

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 20332 OF 2017

Raj Kumar Dey

Vs.

The State Bank of India & Ors.

For the Petitioner : Mr. Srijib Chakraborty ,
Mr. Pankaj Agarwal,
Mr. Jibantaraj Dan Roy,
Ms. Paromita Maityadvocates

For the Respondent No. 1 : Mr. Subrata Kumar Dutt,
Ms. Riya Banerjee
.....advocates

For the Respondent No. 2 : Mr. Mihir Kumar Kundu advocate

Heard on : 16.03.2022

Judgment on : 19.05.2022

Hiranmay Bhattacharyya, J.:-

1. This writ petition has been filed for issuance of a writ of mandamus to set aside and quash the order dated August 4, 2016 passed by the disciplinary authority and the order dated November 18, 2016 passed by the appellate authority of the respondent no. 1 Bank.
2. A complaint was made by the respondent no. 2 on September 8, 2014 against the petitioner alleging sexual harassment made by the petitioner. The complaint was examined by the Internal Complaint Committee (for short

“ICC”) who filed a report dated October 24, 2014. The petitioner filed a writ petition before this Hon’ble Court being WP 1021(W) of 2016. After taking note of the fact that the petitioner has responded to the notice pertaining to sexual harassment by his reply dated April 18, 2015, a co-ordinate bench of this court by an order dated February 2, 2016 passed in WP 1021(W) of 2016 directed the bank to conclude the matter by forwarding a reasoned decision to the petitioner before the adjourned date.

3. Pursuant to the said order another enquiry was conducted by the ICC which submitted its report on July 16, 2016. ICC in its report dated July 16, 2016 made a recommendation to the appropriate authority of the bank to take a decision on the findings contained in the said report. The disciplinary authority by an order dated August 4, 2016 imposed the penalty of compulsory retirement with superannuation benefits i.e., pension and/or provident fund and gratuity and without disqualification from future employment. The petitioner preferred an appeal before the appellate authority against the order of punishment passed by the disciplinary authority. The appellate authority by an order dated November 18, 2016 dismissed the appeal of the petitioner.
4. Being aggrieved, the petitioner filed the instant writ petition.
5. Mr. Chakraborty, learned advocate for the petitioner contended that the disciplinary authority inflicted the penalty of compulsory retirement upon the petitioner without initiating any disciplinary proceedings in terms of

the service regulations governing the service of the petitioner. He, further, contended that the report of the ICC is a mere preliminary investigation report and no penalty can be imposed without initiating any disciplinary action in terms of the service rules. He contended that the findings of the ICC cannot be sustained in the eye of law as the ICC did not follow the modified policy of the respondent bank on Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal Act, 2013) (for short “the 2013 Act”) while undertaking the said enquiry. He further contended that the order passed by the disciplinary authority as well as the appellate authority are unreasoned and nonspeaking and as such the same are liable to be set aside and quashed by this court. He also contended that the modified policy on sexual harassment provides that after the report is submitted by the ICC, the disciplinary authority has to initiate disciplinary proceedings after issuing chargesheet and holding an enquiry by an Inquiry Officer as per the service rules.

6. Per contra, Mr. Dutt learned counsel appearing for the respondent no. 1 bank contended that the ICC report cannot be said to be a mere preliminary investigation report but the same shall be treated as findings in a disciplinary enquiry against the delinquent employee and the disciplinary authority shall act on such report accordingly. In support of such contention he placed reliance on a decision of the Hon’ble Supreme Court of India in the case

of *Medha Kotwal Lele and Ors. Vs. U.O.I. and Ors.* reported at AIR 2013 (SC) 93.

7. He further contended that in spite of being served with the notice of hearing the petitioner did not attend the hearing before the appellate authority and as such the appellate authority had no other alternative but to decide the appeal ex-parte. He contended that the petitioner did not challenge the ICC report by preferring an appeal as per the 2013 Act and read with the modified policy of the bank on sexual harassment. He submitted that the petitioner has also not challenged the ICC report in the instant writ petition and as such the ICC report ought not to be interfered with by this court. He further submitted that the petitioner was given sufficient opportunity at the enquiry conducted by the ICC. He also submitted that there was no necessity of conducting further enquiry by an Inquiry Officer in the instant case as a detailed fact finding enquiry into the complaint was made by the ICC. He, thus, contended that the instant writ petition is a frivolous one and the same is liable to be dismissed.
8. Mr. Kundu, the learned advocate representing the respondent no. 2 adopted the arguments advanced by Mr. Dutt.
9. In reply Mr. Chakraborty submitted that the decision of the Hon'ble Supreme Court in *Medha Kotwal* (supra) is not applicable as the directions contained in the said judgment was operative till a legislation was enacted. He, thus, submitted that after coming into force of the 2013 Act, the

observation that the ICC report shall not be treated as mere preliminary investigation or enquiry does not hold good at this stage.

10. Heard the learned advocates for the parties perused the materials placed.

11. In *Vishaka* (supra) the Hon'ble Supreme Court of India laid down the guidelines and norms that are to be followed at all workplaces or institutions until a legislation is enacted for effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse at workplace. "Sexual harassment" was defined in the Guidelines and Norms prescribed by the Hon'ble Supreme Court. The employers were directed to create an appropriate complaint mechanism and also as to how the complaints committee is to be constituted. It was also stipulated that 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.

12. In *Medha Kotwal* (supra), Hon'ble Supreme Court, after taking note that the Vishaka guidelines have not been implemented effectively, passed further direction in the said judgment which was delivered on October 19, 2012. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules were directed to provide that the report of the complaints Committee shall be deemed to

be the inquiry report in a disciplinary action under such service rules.

13. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short “the 2013 Act”) received the assent of the President of India and was published in the Gazettee dated April 23, 2013.
14. Therefore, after 2013 Act came into force, whether the inquiry by the ICC can be said to be merely a preliminary investigation or enquiry has to be decided after considering the provisions of the 2013 Act.
15. Section 2(n) of the 2013 Act defines the expression “sexual harassment”. Section 3(2) narrates some of the circumstances which may amount to sexual harassment though the said list is not an exhaustive one.
16. Section 4(1) obliges an employer to constitute an Internal Complaints Committee. The constitution of such committee and the manner in which the same is to be constituted has been provided in subsection (2) of Section 4.
17. “Aggrieved woman” in relation to a workplace has been defined in Section 2(a)(i) to mean a woman of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent.
18. “Respondent” has been defined in Section 2(m) to mean a person against whom the aggrieved woman has made a complaint under Section 9.

19. On complaint being made under Section 9 against an employer, ICC shall proceed to make an enquiry into the complaint in accordance with the service rules applicable to the employee as provided under Section 11 of the 2013 Act.
20. Section 13(1) provides that on completion of an enquiry, the ICC shall provide a report to the employer and such report is to be made available to the parties.
21. Section 13(2) provides that in case ICC arrives at the conclusion that allegation against the employee has not been proved, it shall recommend to the employer that no action is required to be taken. However, if ICC arrives at the conclusion that the allegation against the employee has been proved it shall recommend to the employer under Section 13(3) to take action for sexual harassment as a misconduct in accordance with the provision of the service rules applicable to the employee.
22. Subsection 4 of Section 13 casts an obligation on the employer to act upon the recommendation of ICC.
23. Section 18 provides right of appeal to any person aggrieved by the recommendations made under subsections 2 and 3 of Section 13 in the manner as may be prescribed. The period of limitation for preferring such appeal has also been laid down in subsection 2 of Section 18.
24. In exercise of the powers conferred by Section 29 of the 2013 Act, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013 (for

short “the Rules”) has been framed by the Central Government.

25. Rule 7 lays down the manner in which the inquiry into complaint is to be made by ICC. It provides for supply of a copy of such complaint to the respondent/ employee within the prescribed time limit. The employee has a right to file his reply to the complaint along with his list of documents and names and addresses of witness within the prescribed time limit. Subrule 4 provides that ICC shall make inquiry into the complaint in accordance with the principles of natural justice.
26. ICC also has the right to terminate the inquiry proceedings or to give an ex parte decision in terms of Rule 7(5).
27. Section 11(3) of the 2013 Act provides that for the purpose of making an enquiry under Section 11(1), ICC shall have the powers which are vested in a civil court in respect of summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of documents and any other matter which may be prescribed.
28. After reading the provisions laid down in 2013 Act and the rules this Court finds that upon a complaint being made, the copy of the complaint is to be supplied to the employee against whom such complaint is made. The employee gets an opportunity to file his reply to the complaint. The complainant as well as the respondent/ employee gets

opportunity to adduce oral as well as documentary evidences in support of their respective contentions. Rules provide that the enquiry by ICC is to be made by following the principles of natural justice. ICC is also vested with the powers of the civil court in respect of certain matters regarding evidence of witnesses etc.. An aggrieved party also has a right to file an appeal against the ICC Report. Thus, after reading the various provisions of the 2013 Act and the rules framed thereunder, this Court is of the considered view that an inquiry conducted by the ICC is a full fledged enquiry wherein the parties get ample opportunities to prove their contentions and a finality is also attached to such inquiry. The 2013 Act also mandates the employer to act on the recommendations of the ICC. Therefore, the inquiry report cannot be said to be merely a preliminary investigation report.

29. Section 18 of the 2013 Act provides for a remedy of appeal to any person aggrieved from the recommendations made in the ICC report. The modified policy provides that any person aggrieved by the decision of the ICC may prefer an appeal within 90 days of the recommendations to the Internal Appellate Committee. The said policy also provided the manner of constitution of such appellate committee. Admittedly, the petitioner did not prefer any appeal against the ICC report. Section 13(4) of the 2013 Act provides that the employer shall act upon the recommendation of the ICC report. Therefore, the recommendations of the ICC in its

report, if the same has attained finality is binding upon the employer. It is not open to the employer to ignore the recommendations of the ICC. Thus, this court is of the considered view that it is not open to the petitioner at this stage to contend that the ICC report should not be acted upon by the employer for taking disciplinary action.

30. The next question arises is whether the action of the disciplinary authority in passing the order of punishment without initiating a fresh enquiry as per the service rules is justified.

31. Section 13(3) of the 2013 Act lays down that when the Internal Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent. None of the parties to this proceeding produced the service rules governing the service of the petitioner save and except the modified policy on sexual harassment.

32. From the order of the disciplinary authority dated August 4, 2016 it appears that the punishment was imposed as per the provisions of the memorandum of settlement dated April 10, 2002. The said memorandum of settlement was not produced by the parties at the time of hearing of the writ petition.

33. Though, Mr. Chakraborty was right in arguing that before imposing punishment upon a delinquent employee disciplinary action for sexual harassment as a misconduct is

to be taken in accordance with the provisions of the service rules applicable to the delinquent employee but the manner in which the disciplinary action is to be conducted is laid down in the service rules governing the delinquent employee. Whether the ICC report can be treated to be the report of the inquiry authority in a disciplinary proceeding shall have to be decided after looking into the provisions in the service rules governing the delinquent employee. Since this court did not have the occasion to go through the service rules governing the service of the petitioner, this court is unable to render any finding as to whether the disciplinary authority as well as the appellate authority conducted the proceedings in accordance with the service rules prior to imposing punishment upon the petitioner.

34. After going through the order passed by the appellate authority this court finds that the letter dated November 8, 2016 was sent to the petitioner through a guard of the Howrah Branch who personally visited the recorded address of the petitioner on 09.11.2016 and 10.11.2016. It appears from the said order that the guard could not find the petitioner therein as the house remained closed. It further appears from the said order that the said guard pasted the said letter on the main door of the recorded address of the petitioner on November 10, 2016.

35. Petitioner claims that he did not receive such notices and it is not in dispute that the appeal was decided ex-parte. Furthermore, the appellate authority after recording the

grounds taken by the petitioner in the appeal dismissed the appeal without recording any findings on the grounds of appeal. When the petitioner raised specific grounds of challenge against the order of punishment of the disciplinary authority it is expected that appellate authority should deal with such grounds while deciding the appeal and ought not to have dismissed the appeal by a totally nonspeaking order. The appellate authority cannot shirk off its duty by merely quoting the grounds taken in the appeal without rendering its finding thereon. Thus, only on the ground that the order passed by the appellate authority is nonspeaking one, the same is liable to be set aside.

36. Since, the petitioner has raised several points challenging the manner in which the disciplinary action was taken by the disciplinary authority and the appellate authority and the said issues relate to validity of the disciplinary action taken by the disciplinary authorities, this court feels that an opportunity is to be afforded to the petitioner to raise all points including the validity of the disciplinary action taken by the disciplinary authorities by making a representation before the appellate authority. The appellate authority should be directed to take a fresh decision on such representation in accordance with law.

37. For the reasons as aforesaid the order of the appellate authority dated November 18, 2016 is set aside and quashed. WPA No. 20332 of 2021 is disposed of by granting liberty to the petitioner to submit a representation before the appellate

authority in the manner as indicated hereinbefore within a period of fortnight from the date of receipt of a copy of this order. In the said representation the petitioner shall disclose his current postal address, his mobile phone number, e-mail, if any, for the purpose of communication by the appellate authority. Upon receipt of the said representation, the appellate authority shall consider and dispose of the same in accordance with the service rules governing the service of the petitioner after affording an opportunity of hearing to the petitioner and by passing a reasoned order within a period of four weeks from the date of receipt of the representation.

38. There shall be, however, no order as to costs.

39. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis.

(Hiranmay Bhattacharyya, J.)

Later:

Date: 19.05.2022

After this judgment is delivered, Mr. Dutt, learned advocate for the respondent no. 1 and Mr. Kundu, learned advocate for the respondent no. 2 pray for stay of operation of the judgment.

The prayer for stay is considered and is rejected.

(Hiranmay Bhattacharyya, J.)

(P.A.- Sanchita)