancellor. The entire tone, tenor, manner and the contents thereof are complete pointer to the fact that respondent No.1 after due application of mind sought the recommendations of the Senate/Syndicate and after considering the same constituted/approved the Members of the Committee with liberty to the petitioner to raise all her grievances before the said Committee. There is thus no infirmity in the impugned orders/letters. The same are legally tenable and in consonance of applicable law.

38. For the reasons recorded above and without repeating the same, I also reject the petitioner's vapid contention that the resolutions passed by the Senate/Syndicate to respondent No. 1 for constituting the Internal Complaint Committee are without jurisdiction. The said resolutions were

merely proposals/recommendations initiated at the instance of Chancellor and MHRD and after due consideration stood superseded by subsequent order dated 20.03.2018 (Annexure P-27) passed by respondent No.1 constituting Internal Complaint Committee.

39. Re petitioner's objections qua constitution of ICC, I may hasten to add that letter dated 19.07.2018 (Annexure P-31) issued by respondent No. 1 and addressed to the petitioner itself shows that that the Registrar, Panjab University vide letter dated 14.03.2018 (attached thereto as Annexure I), had forwarded *inter alia* the minutes of the meeting of the Syndicate dated 10.01.2018 and extracts of para VII of minutes of meeting of the Senate dated 17.02.2018. The actual letter/proposals/recommendations sent by respondent No.2 to respondent No.1, for constituting the Committee has/have not been produced. Thus, there is no material on record to support the contention of the petitioner that respondent No. 1 has not been apprised of the complete proceedings and was only given information of some part of the Senate's proceedings dated 17.02.2018, while withholding vital information about the dissent recorded by the other members of the Committee. Even assuming otherwise, without giving any such finding, once the Resolution was passed by the majority of the Senate, any dissent did no affect its legality and validity and the non submission of the note/s of minority dissent was of no consequence and is insignificant.

40. In my opinion, the constitution of the committee is as per mandate of and in consonance with the Act in terms of her representation/complaint filed by the petitioner. The contrary contention of the petitioner cannot, therefore, be accepted.

41. For reasons already recorded, I have held in preceding part of this order that the Internal Complaint Committee has been actually constituted by and under the orders of respondent No. 1, who admittedly is the employer of respondent No. 3. That negates the contention of the petitioner to the effect that there was/has been any delegation of power of respondent No. 1 to nominate the members of the Committee and the proposal sent by the Senate/Syndicate for constituting the Committee is without jurisdiction. Further, the contention that Senate/Syndicate are not the employer of respondent No. 3 is redundant, as the Committee has been actually constituted by and under orders of respondent No. 1.

42. The objections raised by the petitioner against couple of its members of ICC were duly considered and kept open by respondent No. 1 vide the impugned letter/order dated 19.07.2018 (Annexure P-31) or at worse, the same have been temporarily repelled by respondent No.1 to be considered by the Committee itself. To my mind, every allegation/apprehension of bias, even if unfounded, against the Committee or any of its members, would not justify the re-constitution of the Committee or grant of stay on its proceedings. Taking a contrary view would rather provide an unfair handle to and place a complainant in a commanding position, to act on her whim and fancy, to dictate and impose her own terms and wishes until constitution of a Committee of her own chosen members. That would erode, if not take away the statutory authority of the employer to constitute the Committee. In my opinion, *prima facie* though, in the instant case, no reasonable or valid grounds of bias or malice have been made out by the petitioner against the constitution of the Committee and in any case, same are kept open to be considered by ICC

itself.

43. While upholding the Constitution of Internal Complaint Committee to be inconsonance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, the present petition is disposed of with liberty to the petitioner to raise all her contentions and objections for mitigation of her grievance before the ICC which shall look into the same before submitting its final report. Needless to say, that all those contentions to be raised by the petitioner have been dealt with only in the passing herein and any observation qua same shall not be construed as an opinion on their merits. Same are kept open to be dealt by the Committee while mitigating the grievance of the petitioner.

44. Writ petition is disposed of in above terms and miscellaneous application(s), if any, also stands disposed of.

15.10.2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No