

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 628 OF 2013**

Shri Milind Mamlekar, ..... Petitioner  
resident of House No.1731, Xirwada,  
Shiroda, Ponda-Goa.

V/S.

Goa University, through its Registrar, having  
office at Goa University, Taleigao Plateau,  
Bambolim- Goa. .... Respondent

Mr. Prasheen Lotlikar, Advocate for the petitioner.

Ms. A.Agni, Senior Advocate with Ms. Jay Sawaikar, Advocate for  
the respondent.

**Coram:- M. S. SONAK &  
SMT. BHARATI H. DANGRE, JJ.**

**Reserved on: 20<sup>th</sup> January, 2021**

**Pronounced on : 29<sup>th</sup> January, 2021**

**JUDGMENT : ( Per SMT. BHARATI H. DANGRE, J.)**

“The meaning and content of the fundamental rights  
guaranteed in the Constitution of India are of sufficient amplitude  
to compass all the facets of gender equality”.

Lordship Justice J.S. Verma while delivering the judgment in the **Vishaka & Ors vs State Of Rajasthan** [(1997) 6 SCC 241] expressed above.

2. Sexual harassment results in violation of the fundamental rights of the woman to equality as enshrined in the Constitution and also her right to live with dignity guaranteed under Article 21 of the Constitution. The Government of India has enacted The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The said enactment is an extension of the guidelines issued by the Apex Court in case of **Vishaka & Ors vs State Of Rajasthan**(supra) in the year 1997, by acknowledging sexual harassment at workplace as human right violation. The Act is reflective of the commitment of the Government to the ratification of convention on elimination of all forms of discrimination against woman and on enactment of the said statute India has become part of select group of countries who have prohibited sexual harassment at work place through a legislation.

3. The present case where the petitioner has assailed the penalty imposed on him pursuant to a complaint filed by a class IV

employee working with the respondent, Goa University is the one which fall within the ambit and scope of the Act of 2013 where the allegations levelled against the petitioner were inquired into by the Committee for Prevention of Sexual Harassment of Woman at Work Place (CPSHW) constituted by the Goa University, the respondent to this writ petition. The petitioner assails the said decision in the backdrop of violation of the principle of natural justice and on the ground of perversity.

4. A complaint came to be filed by a destitute woman working in the capacity as sweeper/scavenger for the last 20 years with the University. In the complaint she mentioned about the incidents of harassment from the petitioner who was working as Supervisor in the Estate Section. She referred to an incident which took place in the month of July and alleged that while she was cleaning the Ph.D. hostel the petitioner arrived there and under the pretext of showing her the uncleaned floor attacked her physically. His act was resisted by the complainant and she stated that she would complain to the Head of the University Work Section but he was undeterred. She wanted to lodge a complaint but since the superiors were not in office she could not do so and then she stated the reason why she could not complain, the apprehension of facing

that humiliation. Another incident reported is of 13/11/2010 and a further incident dated 15/11/2010 is also mentioned. By her complaint dtd 24/11/2010 the complainant requested the Chairman of Sexual Harassment Committee, Goa University to take cognizance of the act of the petitioner since she had a feeling of insecurity and was apprehensive that the petitioner would repeat the act.

5. On the complaint being received by the CPSHW, her statement came to be recorded on 30/11/2010. In the detailed statement she referred to the incident which had occurred in the month of July at about 11:30 a.m. and she described the nature of sexual assault, and alleged that she was raped by the petitioner, but being terrified and under the shock, she made attempts to push him away but could not stop him. She offered an explanation why she did not report the incident as she would be defamed and she was not aware of the existence of any such Committee which would look into her grievances. She also state that to avoid any shame and implications to her newly married daughter, she kept quiet. Another incident which she referred to is alleged to have taken place on 04/10/2010 when she had to approach the petitioner at the Project Office with requisition for cleaning material and when she proceeded along with him to the storeroom to pick up the items, he

sexually ravished her and when she came out of the store no one was there. She wanted to complain to his superior but he was on leave and another superior Mr Sangam was also not available. After 4 to 5 days she broadly narrated the incident to Ms. Sunita Sawant, Assistant Registrar, but since there were people in the office she could not give her the details. After many days when she found her all alone she narrated the incident in detail. She assured her that if the petitioner again make any attempt, she should complain to Mr Sawkar. She referred to an incident dated 13/11/2010 when she was asked to go to the Examination Section by the supervisor and when she was signing the muster roll while leaving the office, on 15/11/2010 she was again intimidated by the petitioner. He banged the table thrice and ordered her to sit there on the chair.

6. After this incident she gathered her courage and along with Ms. Sunita Sawant spoke to her superior and referred to the incident dated 15/11/2010. She state that she had left it to Ms. Sunita to mention the earlier incident as she was hesitant to talk to Mr Sawant. She was advised to make a complaint to the Registrar but she could not have approached the Registrar directly and she spoke to Miss Bertha from the Legal Department who then directed her to the CPSHW, before whom she narrated the previous

incidents. About the omission to mention about the incident of October she stated that she wanted to complain and the incident which she had narrated in her original complaint is the one of 04/10/2010. She state before the CPSHW that she was terribly scared as to what the petitioner would do on coming to know that she had lodged a complaint against him and this left her sick and she proceeded on leave from 26/11/2010. The committee also recorded the statement of Ms. Sunita Sawant (Maya Sawant) who work as Assistant Registrar with the Goa University and knew the complainant. In her statement she corroborates that about four months back, the complainant had told her about the supervisor touching her inappropriately. She also stated that she inspired some confidence in the complainant but whenever she used to talk to her there were people around her but sometime in October she waited till her office hours were over and reported that the petitioner had misbehaved again. The said witness state that she could not meet Mr. Sawkar and did not report the incident but after 3 weeks the complainant again approached her and made earnest request that she should tell her superior that he should not post her in the hostel or she should be posted any place where the petitioner could not follow her. Mr. Sawkar repeatedly asked the reason for such a request but

she was not able to openly speak to him but only stated that the petitioner should not follow the complainant. Since the complainant was continuously requesting her and then she narrated the incident which had taken place, which left her aberrated. In the mid of November the complainant had been to the said witness and her superiors wanted that she should make a complaint in writing.

7. On receipt of the complaint the CPSHW carried its site inspection on 03/01/2011 and noted that the Research Student's Hostel (Men) is located at an isolated area of campus. In support of her allegations in the complaint, that when the incident took place she was dragged out of the bathroom, the inspection indicated that the bathroom was on the extreme left of the washroom block and since it was alleged by the complainant that she was dragged and taken to the kitchen area, the site inspection also show that the kitchen area was adjoining the bathroom block to the right side. There was a kitchen platform and as alleged she was raped on the said platform by the petitioner.

8. The Committee also recorded statement of Mr. Sawkar and Mr Sangam Talaulikar, Assistant Engineer, Estate Division about the posting given to the complainant. On conducting a preliminary

verification process into the complaint filed by the complainant, and on recording that the Committee find a prima facie case against the petitioner, by order dated 04/01/2011, he was informed that the CPSHW proposes to hold an inquiry against him under Rule 14 of the Central Civil Services (Classification, control and Appeal) Rules, 1965 read with Rule 3 C of CCS(CCA) Rules. Along with the said communication, the substance of imputations of sexual harassment in respect of which the inquiry was proposed including the article of charges were forwarded to him along with the necessary documents based on which the charges were proposed to be sustained. He was offered an opportunity to submit his written statement in defence and also as to whether he desires to be heard in person. In absence of the statement of the defence being submitted, the inquiry was directed to be proceeded ex- parte.

9. The petitioner submitted his written statement in defence against the article of charges on 14/01/2011 and also sought permission to be represented by a lawyer to defend him and raised a preliminary objection about jurisdiction of the CPSHW to conduct an inquiry. On 18/10/2011, the Registrar, Goa University on receipt of the report of the Committee accepted the report and decided to impose a penalty on the petitioner under Rule 11(vii) of CCS

(CCA) Rules and he was afforded an opportunity of making a representation on the proposed penalty within a period of 15 days. He was served with a copy of the inquiry report in Case No.4 thereby recording the probability in the case of the complainant and in light of the said inquiry a penalty of compulsory retirement in terms of CCS (CCA) Rule was recommended since the petitioner was held to have acted in the manner unbecoming of a Government servant which amounted to a gross misconduct as per Rule 3(1)(iii) of CCS(Conduct) Rules. The petitioner submitted his detailed representation on the inquiry report. On consideration of the said statement and on summarising the inquiry proceedings, the Registrar of the Goa University, i.e. Disciplinary Authority in case of the petitioner, imposed a major penalty of compulsory retirement from the service on the petitioner since the charge of sexual harassment framed against him was held to be proved beyond doubt and the said penalty was held to be commensurating to the charges leveled and proved and served the ends of Justice.

10. Being aggrieved by the said decision, the petitioner preferred an appeal to the Vice Chancellor, Goa University under Rule 23 of CCS (CCA) Rules and the said appeal came to be rejected by upholding the order of the Disciplinary Authority on

15.6.2021. The petitioner also preferred an appeal to the Executive Council of Goa University and the same was dismissed on 25/03/2013. Being aggrieved he has approached this court.

11. We heard Mr. P. Lotlikar, Counsel for the petitioner and Ms. Agni, learned Senior Counsel with Ms. Jay Sawaikar for the University.

12. The learned Counsel representing the petitioner is critical of the action of the respondent and the resulting penalty imposed upon him. According to him, the impugned order was passed in breach of principles of natural justice and fair play as the Disciplinary Authority had prejudged the entire issue and even before affording an opportunity to the petitioner to represent against the inquiry report, the Disciplinary Authority had accepted the said report. He also alleged that the petitioner was not afforded full opportunity by the Disciplinary Authority to meet the findings of inquiry. It is also alleged that there is flagrant violation of Rule 5(9) as a petitioner was not given an opportunity of inspection of the documents and along with the chargesheet the entire set of documents were not submitted.

13. On merits of the matter the submission advanced, based on the grounds in the petition, the learned Counsel submit that the petitioner has been penalized on frivolous allegations and it is nothing but an act of vengeance. He urged that the alleged incident of rape is said to have taken place somewhere in July 2010 but the complainant has remained silent for a long time and filed her complaint on 24 /11/2010 after expiry of four months. Further he is also extremely critical that no police complaint for such a serious offence was filed by the complainant and therefore there is no medical evidence available on record to corroborate the alleged incident of rape. Further by even not stating the date on which the incident took place, the Counsel for petitioner would assert that this establishes the falsity of the entire allegation. He also submitted that the complainant on the date of the alleged incident was transferred to the Economics Department and there was no reason for her to be present in the boys' hostel in the month of July. This was also indicative of the veracity of the accusations levelled by her. The evidence relied upon by the Committee in the form of the independent witness Ms. Maya is also sought to be criticized by submitting that she has no connection with the incident and in fact she is neither an eyewitness nor she was somehow related to the area

where the complainant was operative. The Counsel state that the petitioner has examined 11 defence witnesses but their testimony has been pushed under the carpet by the Committee and no weightage has been attached to the deposition of the said witnesses who have categorically stated that the complainant was not working in the boys' hostel when the incident is alleged to have occurred and even on the minute details, it put a spoke in the case of the complainant but conveniently the said evidence has been ignored. On the basis of the same, the Counsel for the petitioner urge that the findings of the inquiry Committee are perverse on account of non consideration of the relevant material and on other hand considering the irrelevant material. The learned Counsel Mr. Lotlikar would also submit that the Appellate Authorities have also fallen in line with the Committee and have misjudged the entire issue and upheld the penalty imposed, and by applying the judicial parameter of perverse finding, it cannot be sustained.

14. The learned Senior Counsel Ms. Agni has invited our attention to the factual findings recorded by the Committee and submit that the Goa University has a policy in the form of (Preventive and Remedial) of Sexual Harassment of Women at the Workplaces which is in force since 2010. According to the said

policy, a CPSHW is constituted in Goa University and in every college/institute affiliated to the Goa University as per the Supreme Court's Guidelines. It comprises of a woman Chairperson and at least 50% of women members with at least one member from outside Goa University/ College well versed with the issues of sexual harassment, with an intention of prevent the possibility of any undue pressure or influence from, within University /College and it also include a person with a law background. She would submit that the said policy contemplates an inquiry on receipt of the complaint after its verification and when a prima facie case is established, contemplate appropriate disciplinary action in accordance with CCS (CCA) Rules. The procedure for conducting inquiry contemplated under the policy is compliant with the principles of natural justice and according to the learned Counsel the said policy has been strictly implemented by conducting an inquiry into the charges levelled by the complainant, a class IV employee working with the University and since it is a national policy of the Government to consider the sexual harassment of woman in workplace, an important and priority issue so as to ensure quality work, environment free of intimidation and to enhance its productivity and to outlive the negative impact on the work culture. In nutshell

the Senior learned Counsel will support the findings of the Committee and the decision taken by the Appellate Authority.

15. With the assistance of the learned Counsel for the petitioner and respondent, we have perused the material placed on record in form of petition and its annexure and also the affidavit in reply file by Professor (Dr) N.S, Bhat, Acting Registrar University sworn on 17/01/2014 along with the rejoinder of the petitioner to the said affidavit. The scope of interference in the matters on disciplinary inquiry has been streamlined by the authoritative pronouncements by the Honorable Apex Court and from this Court in form of decisions rendered from time to time. The power of judicial review conferred on the Courts by Article 226 of Constitution of India, while examining the matters arising out of disciplinary proceedings is limited to interfering in particular contingencies; if the disciplinary /inquiry proceedings were conducted in violation of the principles of natural justice and the proceedings conducted do not afford adequate opportunity to te delinquent to defend himself. Another contingency being, when it is established that the decision of the Disciplinary Authority is not based on any evidence or suffers from malice or perversity. In Indian

Oil Corporation and Anr vs Ashok Kumar Arora [(1997) 3 SCC 72], the honorable supreme Court held as under:

*“20. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and or the punishment is totally disproportionate to the proved misconduct of an employee. The catena of judgments of this Court which had settled the law on this topic and it is not necessary to refer to all these decisions. Suffice it to refer to a few decisions of this Court on this topic namely State of Andhra Pradesh Vs. S.Sree Rama Rao (1963 (3) SCR 25), State of Andhra Pradesh Vs. Chitra Venkata Rao [1975(2) SCR 557], Corporation of City of Nagpur and Anr. Vs.*

*Ramachandra [1981 (2) SCC 714] and Nelson Motis Vs. Union of India and Anr.[1993 (4) SCC 225].”*

16. In **B.C. Chaturvedi v/s. Union of India and other** [(1995) 6 SCC 749] the scope of judicial review was indicated by stating that the review by the Court is of decision making process and where the findings of the authority are based on some evidence, the Court/ Tribunal cannot re-appreciate the evidence by substituting its own findings.

17. In **Lalit Popli vs Canara Bank & Ors** [(2003) 3 SCC 583] their lordships of the Supreme Court held as under :

*"17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an Appellate Authority."*

18. In **Allahabad Bank and others v/s Krishna Narayan Tewari** [(2017) 2 SCC 308] the position of law on the said subject has been reiterated in the following words :

*" 7. We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also*

*grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the Disciplinary Authority and the Appellate Authority. The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defense has not been effectively rebutted by the appellant. More importantly the Disciplinary Authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the Disciplinary Authority. All told, the Enquiry Officer, the Disciplinary Authority and the Appellate Authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the Disciplinary Authority and the Appellate Authority."*

19. On the canvass of the aforesaid position of law, we have examined the case in hand, as put forth before us through the learned Counsels, relying on the records of the disciplinary proceedings. The petitioner was subjected to the departmental enquiry and was made to answer the following charges:

*“ Article I*

*That the said Shri Milind Mamlekar, while functioning as Supervisor in the Estate Division of Goa University during the period July 2010, October 2010 and November 2010 committed acts of unwelcome sexually determined behaviour amounting to sexual harassment as set out in the following articles.*

*Article II*

*That during July 2010 and while functioning in the aforesaid office, the said Shri Milind Mamlekar had committed rape on the complainant.*

*Article III*

*That on 4 October 2010 and while functioning in the aforesaid office, the said Shri Milind Mamlekar had made unwelcome physical contact of sexual nature with the complainant.*

*Article IV*

That during November 2010 and while functioning in the aforesaid office, the said Shri Milind Mamlekar had intimidated the complainant whereby instilling fear in the complainant of repetition of the acts specified in Articles II and III and thereby perpetuating a hostile work environment for the complainant.”

20           As far as the principle of natural justice is concerned, the submission advanced by the learned Counsel for the petitioner is referred, just to be rejected. The record reveal that the petitioner was afforded opportunity at every stage, as required by law, on the complaint being received by the CPSHW, on a preliminary verification being conducted, the Chairperson of the CPSHW on 04/01/2011 issuing the notice to the petitioner intimating about an enquiry being conducted against him. The statement of the petitioner was also recorded before the CPSHW on 17/01/2010.

The substance of imputations of the alleged sexual harassment in respect of which the enquiry proposed was set out in the enclosed substance of imputations including articles of charge (Annexure1). A statement of imputations of sexual harassment in support of which article of charge was also enclosed vide Annexure II. A list of documents by which and list of witnesses by whom the articles of charge are proposed to sustained was also enclosed at Annexures III and IV. He was permitted to submit his written statement in defence. Accordingly, the petitioner submitted an elaborate written statement to the article of charge on 14/01/2011 and also cited witnesses in his defence which he intended to examine. On the conduct of the departmental enquiry a report was served on the petitioner, enabling him to make a representation on the said report along with his representation on the penalty proposed being of compulsory retirement. The detailed Enquiry/report as well as the proposed penalty was responded by him by his communication dated 22/11/2011 and on consideration of his response to the enquiry report and his say on the proposed penalty, the impugned order came to be passed on 02/02/2012 thereby compulsorily retiring him with immediate effect. It can thus been seen that at every stage the petitioner was afforded an opportunity and at two

stages he had submitted his detailed reply. The enquiry report also disclosed that opportunity was given to him to adduce evidence and cross-examine the complainant. As many as 11 witnesses have been examined by him in his defence and he also cross-examined the complainant. Thus, he has availed the full opportunity to tender evidence in his favour and also cross-examine the complainant and her witnesses. This reflect that there was due compliance of the principles of natural justice and disciplinary proceedings do not warrant any interference on this count.

As far as non-supply documents are concerned, the petitioner do not make any grievance when he submit his written response and in fact he himself has referred to several documents which had been supplied to him which include the copy of the noting and the memorandum. Since he participated in the proceedings without making any serious grievances about prejudice caused to him on supply of any necessary documents the vague allegation that he did not receive the necessary documents cannot be appreciated.

21. Now, we deal with the submission of the petitioner that the CPSHW have no jurisdiction and therefore the punishment

imposed is unsustainable, the said contention in our considered opinion is also without any basis.

In a PIL filed by Women's Organization before the Apex Court, on 26.4.2004 noted that though guidelines were issued in Vishaka (supra) steps were not taken by State & U.T. A direction came to be issued to the States and Union Territories which had not carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules. It was directed that the Disciplinary Authority shall treat the report/findings etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. It was categorically held that the findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent. A direction came to be issued to the following effect :

*“Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka's Case, 1997 (6) SCC 241 at pg 253 will be deemed to be an inquiry authority for the purposes of Central Civil Services*

*(Conduct) Rules, 1964 (hereinafter called CCS Rules) and the report of the complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the rules.”*

It is relevant to note that after the judgment in case of **Vishaka** (supra) on 13/8/1997 in case of Medha Kotwal Lele & Ors vs Union of India & Ors [(2013) 1 SCC 297] on 19/10/2012 the Apex Court took a note of the fact that down the line for 15 years after the guidelines were issued in **Vishaka**(supra), no appropriate legislation is enacted by the parliament and many women still struggle to avail basic rights protected at workplaces. In a PIL, the Apex Court took the exercise of reviewing the action on parts of the different States by framing necessary Rules. Noting that the guidelines in **Vishaka** (supra) had to be not only in form but were to be implemented in substance and spirit so as to assure a safe and secure environment to women at the workplace in every aspect and enabling the women to work with dignity, decency and due respect, States and Union Territories were directed to take steps by amending Service Rules.

Since the Committee which enquired into the charges levelled against the petitioner was itself duly constituted in terms of the statute, CCS(CCA) Rules 1965 and the guidelines laid down in case of **Vishaka**(supra), the submission advanced that the committee lack the jurisdiction to conduct an enquiry has no force and is rejected.

22. Coming to the merits of the decision of the Disciplinary Committee, holding the applicant guilty of sexual harassment, it is to be noted that sexual harassment carry a definite connotation though it has been now defined in 2013 Act, it in terms of the Apex Court in **Vishaka** (supra) included such unwelcome sexually determined behaviour (whether directly or by implication), all physical contact and advances; a demand or request for sexual favours; sexually-coloured remarks/acts; derogatory comments, conduct or any such behaviour based on the gender identity/ sexual orientation of a woman or any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Where any aforesaid acts are committed in circumstances where under the victim of such conduct has a reasonable apprehension that submission to unwelcome sexual advances, request for sexual favours and verbal or physical conduct of the sexual nature can be humiliating and may constitute a health and safety problem.

23           The complainant, a class IV employee working at the University in which the petitioner was working as a Supervisor, gathered all the courage to make a complaint to the committee on 24/11/2010 and in her detailed statement recorded before the Committee on 30/11/2010 revealed her confused state of mind, unclear as to what and to whom she should make a grievance on account of her sufferings at the hands of the petitioner. An illiterate lady, entrusted with the task of carrying out the cleaning work of the bathroom is not expected to keep a record of the dates but broadly referred to an incident which took place in the month of July and disclose that it was Monday. She narrated the woes before the Committee when she was on duty and was dragged by the petitioner out of the bathroom to a side room when nobody was present in the hostel as the students were in the Department. She alleged that she was sexually ravished by the petitioner and if the story was concocted she would have cunningly given the dates and would have been more explicit about the incident. She state before the Committee that she was unaware of the procedure to be followed in reporting of the incident but she attempted to contact her superior who was not available. She also state that she was very much ashamed of the said incident and carried an apprehension that it

would spoil her name and she was also not aware that there was a Committee of women members who could look into her grievances of such nature. In order to avoid any shame and implications to her only daughter who was recently married and she being the only member of her family, she just kept it to herself. Another incident which she had had referred to is said to have taken place on 04/10/2010 when again she was subjected to sexual harassment when she was pulling out items from the storeroom. The complainant has narrated that she had approached the Assistant Registrar of Goa University, firstly being a lady and secondly on the ground that she would give her an audience but she felt so humiliated that she could not narrate the entire incident to this witness. The statement of the complainant is corroborated by Ms. Maya Sawant who has stepped into the witness box and somehow assisted the complainant to reach to the grievance committee.

The attempt of the petitioner is to show that either she was not employed in the boys' hostel in the month of July when the incident alleged is said to have taken place as up to 28/4/2010 or she was working in Economic Department but then transferred to boys' hostel and from 26/6/2010 she was transferred to the Economics Department. In the complaint the petitioner state that the incident

took place in the Research hostel. The site inspection report by the Committee inspected the spot shown by the complainant as it is a Research Student Hostel (Men). The complainant in her own language without knowing the great details as to whether it was the boys' hostel or research student hostel, referred to it as a boys' hostel. The petitioner has made sincere efforts to encash this discrepancy and has focused his attention in establishing that she was not working in the boys' hostel but transferred to the Economics Department on 26/06/2010. It has come on record that the Dean has carried out an inspection in the hostel in the month of July 2010 and, therefore, it is possible that the complainant would have asked to clean the floor in the said hostel and in any case the duties entrusted to the complainant were of cleaning the hostel and the fact that at time she was placed in leave reserve, which would go to show that at times sweepers are asked to undertake duties by working at various places without focusing on the actual orders. The petitioner has tried to bring on record the discrepancies to show that the entire case lodged against him is not truthful but is malicious but has failed to do so. The enquiry report of the Committee deal with the preliminary objections, the evidence brought on record in form of witnesses by the complainant as well as at the instance of the

petitioner and has analysed and appreciated the said evidence on record and rightly held that no witness have categorically denied the possibility that the complainant could have been asked to work in the hostel on the said date. It is not the version of the petitioner that at the relevant time there was no possibility of him being present at the said place. The Committee has also observed on the basis of the deposition of the witnesses brought by the petitioner to the witness box that the actual work assigned to the sweepers does not always and in totality correspond with the dates of the posting as per the official orders and instance has been cited to that effect that when the complainant was posted to the Economic Department on 26/06/2010, she signed the muster attendance at the Department from 01/09/2010. The following observations are relevant:

*“From the above, it can be seen that there are different reference points as regards the Boys’ hostel and its enclosure and cleaning. In the first place, opening of hostels did not Necessarily entail that the old hostel was not subjected to cleaning, the keys were available at the Estates Division to clean the hostel if it was found necessary, there was no effective supervision of the supervisor for any superior to be able to categorically*

*make a Statement that the supervisor may not have directed the sweeper to sweep and wash the toilet of a particular place, be it the hostel or otherwise. DW11 has stated the norms, but would not be able to state whether the norms were being followed or not as he has admitted that it is not possible to be visited every site where sweepers are working regularly. His own last visit to the Boys' Hostel was reportedly sometime two or three years ago or in May 2010."*

24. In the light of the allegations levelled, the Committee has rendered its finding on each article of charge by referring to the definition of sexual harassment and has hold as under:

*"Article I: There is evidence satisfactorily pointing to the committing of acts of unwelcome sexually determined behavior amounting to sexual harassment by the DE, on the basis of which the CPSHW considers that Article I is proved.*

*Article II: Based on the evidence on record, there is a probability that the DE had committed rape on the complainant. No evidence has been satisfactorily placed*

*by the DE to prove alibi or the probability of non-occurrence of rape by the DE or that there could have been no such conduct on his part in all probability.*

*Article III: There is a strong probability that the DE made unwelcome physical contact of sexual nature with the complainant on 4 October 2010 while handing over supplies.*

*Article IV: There is a probability that the DE on 15 November 2010, while functioning in the aforesaid office, had intimidated the complainant thereby instilling fear in the complainant or reception of the acts specified in Articles II and III and thereby.”*

25. In the result, the committee recorded its conclusion and recommended the penalties of compulsory retirement in its report to the following report:

*“3.2, CONCLUSION AND RECOMMENDATION:*

*According to the Supreme Court of India in Medha Kotwal Lele & Ors. v/s UOI & Ors.: “Complaints Committee as envisaged by the Supreme Court in its*

*Judgement in Vishaka's Case, 1997 (6) SCC 241 at 253, will be deemed to be an inquiry authority for the purpose of Central Civil Services (conduct) Rules, 1964 (hereinafter called CCS Rules) and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS rules. Thereafter the disciplinary authority will act on the report in accordance with the rule."*

*Any act of sexual harassment of women employees attracts the provisions of Rule 3 (1)(iii) of CCS (Conduct) Rules, as an act unbecoming of a Government servant and amounts to misconduct. Therefore as the inquiry has established sexual harassment of the C by the DE the CP SHW as per CCS CCA Rule 11 recommends penalty no (vii): Compulsory Retirement. Therefore as the inquiry has conclusively established sexual harassment of the C by the DE, the DE has committed acts unbecoming of a Government servant which amounts to grave*

*misconduct in gross violation of Rule 3 (1)(iii) of CCS (Conduct) Rules.”*

26. There is no reason for the complainant to falsely implicate the petitioner amongst the several male employees of the University. No motive for false allegations is brought on record. Further, we can well appreciate the efforts taken by a Class IV employee to make her superiors indulge her by hearing her out and the unfortunate situation, were had to complain against her supervisor complaining against the supervisor, we can well judge her predicament.

27. In case of departmental enquiry which is distinct from a criminal trial, the charges are not to be proved beyond reasonable doubt but are to be established based on preponderance of probabilities. The disciplinary proceedings are initiated against an erring official by the administration according to the prevailing Rules and Regulations governing his service conditions. Some activities which may lead to a departmental action may also coincide with the criminal action initiated against him. But the standard of proof required in both the two proceedings is of different nature. It is well settled that the scope of disciplinary proceedings before

authority and the criminal proceedings before the Court of law quite be distinct, exclusive and independent of each other and the standard of proof required in the two are different. It has been held in the catena of the decisions of the Apex Court that interference in the disciplinary proceedings is not permissible unless the orders passed are unreasonable or perverse or manifestly illegal or grossly unjust and it has now being a well settled principle that merely on the basis of acquittal in the criminal case, delinquent official cannot be discharged from the charges in the departmental proceeding and though both the proceedings were based on the same set of facts mere acquittal in the criminal proceedings will not exonerate a delinquent / accused from the departmental proceedings. Since the standard proof required in the disciplinary proceedings is merely to the extent of preponderance of probabilities, the Committee has established the said probability by examining the material placed before it on record and in absence of any evidence to eliminate the said probability on the part of the petitioner, has accepted the allegations levelled by the complainant in the complaint and after affording the necessary opportunity has found the petitioner guilty and accordingly imposed the penalty of compulsory retirement upon him. The Appellate Authority, find no reason to disturb the same

and concur with the said finding, since the petitioner has been afforded necessary opportunity to deal with the charges levelled against him and on following the due procedure of law, the charges had been held to be established by the committee and penalty proportionate to the charges levelled against him has been imposed.

We find no legal infirmity in the impugned orders and therefore, we dismiss the Writ Petition. Easy on costs.

**SMT. BHARATI H. DANGRE, J**

**M. S. SONAK, J.**

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