

Ct. 16
Item No.106
08.07.2021
(suvendu)

WPCT 34 OF 2021

**Union of India & Ors.
Vs.
Pawan Kumar Niroula**

(Via Video Conference)

Mr. P. Bajpayeefor the petitioners
Mr. Suman Banerjeefor the respondent

The writ petition arises out of an order passed by the learned Central Administrative Tribunal on 8th February, 2021 in connection with an original application filed by the respondent challenging, *inter alia*, the initiation of summary trial against the respondent.

The learned counsel appearing for the writ petitioners has submitted that with regard to the fact that the offence under the POCSO Act has been committed by the respondent, a committee was constituted to enquire into the matter in relation to such sexual offence and accordingly, there is no requirement to follow Vishakha guidelines as it is not an offence concerning a woman at the workplace. It is further submitted that the direction of the learned

tribunal to follow the mandate of Ajay Kumar Choudhury is also not applicable in view of the notification dated 20th December, 1993.

Per contra the learned counsel appearing for the respondent/original applicant submits that the constitution of the enquiry committee is vitiated for various reasons as urged in the writ petition and the tribunal was justified in making the aforesaid observations.

We have perused the order impugned. It appears that the submissions on behalf of the writ petitioners with regard to the requirement to follow the Vishakha guidelines in the facts and circumstances of the instant case have not gone into. We do not find any reason as to how the objection raised by the writ petitioners has been dealt with by the learned tribunal and if the Vishakha guidelines are not applicable in the facts of the instant case then the direction in the 4th paragraph of the order is inconsequential. Similarly, whether Ajay Kumar Choudhury is applicable in the instant case is a matter which ought to have been decided by the tribunal. We do not find any reason given for applying the mandate of Ajay kumar Choudhury in

the present case. In the absence of any reason in the order impugned in justifying the order passed by the learned tribunal, we set aside the order of the learned tribunal and direct the learned tribunal to decide the said issues on the next date of hearing. Further the fact finding committee to enquire into the matter shall remain stayed up to 10th August, 2021 or till the matter is taken up by the learned tribunal, whichever is earlier.

We have been informed that the learned tribunal fixed 8th August, 2021 for consideration of the matter.

In view of the submissions that objections on both counts have been submitted to the tribunal and the same are not being considered at the time of passing the order, we pass the aforesaid direction and request the tribunal to decide both the issues if possible on the next date fixed itself.

The petitioners shall file an affidavit with regard to the aforesaid two issues before the learned tribunal within ten days from date upon prior service to the learned counsel representing the original applicant before the learned tribunal and reply

thereto, if any, shall be filed within ten days thereafter. In the event the tribunal is unable to concluded the matter, the tribunal shall pass any appropriate order as it deem fit and proper without being influenced by our observations.

The writ petition is, accordingly, disposed of.

(Amrita Sinha, J.)

(Soumen Sen, J.)