

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.3095 OF 2019

Sunita Jasmine Pauldas Gladston Somervel ... Petitioner

V/s.

State of Maharashtra and ors.

... Respondents

Mr.Mihir Desai, Senior Advocate i/by Mr.Swaraj Jadhav, Advocates
for the Petitioner.

Mr.L.T.Satelkar, AGP for Respondent Nos.1 and 4.

Mr.Ankit Lohia alongwith Mr.Murari Madekar and Mr.Sachin Kudalkar
i/by M/s Madekar & Co., Advocates for Respondent Nos.2,6 and 7.

Dr.Milind Sathe, Senior Advocate alongwith Mr.Amey Nabar, Ms.
Gitanjali Sharma, Ms.Priyanka Masand i/by M/s A.S.Dayal &
Associates, Advocates for Respondent No.3.

Mr.Vipul Shukla, Advocate for Respondent No.5.

**CORAM : UJJAL BHUYAN &
MADHAV J. JAMDAR, JJ.
DATE : JULY 30, 2021.**

P.C.:-

Heard Mr.Mihir Desai, learned senior counsel for the
petitioner; Mr.L.T. Satelkar, learned AGP for respondent Nos.1 and
4; Mr.Milind Sathe, learned senior counsel for respondent Nos.2
and 3; and Mr.Vipul Shukla, learned counsel for respondent No.5.

2. By filing this petition under Article 226 of the Constitution
of India, petitioner seeks the following reliefs:-

“a. The Hon’ble Court may be pleased to grant a
writ of mandamus or a writ, order or direction in the
nature of mandamus, quashing and setting aside the
Report of the findings of the Respondent No.3, the ICC
of the Respondent No.2 School, dated 05.12.2018.

b. The Hon’ble Court may be pleased to grant a
writ of mandamus or a writ, order or direction in the
nature of mandamus directing Respondent No.1 to
constitute an independent External Committee in
conformity with the Sexual Harassment Act, 2013 and

conduct an enquiry *de novo* into the conduct of Respondent Nos.5,6 and 7;

c. The Hon'ble Court may be pleased to grant a writ of mandamus or a writ, order or direction in the nature of mandamus, directing the Respondent No. 3 to forward to the constituted External Committee all documents and records before itself, arising out of the impugned proceedings consequent to the complaint of the Petitioner;

d. The Hon'ble Court may be pleased to adjudge and declare that the Respondent Nos.2 and 3 failed protect and provide redress to the Petitioner in violation of the Sexual Harassment Act and Rules, 2013, including Section 4 of the Sexual Harassment Act, 2013, and that the Respondent No.2 School is liable under Section 26 of the Sexual Harassment Act, 2013;

e. That this Hon'ble Court be pleased to grant a writ of mandamus or a writ, order or direction in the nature of mandamus, directing the Respondent No.2 to take steps to ensure that their policy on sexual harassment of women at workplace adheres in letter and spirit with the Sexual Harassment Act and Rules, 2013;

f. That this Hon'ble Court be pleased to grant compensation to the Petitioner in lieu of the harassment and insensitivity of the unlawful and illegitimate process adopted by the Respondent No. 2 School and the Respondent No.3 in dealing with her complaint of sexual harassment at the workplace;

g. That this Hon'ble Court be pleased to direct the Respondent No.2 School to reinstate the Petitioner, with back wages from the date of her wrongful termination from employment;

h. That this Hon'ble Court be pleased to grant ad-interim and interim reliefs, in the terms of above prayers (a) to (d).

i. That this Hon'ble Court be pleased to grant costs of this petition; and

j. For any other just and equitable relief as this Hon'ble Court may deem fit to grant."

3. Basically petitioner is aggrieved by finding of the internal complaints committee rejecting her complaint of sexual

harassment at workplace. Further, petitioner is also aggrieved by termination of her service.

4. This court in **Punam V. Thakkar Vs. Aditya Birla Capital Shared Services Limited, Writ Petition (L) No.3972 of 2021, decided on 8th July, 2021**, took the view that in terms of section 18 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2018 (briefly "the Act" hereinafter) read with Rule 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (briefly "the Rules" hereinafter) an aggrieved person may avail the remedy of appeal before the Industrial Court at Mumbai. Relevant portion of the decision dated 8th July, 2021 reads as under :-

"7. Section 18 of the Act reads as under:-

"18. Appeal.—(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.
(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations."

7.1. From the above, we find that any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to such Court or Tribunal and in such manner as may be prescribed. As per sub-section

(2), such appeal is required to be preferred within a period of 90 days of the recommendations.

8. Rule 11 of the Rules reads as under:-

“Rule 11. Appeal- Subject to the provisions of section 18, any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the appellate authority notified under clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).”

8.1. From a perusal of the above, it is seen that appeal under section 18 of the Act may be preferred to the appellate authority notified under clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946.

9. Section 2(a) of the Industrial Employment (Standing Orders) Act, 1946 defines appellate authority to mean an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under the Industrial Employment (Standing Orders) Act, 1946.

10. From the reply affidavit of respondent No.4 we find that State of Maharashtra in the Industrial, Energy and Labour Departments has issued notification in exercise of powers conferred by clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946. It is in super-session of earlier notifications issued in this regard. As per the notification, the Industrial Court at Mumbai exercises jurisdiction over Mumbai city and Mumbai Sub-Urban District.

11. That being the position, we are of the view that petitioner may avail her remedy in terms of section 18 of the Act read with rule 11 of the Rules by filing appeal before the Industrial Court at Mumbai. It would be open to the petitioner to seek condonation of delay in filing the appeal in which event the appellate authority may consider the period spent in pursuing

the writ petition before this Court as well as the condition prevailing in the State on account of COVID-19 pandemic.

12. No opinion is expressed as to maintainability of the writ petition as well as on merit. Consequently, all contentions are kept open.

13. With the above directions, writ petition is disposed of.”

5. That being the position, we grant liberty to the petitioner to avail her remedy of appeal in terms of section 18 of the Act read with Rule 11 of the Rules by filing appeal before the Industrial Court at Mumbai. It would be open to the petitioner to seek condonation of delay in filing the appeal considering the pendency of the writ petition before this court in which event the appellate authority may consider the same in accordance with law.

6. In so far termination of service is concerned, we also grant liberty to the petitioner to pursue her remedy in accordance with law.

7. No opinion is expressed on merit.

8. With the above, writ petition is disposed of.

(MADHAV J. JAMDAR, J.)

(UJJAL BHUYAN, J.)

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