

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9445 OF 2019
With
INTERIM APPLICATION NO.511 OF 2021

Laxman B. Panmand,

Age 57 years,
Presently serving as Deputy Manager (HR),
Madras Atomic Power Station,
Nuclear Power Corporation of India Limited,
Kalpakam, Tamil Nadu, Pin: 603 102
and having permanent residence at
D-20/11, New Omkar CHS Ltd.,
Sector-48, Nerul, Navi Mumbai,
District Raigad, Pin-400 706,
Maharashtra.

... Petitioner

Versus

(1) Nuclear Power Corporation of India Limited,

a Government of India
Undertaking,
having its registered Office at NUB,
Anushaktinagar,
Mumbai-400 094,
through the Company Secretary.

(2) The Board of Directors,

Nuclear Power Corporation of
India Ltd.,
16th Floor, World Trade Centre,
Cuffe Parade, Colaba,
Mumbai-400 005.

(3) The Chairman and Managing Director,

Nuclear Power Corporation of India Ltd.,
NUB, Anushaktinagar,
Mumbai-400 094.

... Respondents

Mr. Ramesh Ramamurthy a/w Mr. Saikumar Ramamurthy for
Petitioner.

Mr. Arsh Misra a/w Ms. Kavita Anchan instructed by
M.V. Kini & Co. for Respondents.

CORAM : DIPANKAR DATTA, C.J. & M.S. KARNIK, J.

RESERVED ON : 1st MARCH 2022

PRONOUNCED ON : 21st APRIL, 2022

JUDGMENT (Per DIPANKAR DATTA, C.J.) :

1. This writ petition dated 8th June, 2019 mounts a challenge to an order of the reviewing authority dated 7th May, 2019 declining to review an appellate order dated 25th June, 2018 which, in turn, affirmed an order dated 2nd February, 2018 of the disciplinary authority. The petitioner has prayed for quashing of the aforesaid orders together with the proceedings of inquiry conducted by the Internal Complaints Committee (hereafter "ICC", for short) as well as for grant of service benefits which would have accrued to him, but for the aforesaid proceedings and the orders passed therein.

2. While discharging duties as Senior Manager (HR) in the Nuclear Power Corporation of India Limited (hereafter "Corporation", for short), the petitioner was informed of proceedings that had been initiated by the ICC upon receipt of a complaint lodged by a lady employee against him. The complaint centered around allegations of unwelcome behaviour on the part of the petitioner towards the complainant. It is not in dispute that the petitioner participated in the proceedings before the ICC, whereupon the ICC submitted its report dated 4th January, 2018 to the petitioner's disciplinary authority, i.e., the Chairman and Managing Director of the Corporation. It was concluded that upon careful consideration of the whole issue including perusal of the complaint

dated 16th November, 2017 and the testimony of the witnesses, the complaint of sexual harassment made against the petitioner was sustainable. The petitioner duly responded to the inquiry report by submitting a representation dated 16th January, 2018, disagreeing with the conclusions arrived at by the ICC that his conduct was unacceptable and unwelcome to the complainant and tends to undermine her dignity as a woman as well as an employee of the Corporation. It was further alleged that the ICC did not consider the matter from the proper perspective and that there was an error in evaluation of the evidence before drawing adverse conclusions against the petitioner. It was also alleged that vital information had not at all been considered.

3. The disciplinary authority upon considering the record of the proceedings before the ICC as well as the petitioner's response dated 16th January, 2018 held the petitioner guilty of misconduct, as defined in rule 9 of the Corporation's (Conduct) Rules, 1994 (hereafter "Rules of 1994", for short). The disciplinary authority, therefore, proceeded to pass the following order:

"8. ... Accordingly, I am of the considered opinion that imposition of the penalty of reduction to the lower scale of pay of Pay Level 10 i.e. the scale of pay attached to the grade of Dy. Manager (Human Resource), as per the Pay Structure notified under the CCS (Revised Pay) Rules, 2016, would meet the ends of justice in the case.

9. NOW THEREFORE, in exercise of the powers conferred on me, I hereby order imposition of the penalty of reduction to the lower scale of pay of Pay Level 10 i.e. the scale of pay attached to the grade of Dy. Manager (Human Resource), as per the Pay Structure notified under the CCS (Revised Pay) Rules, 2016, on Shri L.B. Panmand, with the following

conditions:-

(a) The reduction to the lower scale of pay of Pay Level 10 as per the Pay Structure notified under CCS (Revised Pay) Rules, 2016 shall be for a period of three years;

(b) In the reduced scale of pay, the initial pay that Shri L.B. Panmand shall draw shall be the minimum of the Pay Level, i.e. Rs.56100/-;

(c) During the period of reduction, Shri L.B. Panmand shall be eligible to draw increments in the Pay Level 10, subject to fulfilling the applicable conditions for drawal of increments;

(d) On expiry of the period of reduction of three years, Shri L.B. Panmand shall be eligible to be considered for promotion to the grade of Manager (Human Resource) subject to fulfilling the eligibility criteria and as per the law laid procedure;

(e) For being considered for promotion to the grade of Manager (Human Resource), the period of service rendered by him in the grade of Senior Manager (Human Resource) prior to reduction and the service rendered in the grade of Dy. Manager (Human Resource) after reduction, shall be counted as eligible service, if otherwise admissible and on such promotion his pay in the grade of Manager (Human Resource) shall be fixed under the normal rules.

Shri L.B. Panmand is hereby informed that appeal against this Order lies with the Appellate Authority, namely, the Board of Directors of NPCIL, and may be preferred by him, if he so desires, within 45 days from the date of receipt of this order."

4. Based on the aforesaid order of the disciplinary authority, an office order dated 15th February, 2018 transferring the petitioner was issued. On such transfer, the petitioner was posted as Deputy Manager (HR) at Madras

Atomic Power Station in Chennai. It was mentioned in the office order that the transfer was in the interest of the Corporation.

5. The order of the disciplinary authority dated 2nd February, 2018 meanwhile was carried in appeal by the petitioner before the Board of Directors of the Corporation, being the appellate authority. It was contended in the appeal that since the complainant had not alleged sexual harassment, the provisions of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (hereafter "Act of 2013", for short) were not attracted. There was no physical contact or advances on the part of the petitioner, nor any demand or request for sexual favours was made. Further, the petitioner did not force the complainant to look into any pornographic material. Without prejudice to the same, it was alleged that no opportunity was given to the petitioner to record his statement. The petitioner claimed that a pure misunderstanding on the part of the complainant caused him immense loss of prestige as well as entitlements after putting in 25 years of unblemished service. The estimated financial loss on account of the punishment imposed upon the petitioner was claimed to be in the range of Rs.45 to 50 lakh, which was wholly uncalled for. Also, the penalty had taken the petitioner back by 14 years in his service career and with the reduced pay, he would hardly be able to provide bare minimum necessities of life to his family. The Board of Directors, by an order dated 25th June, 2018, resolved to confirm the order dated 2nd February, 2018 of the disciplinary authority and accordingly rejected the appeal.

6. After receiving the appellate order of rejection of his appeal dated 25th June, 2018, the petitioner applied for review

under rule 22 of the Corporation's (Discipline and Appeal) Rules, 1996 (hereafter, "D & A Rules of 1996", for short). It was in the review application that the petitioner took serious exception to the order of punishment. According to him, his reversion from the post of Senior Manager (HR) to two levels below, i.e., to the post of Deputy Manager (HR), was impermissible as per the law settled by the Supreme Court (no reference was made by him to any such decision). The order of penalty although directed reduction to the lower scale of pay, in effect it amounted to an order of reversion from the post of Senior Manager (HR) to Deputy Manager (HR) and such reduction of pay for a period of three years together with reversion would result in the petitioner being on par with any fresh entrant in the post of Deputy Manager (HR) in terms of pay which, in effect, would be a third punishment apart from reduction in pay as well as reversion. The petitioner further highlighted that no charge-sheet was issued to him. Hence, the findings rendered by the ICC could not have been regarded as a report of inquiry into a departmental charge-sheet. Further, it was alleged that even it be assumed that the petitioner had indulged in an act of misconduct under the Service Rules of the Corporation, the ICC was required to conduct an inquiry as per the Service Rules in terms of section 11(1) of the Act of 2013. It was only after issuance of a charge-sheet and upon conducting a proper inquiry that any punishment could have been imposed based on proved charges.

7. By an order dated 7th May, 2019, the reviewing authority, i.e., the Board of Directors of the Corporation, resolved to decline a review of the appellate order dated 25th June, 2018 and once again confirmed the order of the disciplinary authority dated 2nd February, 2018 with the

result that the review application stood rejected.

8. Appearing in support of the writ petition Mr. Ramamurthy, learned advocate, raised the following four contentions: -

(1) The complaint against the petitioner lodged by the complainant on 16th November, 2017, even if accepted on face value, does not constitute either misconduct or offence attracting punitive action; hence, the complaint ought not to have formed the foundation of any punitive order.

(2) When the ICC was constituted, one Ms. Bhavna Parmar, Manager (HRS) of the Corporation was appointed as its Member-Secretary. Ms. Parmar continued to be a part of the ICC for quite some time and in the midst of the inquiry, rather abruptly, she was cited as a witness to support the case of the complainant. This procedure is in the teeth of a fair and reasonable procedure for conducting inquiry and cannot be countenanced in law. By reason of participation of Ms. Parmar in the inquiry, firstly as its Member-Secretary and thereafter as a witness for the complainant, the petitioner was deeply prejudiced.

(3) After the report was submitted by the ICC on 4th January, 2018 and the same was forwarded to the petitioner's disciplinary authority, it was obligatory for the disciplinary authority to initiate disciplinary proceedings by issuance of a formal charge-sheet. Not having so initiated, the entire proceedings stand vitiated. Reliance was placed on the decision of the Supreme Court in **Dr. Vijayakumaran C.P.V. vs.**

Central University of Kerala and others¹ in support of the contention that the petitioner ought to have been subjected to a regular inquiry as per the D & A Rules of 1996, since the punitive order passed by the disciplinary authority would obviously visit the petitioner with civil consequences. Reliance was also placed on the decision of the learned Single Judge of the High Court of Orissa at Cuttack dated 16th May, 2018 in **Jyoti Prakash vs. Internal Complaints Committee and others**² as well as the decision of the learned Single Judge of the High Court for the State of Telengana at Hyderabad dated 16th March, 2021 in **Dr. Duraisamy Baskaran vs. M/s. GAIL (India) Limited and others**³.

(4) The penalty imposed on the petitioner is not in accordance with the D & A Rules of 1996. Reference was made to rule 10 thereof in support of the contention that reversion to a lower post is not a penalty that is envisaged and, therefore, reverting the petitioner from the post of Senior Manager (HR) to that of a Deputy Manager (HR) is clearly indefensible.

9. Based on the aforesaid submissions, Mr. Ramamurthy prayed for relief as claimed in the writ petition.

10. The writ petition has been opposed by Mr. Misra, learned advocate for the respondents. He dealt with the contentions of Mr. Ramamurthy by submitting as follows: -

1 (2020) 12 SCC 426

2 Writ Petition (C) No.242 of 2017

3 Writ Petition No.26030 of 2017

(1) Bare reading of the complaint dated 16th November, 2017 would reveal how and in what manner the petitioner harassed the complainant. Further, the findings recorded by the ICC in its report dated 4th January, 2018 under Part-V(i) and (ii) would reveal that there was sufficient material on record to suggest that the petitioner had not behaved appropriately with the complainant and based thereon, the disciplinary authority of the petitioner was justified in taking disciplinary action against him.

(2) Insofar as participation of Ms. Parmar in the proceedings before the ICC is concerned, the same by itself is not a vitiating factor. As would be evident from the record of proceedings, Ms. Parmar was not a part of the final decision-making process. She had refused to be a part of the inquiry when it was found that she could be called upon to appear as a witness for the complainant. Having not participated in the proceedings, except at the preliminary stage, her examination as a witness for the complainant in the inquiry does not suffer from any legal infirmity.

(3) To rebut the challenge laid by the petitioner that no penalty could have been imposed without initiating disciplinary proceedings by drawing up a charge-sheet, attention was invited to rule 12 of the D & A Rules of 1996. It ordains that the procedure laid down in the Act of 2013 would have to be followed in case of a complaint of sexual harassment within the meaning of rule 9 of the Rules of 1994. Due procedure as required by the Act of 2013 having been followed, the petitioner could have no reason to feel aggrieved. It was Mr. Misra

who very fairly brought to our notice the recent decision of the Supreme Court in **Nisha Priya Bhatia vs. Union of India and another**⁴ and in particular paragraph 97 thereof, which we propose to discuss a little later. However, it was the submission of Mr. Misra that since the present case is not one covered by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [hereafter "CCS (CCA) Rules of 1965", for short], the law laid down in **Nisha Priya Bhatia** (supra) may not have any application in a case governed by the D & A Rules of 1996.

(4) The punishment was imposed upon the petitioner in accordance with the provisions of Rule 10 of the D & A Rules of 1996 and, therefore, no illegality has been committed by the respondents.

11. Mr. Misra, thus, urged that the writ petition being devoid of any merits ought to be dismissed.

12. We have heard learned advocates for the parties and considered the materials on record.

13. Insofar as the first contention raised by Mr. Ramamurthy is concerned, we have no hesitation to hold that the same is without any substance. Upon evaluation of the evidence on record, the ICC observed as follows:

"V. EVALUATION OF EVIDENCE:

(i) The Complainant in her complaint dated 16-11-2017 addressed to Director (HR) and during her statement before the ICC ha narrated the sequence of event which led to filing of the present complaint against Shri L.B. Panmand. The Complainant has also controverted and denied the response

submitted by Shri Panmand pertaining to the allegations levelled against him. Shri Panmand in his cross-examination could not discredit the testimony of the Complainant. During her cross-examination, the Complainant has corroborated that Shri Panmand has followed her two to three times in the office corridor. She has also established the fact that whenever she used to pass the corridor and if Shri Panmand happens to be there, he deliberately used to wait holding his office door and stared at her. The Complainant, in her written complaint has very specifically narrated the incident of 10th November, 2017 while returning to home from the Office. There also Shri Panmand followed her at Seawood Railway Station at around 06.15 PM. Most of her allegations levelled in the complaint has remained uncontroverted during the cross-examination. Similarly, from the statement of Shri M. Vijayan, Shri S.N. Shaw and Smt. Bhavna Parmar recorded before the Committee, it is fully established that Shri Panmand in spite of being warned by them as the reporting/concerned Officials of the Complainant, failed to mend his ways and continued to harass the Complainant. In this regard, it is important to note that Shri Panmand in the past has assured all the above named witnesses that he will not repeat the same in future. Despite all such assurances, as is evident from the statement of the complainant and other witnesses that the attitude and conduct of Shri Panmand did not change, which finally culminated in filing of the present complaint. Shri Panmand of his own volition did not avail the opportunity to cross examine the other witnesses. All these witnesses are responsible officials holding important posts with the same HR Group and there is no material on the record before the committee to discard or ignore their evidence, which are of corroborative value.

(ii) As regards evaluation of evidence in a complaint of sexual harassment is concerned, it has to be kept in mind that any unwelcome behaviour or verbal

harassment can constitute sexual harassment. It is unwelcome verbal, visual or physical conduct of a sexual nature that is severe or pervasive and affects working conditions or creates a hostile work environment. Words can be just as offensive as physical acts and contact and can create a hostile work environment. It is important to note that considering the nature of allegation, the committee has to evaluate the evidence on the touchstone as to whether the objective of such unwelcome behaviour tends to undermine integrity of the victim, physically as well as mentally, even though the victim is not physically harmed. The other consideration is whether the conduct of Shri Panmand was unwelcome to the recipient i.e. the complainant. On this point, it has been the consistent case of the complainant, duly corroborated by other witnesses that she has objected to such conduct of Shri Panmand at every possible occasion and was warned of its consequences by the senior officials of the section. In view of the above, there is no hesitation for this committee to record its findings that conduct of Shri Panmand was not acceptable and unwelcome to the complainant and tends to undermine her dignity as a woman and an employee of the Organisation.

14. The writ court does not re-appreciate and re-analyze evidence unless it can be shown that the findings are perverse. Evaluation of evidence is to be left for the fact-finding committee and the writ court should, ordinarily, stay at a distance is the settled law. We are, therefore, not impressed by the first contention raised by Mr. Ramamurthy.

15. The second contention of Mr. Ramamurthy is also without any substance. Although it is true that Ms. Parmar was initially the Member-Secretary of the ICC, but subsequently she recused and did not participate in further proceedings except as a witness for the complainant. Having not

participated in the deliberations leading to submission of report by the ICC holding that the complaint of sexual harassment made by the complainant had substance, we see no reason to accept the contention of Mr. Ramamurthy.

16. The third contention raised by Mr. Ramamurthy is, however, the most important contention and, therefore, calls for deeper application of mind.

17. Prior to the enactment of the Act of 2013, the allegations of sexual harassment of women at workplace were being dealt with in accordance with the guidelines and norms framed by the Supreme Court in **Vishaka and others vs. State of Rajasthan and others**⁵. Despite the Supreme Court having made it clear in **Vishaka** (supra) that the guidelines and norms as prescribed would operate as law declared under Article 141 of the Constitution, many women struggled to have their basic rights at workplaces protected. The Supreme Court in subsequent decisions cautioned the States that the directions issued in **Vishaka** (supra) should not remain symbolic. It was also expressed by the Court that further directions were necessary until legislative enactment on the subject was in place.

18. We may at this stage refer to the decision of the Supreme Court in **Medha Kotwal Lele and others vs. Union of India and others**⁶, wherein further directions were issued. Paragraph 44.1 being relevant is quoted below:

“The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (by whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to

5 (1997) 6 SCC 241

6 (2013) 1 SCC 297

be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, 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. 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.”

From the aforesaid, the extent of weight that the Court intended to be attached to a report of the Complaints Committee is clear. The Complaints Committee’s report of inquiry would be deemed to be a report of inquiry for disciplinary action under the Central Civil Services Rules and such report, instead of being treated as a preliminary investigation report, would be treated as a finding/report in an inquiry into alleged misconduct was the law laid down therein.

19. This position was also noted by the Supreme Court in its decision in **Seema v. State of Sikkim**⁷.

20. It was after all these decisions of the Supreme Court that the Act of 2013 received the assent of the President on 22nd April, 2013. With the enactment of the Act of 2013, the statutory regime came into existence to provide protection to women against sexual harassment at their workplaces and for the prevention and redressal of complaints of sexual harassment.

21. In this connection, we may note the amendment made in the CCS (CCA) Rules of 1971. The relevant rule, i.e., rule 14(2) reads as under:

7 (2013) 1 SCC 641

"14. Procedure for imposing major penalties

...

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof:

Provided that where there is a complaint of sexual harassment within the meaning of Rule 3-C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules."

22. It is pertinent to note that the D & A Rules of 1996 does not contain any proviso of the nature as has been inserted in the CCS (CCA) Rules of 1971. While dealing with the present case, we ought to be necessarily guided by what the D & A Rules of 1996 provide. Rule 12 thereof prescribes the procedure for imposing major penalties and to the extent relevant, the same is set out below:

"12.0 PROCEDURE FOR IMPOSING MAJOR PENALTIES

12.1 No order imposing any of the major penalties specified in Clauses (f), (g), (h), (I) and (j) of Rule 10 shall be made except after an inquiry is held in accordance with this rule.

12.2 Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself inquire into, or appoint any serving officer of the Company (hereinafter called the inquiring Authority) to inquire into the truth thereof.

Provided that where there is a complaint of Sexual Harassment within the meaning of Rule 9 of the NPCIL (Conduct) Rules, 1994 the same shall be dealt in accordance with the provisions under The Sexual Harassment of Woman at work place (Prevention, Prohibition and Redressal) Act, 2013 and rules thereunder.

Explanation:

Where the Disciplinary Authority itself holds the inquiry any reference in sub-rule (7) to sub-rule (19) to the Inquiring Authority shall be construed as a reference to the Disciplinary Authority.

12.3 Where it is proposed to hold an inquiry, the Disciplinary Authority shall frame definite and distinct articles of charge on the basis of the substance of the imputations of misconduct or misbehaviour against the employee. The articles of charge, together with a statement of the imputations of misconduct or misbehaviour in support of each article of charge, a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained, shall be communicated in writing to the employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), a written statement whether he admits or denies any or all the articles of charges.

12.4 On receipt of the written statement of the employee, or if no such statement is received within the time specified, an inquiry may be held by the Disciplinary Authority itself, or by an Inquiring Authority so appointed by the Disciplinary Authority under sub-rule (2).

Provided that it may not be necessary to hold an inquiry in respect of the charges admitted by the employee in his written statement. The Disciplinary Authority shall, however, record its finding on each such charge.

12.5 Where the Disciplinary Authority appoints an Inquiring Authority it shall forward to the Inquiring Authority--

- a) A copy of the articles of charge and the statement of imputations of misconduct or misbehaviour;*
- b) A copy of the written statement of the defence, if any, submitted by the employee;*
- c) A copy of the statement of witnesses, if any, referred to in sub-rule (3) to the employee; and*
- d) A copy of the order appointing the Presenting Officer.*

Where the Disciplinary Authority itself inquires into any article of charge or appoints an Inquiring Authority for holding an inquiry into such charge, it may, by an order appoint

- i) an employee of the Company; or*
- ii) an employee of the Department of Atomic Energy (DAE), its Units or of any PSU under DAE; or*
- iii) any Legal Practitioner; or*
- iv) a nominee of Central Bureau of Investigation (only in respect of case investigated by CBI).*

to be known as the 'Presenting Officer' to present the case in support of the article of charge.

23. Once the proviso to rule 12.2 requires that a complaint of sexual harassment shall be dealt with in accordance with the provisions of the Act of 2013, we need to notice sections 11, 13 and 19 thereof. To the extent relevant for the present purpose, sections 11, 13 and 19 read as follows :

"11. Inquiry into complaint.—(1) *Subject to the provisions of Section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under Section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:*

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of Section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) ***

(3) *For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely—*

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

13. Inquiry report.—*(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.*

*(2) ****

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(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;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of Section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

19. Duties of employer.—*Every employer shall—*

(a) ***

(i) *treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;*

24. Reliance placed by Mr. Ramamurthy on the decision of the Supreme Court in **Dr. Vijaykumar C.P.V.** (supra) appears to us to be misplaced. There, the Supreme Court was essentially concerned with an order of discharge of a probationer. Such order was, however, made upon a scrutiny of a report *inter alia* of the Internal Complaints Committee and, thus, the Court was seized of the question as to whether such order of discharge was simpliciter termination or *ex facie* stigmatic. Upon consideration of various precedents including the decision of the Supreme Court in **Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic SC., Calcutta**⁸, the Court held that the impugned termination order dated 30th November, 2017 was illegal being *ex facie* stigmatic. Since we have not been called upon to examine any order of discharge of a probationer and the tests therefor are different, the cited decision does not assist Mr. Ramamurthy.

25. Left to us, based on our understanding of the D & A Rules of 1996 read with the 2013 Act and the decision in **Medha Kotwal Lele** (supra) we would be persuaded to hold the view that even in the absence of a provision similar to the one in the proviso to rule 14(2) of the CCS (CCA) Rules of 1965 in the D & A Rules of 1996, there would be no necessity of holding a separate inquiry under the latter Rules once the ICC submits its report holding that the complaint of the aggrieved woman has substance and forwards the same to the

8 (1999) 3 SCC 60

disciplinary authority for appropriate action.

26. However, as has been noted above, Mr. Misra has placed before us the decision in **Nisha Priya Bhatia** (supra). Paragraph 97 of the decision is relevant and is, accordingly, set out hereunder:

"97. Be that as it may, in our opinion, the petitioner seems to have confused two separate inquiries conducted under two separate dispensations as one cohesive process. The legal machinery to deal with the complaints of sexual harassment at workplace is well delineated by the enactment of the Sexual Harassment of Women at Workplace Act, 2013 (hereinafter 'the 2013 Act') and the Rules framed thereunder. There can be no departure whatsoever from the procedure prescribed under the 2013 Act and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (for short 'the 2013 Rules'), either in matters of complaint or of inquiry thereunder. The sanctity of such procedure stands undisputed. The inquiry under the 2013 Act is a separate inquiry of a fact-finding nature. Post the conduct of a fact-finding inquiry under the 2013 Act, the matter goes before the department for a departmental enquiry under the relevant departmental rules [the CCS (CCA) Rules in the present case] and accordingly, action follows. The said departmental enquiry is in the nature of an in-house mechanism wherein the participants are restricted and concerns of locus are strict and precise. The ambit of such inquiry is strictly confined between the delinquent employee and the department concerned having due regard to confidentiality of the procedure. The two inquiries cannot be mixed up with each other and similar procedural standards cannot be prescribed for both. In matters of departmental enquiries, prosecution, penalties, proceedings, action on inquiry report, appeals, etc. in connection with the conduct of the government servants, the CCS (CCA) Rules operate as a self-contained code for any departmental action and unless an existing rule is challenged before this Court on permissible grounds, we think, it is unnecessary for this Court to dilate any further.

27. On reading of the aforesaid extract, it appears to us that law has been laid down in the following terms: (i) the inquiry under the Act of 2013 is a separate inquiry of a fact-finding nature; (ii) post conduct of such fact-finding by the Committee under the Act of 2013, the matter goes before the department for a departmental inquiry under the relevant Departmental Rules; and (iii) accordingly, action should follow.

28. Although the Court did consider the CCS (CCA) Rules of 1965, we have not found any specific reference therein to the proviso to rule 14(2) thereof. As we read the proviso, the statutory mandate is clear that upon a complaint of sexual harassment within the meaning of rule 3(c) of Central Civil Services (Conduct) Rules, 1964, being received, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of the such rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these Rules. The proviso to rule 14(2) might have been overlooked by the Court while delivering the judgment in **Nisha Priya Bhatia** (supra). Also, the decision in **Medha Kotwal Lele** (supra) does not appear to have been cited before the Court where the Court intended that the report of the Internal Complaints Committee would serve as the inquiry report prior to disciplinary action being taken against an employee who misconducts himself at his workplace by his approach/attitude towards women employees, till such time

legislation on the subject is enacted. Although one finds a passing reference to rule 14 in paragraph 92 of the decision, in view of absence of any specific reference to the proviso to rule 14(2) of the CCS (CCA) Rules of 1965, it could be a line of thought that such decision may not have the effect of a binding precedent.

29. However, in contra-distinction to such thought, we would be of the opinion that nothing would turn on rendering of the said decision by the Court without considering **Medha Kotwal Lele** (supra) and the proviso to rule 14(2) in view of the decision of the Supreme Court in **Director of Settlements, A.P. and others vs. M. R. Apparao and another**⁹. It has been held therein that a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court.

30. Although Mr. Misra has sought to distinguish the decision in **Nisha Priya Bhatia** (supra) by contending that it was a case under the CCS (CCA) Rules of 1965, where provisions are different from those contained in the D & A Rules of 1996, we cannot possibly avoid the said decision; on the contrary, we are bound by it. The Court in **Nisha Priya Bhatia** (supra) has interpreted the provisions of the 2013 Act and has categorically held that the petitioner before it seems to have confused two separate inquiries conducted under two separate dispensations as one cohesive process. It was also held that the after the fact-finding committee under the Act of 2013 conducts an inquiry, the matter should go before the department for a departmental inquiry under the relevant departmental rules. The distinction sought to be drawn by

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Mr. Misra is too tenuous to be acceptable. We conclude, based on our reading of paragraph 97 of the decision in **Nisha Priya Bhatia** (supra), that the disciplinary authority of the petitioner ought to have treated the report of the ICC as a preliminary/fact finding report and ought to have initiated disciplinary proceedings by drawing up a charge-sheet under rule 12.3 and, thereafter, proceed in the manner as required by rule 12.4 and the sub-rules following it.

31. In view of above, we have no other option but to declare the impugned orders dated 7th May, 2019, 25th June, 2018 and 2nd February, 2018 as illegal and, therefore, liable to invalidation.

32. We could have ended our judgment here. However, in a recent decision in **Agricultural Produce Marketing Committee, Bangalore vs. State of Karnataka & others**¹⁰, the Supreme Court has held that the High Court must decide all the issues that are raised before it by the parties and not allow a writ petition upon acceptance of a point without determination of the other points. In such view of the matter, notwithstanding our decision in respect of invalidity of the proceedings giving rise to the orders impugned, we proceed to render our opinion on the order of penalty separately.

33. Mr. Ramamurthy seems to be right in his contention that while the disciplinary authority for all purposes and intents ordered a penalty in terms of rule 10.1(f), such order brings about a reversion of the petitioner from a higher post [Senior Managar (HR)] to a lower post [Deputy Manager (HR)], which is impermissible. While imposing the order of penalty dated 2nd February, 2018, the disciplinary authority while directing that the petitioner shall be reduced to the lower scale

of pay of pay level 10, i.e., the pay scale attached to the post of Deputy Manager (HR), could not have at the same time observed that the petitioner would be considered for promotion to the grade of Manager (HR) as if there has been a reversion to the post of Deputy Manager (HR). Juxtaposing rule 11(vi) of the CCS (CCA) Rules of 1965 with rule 10.1(g) of the D & A Rules of 1996, we find that the latter does not have provision for reduction to lower "grade, post or service" as in the former. The petitioner had in fact secured four promotions, i.e., as Assistant Manager (HR) in June 1999, Deputy Manager (HR) in July 2004, Manager (HR) in 2009 and Senior Manager (HR) in July 2016. It was open to the disciplinary authority to down-grade the petitioner's pay but there being no provision in the D & A Rules of 1996 authorizing the disciplinary authority to revert the petitioner from the post of Senior Manager (HR) to that of Deputy Manager (HR), to such extent too, the order of the disciplinary authority is illegal which the Board of Directors, while hearing the appeal as well as the review, failed to take note of. Consequently, even if the petitioner's (mis)conduct called for any penalty, the disciplinary authority ought to have imposed penalty within the contours of the D & A Rules of 1996 and not beyond it.

34. For the reasons as aforesaid, we set aside the impugned orders by granting relief as claimed vide prayer clause (a). There shall be a further order in terms of prayer clause (c), viz. that the petitioner shall be given back the post of Senior Manager (HR) and posted anywhere according to the convenience of the Corporation. There shall also be an order in terms of prayer clause (b), viz. that the petitioner shall be entitled to all service benefits including the financial benefits which would have otherwise accrued to him as Senior Manager

(HR) had he not been fastened with the impugned order dated 2nd February, 2018. The financial benefits shall be released in his favour without, however, any interest as claimed.

35. Nothing in this order shall preclude the Corporation to proceed, after compliance with the aforesaid directions, by initiating appropriate disciplinary proceedings against the petitioner by serving him formal charge-sheet under rule 12 of the D & A Rules of 1996 by treating the report of the ICC as a preliminary fact-finding report in terms of the law laid down in **Nisha Priya Bhatia** (supra). If such proceedings are initiated, the petitioner shall be entitled to all defences that are available to him in law and the same shall be taken to its logical conclusion uninfluenced by our finding in respect of the first contention raised by Mr. Ramamurthy.

36. The writ petition stands allowed to the extent as mentioned above. In view of the aforesaid order, Interim Application No.511 of 2021 stands disposed of.

37. The parties shall bear their own costs.

(M.S. KARNIK, J.)

(CHIEF JUSTICE)

Lanjewar, PS

Digitally
signed by
PRAVIN
DASHARATH
PANDIT
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