

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) Nos.5175 & 2244 OF 2020**

(Applications under Articles 226 and 227 of the Constitution of India)

**In W.P.(C) No.5175/2020**

**Dr.Swapan Kumar Karak      ...      Petitioner**

**-versus-**

**Addl. Director General,  
Department of Higher Education  
and others      ...      Opposite Parties**

**Advocates appeared in the case through hybrid mode:**

**For Petitioner      : Mr.P.K.Rath,  
Advocate  
Mr. Sabyasachi Panda,  
Advocate.**

**-versus-**

**For Opposite Party No.1      : Mr.N.K.Praharaj, A.G.A.**

**For Opposite Parties 2 to 5      : Mr. N.K.Sahu, Advocate**

**In W.P.(C) No.2244/2020**

**Dr.Swapan Kumar Karak      ...      Petitioner**

**-versus-**

**National Institute of Technology,  
Rourkela& others      ...      Opposite Parties**

**Advocates appeared in the case through hybrid mode:**

**For Petitioner** : Mr.P.K.Rath,  
Advocate  
  
Mr. Sabyasachi Panda,  
Advocate

*-versus-*

**For Opposite Party No.3** : Mr.N.K.Praharaj, A.G.A.

**For Opposite Parties 1,2  
and 4 to 6** : Mr. N.K.Sahu, Advocate

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**CORAM:**

**JUSTICE SASHIKANTA MISHRA**

**JUDGMENT**  
**26.9.2022.**

*Sashikanta Mishra,J.* Both Writ Petitions involve similar facts and common questions of law and as such, both were heard together and are being disposed of by this common judgment.

2. The Petitioner was appointed in the year, 2011 in the National Institute of Technology (NIT), Rourkela. While discharging his duties as an Asst. Professor in the Department of Metallurgical and Materials Engineering, NIT, a complaint was lodged against him by a girl student alleging sexual harassment. The said girl student

was engaged as a Senior Research Fellow under the guidance of the Petitioner. Accordingly, the complaint was referred to the Internal Complaints Committee (for short, “ICC”) constituted as per the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short “2013 Act”). In course of the inquiry, the ICC was of the view that the complaint was belated and accordingly, recommended in its report dated 29th August, 2018 for conciliation between the parties. Since both parties agreed for conciliation and also submitted the same in writing, the complaint was closed. Subsequently, another complaint was lodged by the same student against the Petitioner on 15th November, 2018 being addressed to the Director, NIT. The said complaint was again referred to the ICC. The matter was enquired into in detail by examining witnesses and also relevant documents. After considering the evidence on record, the ICC found that the complaint had been established and accordingly, recommended the authority to take necessary action against the Petitioner as per findings of the ICC. Certain other recommendations were also made for non-allotment of any girl student for Masters and Research programme to Petitioner in future. The Petitioner challenges the findings of the ICC in the Writ

Petition bearing W.P(C) No.2244/2020 with a prayer to quash the same. Pursuant to such report submitted by the ICC, the Board of Governors (BOG) in its meeting held on 1st October, 2019 considered the report of the ICC and took a decision to terminate the Petitioner from his job, if he did not resign there from. Challenging such order the Petitioner has approached this Court in W.P.(C) No.5175/2020. Basing on such decision of the BOG, an order terminating the services of the Petitioner was issued on 20th January, 2020, which is impugned in W.P(C) No.2244/2020.

3. Counter affidavit has been filed by the NIT mainly on the ground that the Petitioner's misconduct having been adequately proved in the inquiry held by the ICC, the decision to terminate him from service was rightly taken by the BOG. It is further stated that the Petitioner, if at all he was aggrieved by the findings of the ICC, should have challenged the same before the appropriate forum by filing appeal as provided under Section 18(2) of the 2013 Act. Instead, he has approached this Court which may not examine the factual aspects of the matter exercising writ jurisdiction. As regards the order of termination, it is stated that the allegations levelled against the Petitioner were duly proved and being serious in nature, he was rightly terminated.

4. Heard Mr. Sabyasachi Panda, learned counsel for the Petitioner, and Mr. N.K.Sahu, learned counsel appearing for the NIT.

5. Mr. Panda would contend that the second complaint lodged by the concerned girl student and taking cognizance of the same by the authorities was not maintainable in the eye or law apart from being belated. It is further argued that on the first complaint, the Petitioner as well as the complainant had duly settled their differences for which the issue was treated as closed, but subsequently due to extraneous reasons, the complainant again lodged a complaint on the self-same allegations. Entertaining such a complaint by the authority including the ICC was completely illegal and unjustified. It is further argued by Mr. Panda that the Petitioner was straight away terminated from services without adhering to the principles of natural justice and the relevant rules.

6. Per contra, Mr. N.K.Sahu has argued that if the Petitioner had any reason to question the correctness of the findings of the ICC, he should have approached the appellate authority under Section 18(2) of the 2013 Act. Since the report of the Committee is entirely based on factual aspects, this Court may not go into the same while exercising writ jurisdiction. It is also argued that if the Petitioner is

aggrieved by the order of termination, he has the remedy of appeal provided under Section 26 of the NIT Statute, 2007.

7. I have given my anxious consideration to the rival contentions as also the relevant statutory provisions. It is seen that the ICC recommended taking of action against the Petitioner in its report dated 18th March, 2019. Such recommendation appears to have been made by the Committee considering the oral and documentary evidence laid before it. There is considerable force in the submission of Mr. Sahu that this Court exercising writ jurisdiction would ordinarily not go into the factual aspects of the matter particularly when alternative and efficacious remedy by way of appeal is available. The 2013 Act provides remedy of appeal in such situation. Section 18 of the 2013 Act reads as follows:

*“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 application to the said person or whether no such service rules exist then, without prejudice to the 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.”*

8. In the instant case, the ICC recommended taking of action against the Petitioner on the ground of the charges being established and submitted its report accordingly, which has to be treated as recommendations made under Section 13(3)(i) of the 2013 Act. Therefore, on the face of it, the remedy of appeal is provided under Sub-section (1) of Section 18 of the Act. Sub-section (2) provides that the appeal should be preferred with a period of 90 days of the recommendation and such period has already expired. However, the fact that the Petitioner, rightly or wrongly, had approached this Court bonafide by filing the Writ Petition on 20<sup>th</sup> January, 2022, the same is a significant factor which can be considered by the appellate authority for condonation of the delay, if and when an appeal is preferred by the Petitioner.

9. Coming to the question of termination of services of the Petitioner, it is seen that the ICC in its report had not made any such recommendation save and except recommending that “authority is requested to take necessary action on the findings

(24-A) and other findings (24-B) of the committee.” The BOG in its meeting on 1<sup>st</sup> October, 2019 decided that the job of the Petitioner should be terminated having regard to the gravity of the situation. It has been argued by Mr. Panda, learned counsel for the Petitioner, that no opportunity of hearing whatsoever was granted to the Petitioner nor any disciplinary proceeding initiated against him. A reference to Section 13 of the 2013 Act would make it clear that the report of the ICC is akin to a fact-finding preliminary inquiry report and cannot be equated with the finding of an inquiring authority in a duly constituted disciplinary proceeding. Rule 13 (3)(i) of the 2013 Act reads as under:-

*“13(3)(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed.”*

*(emphasis supplied)*

Therefore, basing on the report of the ICC, a drastic action to terminate the services of the Petitioner could not have been taken by the authorities without resorting to the procedure prescribed under the applicable service rules. In so far as the Petitioner is concerned, reference to Statute 26 of the First Statutes of the

National Institute of Technology (NIT) is relevant. Clause-(5) of Statute 26 enumerates the different penalties including removal from service without disqualification for future employment and dismissal from service with disqualification for future employment on the employees of the institute. Clause-6 expressly mandates as follows:

*“No order imposing on any member of the staff any of the penalties specified at (v) to (viii) above shall be passed by any authority subordinate to that by which he was appointed and except after an enquiry has been held and the member of the staff has been given reasonable opportunity of showing cause against the action proposed to be taken in this regard.”*

Evidently, such a course of action was never undertaken before visiting the Petitioner with the extreme penalty of termination of service. In such view of the matter, this Court has no hesitation in holding that the impugned order of termination of service of the Petitioner cannot be sustained in the eye of law and hence, deserves to be quashed.

**10.** Coming to the relief to be granted, this Court is of the view that once the order of termination is held to be invalid, the natural corollary thereof would be to direct re-instatement of the Petitioner in service. However, this shall not be taken to mean exoneration of

the Petitioner from the findings of the ICC or the recommendations by it. In so far as the findings of the ICC are concerned, this Court has already held that the Petitioner can pursue the remedy of appeal as provided under Section 18 of the 2013 Act. In so far as recommendations of the ICC are concerned, it shall be open to the authorities concerned to take appropriate action in terms of the provisions of the First Statutes referred hereinbefore. In holding so, this Court relies upon on a decision of the Supreme Court in the case of **Dr. Vijayakumaran C.P.V v. Central University of Kerala and others**; reported in 2020 (12) SCC 426; wherein it was held as under:-

*“A priori, we have no hesitation in concluding that the impugned termination order dated 30.11.2017 is illegal being ex facie stigmatic as it has been issued without subjecting the appellant to a regular inquiry as per the service rules. On this conclusion, the appellant would stand reinstated, but whether he should be granted back wages and other benefits including placing him under suspension and proceeding against him by way of departmental or regular inquiry as per the service rules, is, in our opinion, a mater to be taken forward by the authority concerned in accordance with law. We do not intend to issue any direction in that regard keeping in mind the principle underlying the exposition of the Constitution Bench in ECIL v. B. Karunakar.*

xxx                      xxx                      xxx                      xxx.”

**11.** For the foregoing reasons therefore, both the Writ Petitions are disposed of in the following manner:-

(i) The impugned order dated 20<sup>th</sup> January, 2020 (Anneuxre-1) is hereby quashed.

(ii) The Petitioner is directed to be reinstated in service forthwith.

(iii) The authorities concerned shall take a decision with regard to grant of back wages to the Petitioner within a period of two weeks after his reinstatement. The same shall, however, be subject to the result of the disciplinarily proceeding/action taken against him, if any, under the relevant provisions of the First Statutes.

(iv) It shall be open to the Petitioner to prefer appeal against the findings of ICC in accordance with law within a period of two weeks. In the event such appeal is preferred within the period aforesaid, the appellate authority shall consider condonation of delay in filing thereof in view of the pendency of the Writ Petition before this Court and in case, delay is condoned the appellate authority shall dispose of the appeal within a period of three weeks giving full opportunity of hearing to the Petitioner.

12. The Writ Petitions are disposed of accordingly.

*Ashok Kumar Behera*

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*Sashikanta Mishra,*  
*Judge*





