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W.P.No17798 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.08.2022

PRONOUNCED ON : 09.09.2022

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No17798 of 2022

and

W.M.P.No.17093 of 2022 & 17928 of 2022

S.Ravi Selvan

... Petitioner

vs.

1. Central Board of Indirect Taxes & customs

Represented by the Chairman,
North Block,
New Delhi – 110 001.

2. Internal Complaints Committee,

Headed by Ms. Prachi Saroop IRS,
Principal Additional Director General
Directorate General of Vigilance,
West Zonal Unit,
New Custom House,
Annex Building, 7th floor,
Mumbai – 400 001.

3. The Principal Chief Commissioner,

Central Goods Services Tax & Central Excise,
Tamil Nadu & Puducherry Zone,
121, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.



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4.XYZ

5.The Chief Commissioner,
Chennai Customs Zone,
Customs House, No.60,
Rajaji Salai, Chennai – 600 001.

... Respondents

PRAYER: Writ petition filed under section 226 of Constitution of India for Writ of declaration that all action and proceedings on the first and fifth respondent pursuant to the complaint dated 24.05.2022 filed by the fourth respondent and to constitution of the second respondent committee and all further proceedings pursuant to F.No.S.Misc.49/2022-ICC dated 04.06.2022 of the second respondent as illegal and ultra vires.

(Prayer Amended vide order of this Court dated 19.07.2022 made in WMP.No.17927/2022 in W.P.No.17798 of 2022)

For Petitioner : Mr.M.Ravi

For Respondents 1 to 3 & 5 : Mr.Sankaranarayanan,
Additional Solicitor General
Assisted by
Ms.R.Hemalatha, CGSC

For Respondent 4 : Ms.R.Vaigai, Senior Advocate,
for M/s.Anna Mathew

ORDER

This writ petition deals with a sexual harassment complaint. Hence, as per the provisions of section 16 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 hereinafter



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referred to as POSH Act, 2013, the name, address, identity of the aggrieved women is not disclosed by this Court. Registry of this Court and the Media are also directed to take note of the sensitivity of the issue and act accordingly. The fourth respondent who is the aggrieved woman is referred to as XYZ in this writ petition.

2. The petitioner in this writ petition challenges the constitution of the second respondent committee (Internal Complaints Committee) which has been constituted pursuant to a sexual harassment complaint dated 24.05.2022 given by the fourth respondent against the petitioner. The petitioner has also sought for a declaration that all actions and proceedings initiated by the first and fifth respondents pursuant to the complaint dated 24.05.2022 given by the fourth respondent are illegal and ultravires.

3. The petitioner was the Principal Commissioner of Customs, when the fourth respondent who is an IRS officer lodged a sexual harassment complaint against him on 24.05.2022.



4. The petitioner has challenged the constitution of the second respondent committee on the following grounds:

(a) The constitution of the Committee is an abuse of process of law and without jurisdiction;

(b) The sexual harassment complaint given by the fourth respondent suffers from malafides and is a counter blast to an investigation conducted by the petitioner into the role of the fourth respondent in a scam involving M/s.Heaven Engineering;

(c) Rule 7 of the Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (hereinafter referred to as POSH Rules, 2013) has been violated;

(d) The petitioner and the fourth respondent have never shared the same workplace. Hence, POSH Act, 2013 will have no application to the present case;

(e) Constitution of the Committee consists of members who are biased against the petitioner;

(f) The complaint is barred by limitation as per section 9 of the POSH Act.



5. However, the respondents question the maintainability of this writ petition and they contend as follows:

(a) The Central Board of Indirect Taxes and Customs (CBIC) vide its communication dated 27.05.2022 addressed to the Chief Commissioner of Customs, Chennai Custom Zone had nominated Ms.Prachi Swaroop to head the second respondent Committee;

(b) The Principal Commissioner also issued Standing Order No.3/2022 to give effect to the CBIC's communication dated 27.05.2022. Therefore, the submission of the petitioner that the second respondent Committee was not constituted by CBIC is fallacious. The petitioner and the fourth respondent (Complainant) both fall under the umbrella of the CBIC and therefore, they did share a common workplace which comes within the definition of Section 2(o) of the POSH Act, 2013. Section 3 of the POSH Act, also makes it clear that any women who is subject to sexual harassment in any workplace may give a complaint and there is no reference to common workplace in the statute;

(c) The contentions of the petitioner are premature. The complaint is one of sexual harassment and there is no direct nexus to the complaint and



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the alleged scam involving M/s.Heaven Engineering. If there is no basis to the complaint and is merely a colourable device, the same will be uncovered only after the preliminary enquiry to be conducted by the Committee. Infact, if the averment of the petitioner is true, then the enquiry by the second respondent Committee would also stand to further the case of the petitioner;

(d) The allegation of bias is also baseless and is an afterthought. Ms.Manasa Gangotri Kata was part of the standing ICC and she was not made a member specifically for the present complaint. She has been a member of the ICC since 05.05.2021. Furthermore, the alleged scam involving M/s.Heaven Engineering would have no relevance to the enquiry into the allegations of sexual harassment by the petitioner. The allegation of bias against the inquiry authority will be dealt with by Disciplinary Authority who is empowered to take a decision on the allegations at the stage of Inquiry which comes after the charge sheet is issued. The second respondent is presently only a fact finding body investigating the complaint and therefore, there cannot be any scope for bias;

(e) The complaint does contain allegations against the petitioner even after December 2021 and also alleges continuing offence committed by the



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petitioner. The question of limitation in the present case is essentially a question of fact and therefore, it is the responsibility of the second respondent Committee to ascertain the veracity of the complaint in order to render a finding on this issue. The second proviso to section 9 of the POSH Act, 2013 provides for a further three months extension period, if the second respondent committee is satisfied that there exists sufficient reasons shown by the fourth respondent to prevent the filing of the complaint. The issue of limitation will be verified by the second respondent committee as part of its investigation;

(f) The copy of the complaint was forwarded to the petitioner and his objections/comments were also sought. The petitioner has also annexed the copy of the complaint along with this writ petition. The petitioner was also called to give his objections in person before the second respondent committee, but he did not appear before them. There is no violation of principles of natural justice, nor has there been any violation of section 9.

6. Heard Mr.M.Ravi, learned counsel for the petitioner, Mr.Sankara Narayanan, learned Additional Solicitor General assisted by



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Ms.R.Hemalatha, learned Central Government Standing Counsel appearing for the respondents 1 to 3 & 5 and Ms.Vaigai, learned Senior Counsel representing M/s.Anna Mathew learned counsel for the fourth respondent.

Discussion:

7. The preamble of the POSH Act, 2013 does not restrict its applicability to an employee alone. The only criteria that has to be satisfied for its applicability is that the sexual harassment must have taken place in a workplace. The preamble of the POSH Act, 2013 reads as follows:

“An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;



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AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.”

8. The legislature has deliberately omitted the word "employee" in the preamble. It is general knowledge that in many workplaces, even persons not in the rolls of the employer work for the employer under the employment of outsourced agents. Admittedly, the petitioner and the fourth respondent work for the very same Central Government Organisation namely Central Board of Indirect Taxes and Customs (CBIC).

9. The petitioner was the Principal Commissioner of Customs and the fourth respondent is an IRS officer, when the sexual harassment complaint was lodged by her with CBIC against the petitioner on 24.05.2022. The



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petitioner is a superior officer to the fourth respondent. In her complaint dated 24.05.2022, she has given the details as to how she came to know the petitioner. The fourth respondent has stated that though she never worked or reported to the petitioner since joining service in the year 2006, she was first introduced to him when she was made Emcee (Master of Ceremonies) for the Finance Minister's program in the year 2020. The fourth respondent has narrated several instances of innuendos against the petitioner which according to her will come within the definition of sexual harassment under the POSH Act, 2013. According to her, the petitioner has been making such innuendos right from the date when she was first introduced to him during the Finance Minister's Programme in 2020 till December 2021 and thereafter also, though specific instances have not been given from December, 2021 onwards. The fourth respondent has also stated that when she was working as an Assistant Commissioner, Chennai outer GST Commissionerate in the year 2020, the petitioner was working as Commissioner, Appeals, Chennai Customs when she was first introduced to him during the Finance Minister's Programme in the year 2020 when she acted as the Emcee for the said programme. According to her, ever since the



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said meeting the petitioner has been passing innuendos on her which amounts to sexual harassment. According to her, in December 2021, she was posted to Customs and the petitioner worked in Import Commissionerate while he was holding charge of Commissioner (Appeals). Both the Commissionerates worked in the same building. According to her, the petitioner has used every opportunity to bad mouth her to ADCs, ACs, AOs and superintendents, many of whom worked under the fourth respondent. According to her, after several months of trying to dig up something and bad mouthing her to several people in February 2022, the petitioner issued a Memo to her calling for an explanation on the lapse in processing a SVLDRS (Sabka Viswas Legacy Dispute Resolution Scheme) file.

10. According to the fourth respondent, neither was the memo signed by the Commissioner nor had the memo mentioned that it is issued under the directions of the Commissioner. It is also contended by her that the memo has been issued to her one and half years after she moved out of the commissionerate. According to her, since she did not cooperate to the



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advances made by the petitioner, the memo was issued by the petitioner to her as a counter blast. According to her, she is the only person who has been called upon to give explanation on the alleged lapse in processing the SVLDRS file.

11. The fourth respondent has also stated in the complaint that recently the petitioner has bad mouthed her to his officers saying that “I am a manipulated lady who will use all means to get sensitive postings”. According to her, this type of character assassination of a lady officer is completely unwarranted, that too, an officer who has never worked with the petitioner. She has also stated that there is absolutely no need for a Commissioner to even talk about an officer at length on a daily basis, leave alone a lady officer who has never worked with the petitioner in any capacity. She has also stated that the petitioner does this for at least 30 minutes every single day. She has also stated in her complaint that she knows several ladies in the Department who have been victims of the petitioner's ill nature at varying points in their career.



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12. The definition of aggrieved women under section 2(a) of the POSH Act, 2013 also makes it clear that the complainant need not be an employee. Therefore, it is clear that it is not necessary that both the petitioner and the fourth respondent will have to work in the very same department when instances of sexual harassment is alleged to have taken place in the workplace. Section 2(a) of the POSH Act, 2013 reads as follows:

“(a) “aggrieved woman” means— (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

(ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;”

13. The definition of employer makes it clear that the second respondent committee was constituted properly in accordance with the Act by the CBIC under whom both the petitioner and the fourth respondent



(complainants) are employed which is a Central Government Department.

Section 2(g) of the POSH Act which defines the employer reads as follows:

*“2 (g) “**employer**” means— (i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;*

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

Explanation. —For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organisation;

(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the



employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;”

14. The petitioner is the respondent under the sexual harassment complaint dated 24.05.2022. Section 2(m) of the POSH Act, 2013 defines the respondent as the person against whom the aggrieved woman has made a complaint under section 9 of the Act and it reads as follows:

“2 (m) “respondent” means a person against whom the aggrieved woman has made a complaint under section 9”

15. Section 2(n) of the POSH Act 2013 defines sexual harassment and it reads as follows:

“2(n) “sexual harassment” includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—

- (i) physical contact and advances; or*
- (ii) a demand or request for sexual favours; or*
- (iii) making sexually coloured remarks; or*



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(iv) *showing pornography; or*
(v) *any other unwelcome physical, verbal or non-verbal*
conduct of sexual nature;”

As seen from the aforementioned definition, it is an inclusive definition and not an exhaustive one. Sexual harassment includes any unwelcome physical, verbal or non-verbal conduct of sexual nature.

16. The definition of Sexual Harassment under the POSH Act, 2013 is wide enough to cover both direct or implied sexual conduct which may involve physical, verbal or even written conduct. The key distinguishing feature is that the conduct is unwanted and unwelcome by the recipient. The definition also includes reference to creating an offensive, intimidating or hostile working environment.

17. The allegations made by the fourth respondent in her sexual harassment complaint will have to be investigated. According to her, the petitioner has been repeatedly making unwelcome gestures and she has narrated instances in her complaint which has caused her mental agony. It is



for the second respondent Committee to consider the same and to investigate the complaint on merits and in accordance with law as at this stage any interference by this Court under Article 226 of the Constitution of India will be premature.

18. Section 3 of the POSH Act 2013 is the provision for prevention of sexual harassment and it reads as follows:

“3. Prevention of sexual harassment.—

(1) No woman shall be subjected to sexual harassment at any workplace.

(2) The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:—

(i) implied or explicit promise of preferential treatment in her employment; or

(ii) implied or explicit threat of detrimental treatment in her employment ; or

(iii) implied or explicit threat about her present or future employment status; or

(iv) interference with her work or creating an



intimidating or offensive or hostile work environment for her; or

(v) humiliating treatment likely to affect her health or safety.”

The sexual harassment complaint given by the fourth respondent may fall under any of the above mentioned circumstances. It cannot be ruled out at the threshold that the allegations of the petitioner in her complaint will not fall under any of the circumstances mentioned in section 3 of the POSH Act, 2013.

19. Section 4 of the POSH Act, 2013 deals with Constitution of Internal Complaints Committee which reads as follows:

“4. Constitution of Internal Complaints Committee.

— (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”:

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.



(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely: —

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees: Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:



Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee, —

(a) contravenes the provisions of section 16;

or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be



removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.”

20. The second respondent Committee has been constituted only in accordance with section 4 of the Act. Section 4(2) of the Act, 2013 specifies the constitution of ICC and it shall consist of the following members to be nominated by the employer namely:

(a) A Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees;

(b) Not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) One member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.

21. Admittedly quorum of the second respondent committee is in place only as per the provisions of section 4(2) of the POSH Act, 2013.



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However, the petitioner asserts bias against some of the members of the second respondent Committee. Under the POSH Act, 2013, there is no provision for removal of any of the members of the Internal Complaints Committee. The petitioner's allegation of bias and malafides against some of the members are also not supported by any undisputed evidence to show that they will act in a biased manner, excepting for stating that they are associated with the fourth respondent as some of the members of the Internal Complaints Committee are the members of the very same department to which the petitioner and the fourth respondent belong. But that cannot be a reason for alleging bias against them, unless it is proved through conclusive evidence.

22. Unless and until the bias and malafides against those members are proved through undisputed evidence, this Court cannot take judicial notice of bias at this stage when the investigation is in the preliminary stage. The external member Ms.Sheela.M is not an employee, but a counsel representing not only offices under Chennai Zone, but also offices of GST and Central excise under CBIC and also other Government of India

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Departments. She is only one amongst the panel of counsels. She was appointed to the second respondent committee on 05.01.2022 much before the complaint was lodged by the fourth respondent. The petitioner has never alleged bias against Ms.Sheela.M in his representations to either CBIC, Joint Commissioner or even in the writ petition filed before this Court.

23. The petitioner contends that the entire complaint is merely a counter blast to the Memorandum issued to the fourth respondent regarding her role in a scam involving M/s.Heaven Engineering. It is alleged by the petitioner that the sexual harassment complaint given by the fourth respondent is merely a colourable device intended to shift attention away from the scam. The petitioner further contends that the second respondent Committee comprises of Ms.Manasa Gangotri Kata (Additional Commissioner of Customs), who is also involved in the scam and therefore, the second respondent Committee is biased against the petitioner. The contentions of the petitioner are premature. The complaint is one of sexual harassment and there is no direct nexus to the complaint and the alleged scam involving M/s.Heaven Engineering. If at all there is any bias, it can be



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uncovered only after the preliminary enquiry conducted by the second respondent Committee. The fourth respondent (Complainant) categorically denies in her counter affidavit that she is involved in any scam, more so, in the case of M/s.Heaven Engineering. Infact in the counter affidavit filed before this Court by the petitioner himself in M/s.Heaven Engineering's case in W.P.No.11098 of 2022 where the show-cause notice issued to M/s.Heaven Engineering was challenged, the petitioner has not alleged any scam. However, he is now alleging scam, contrary to the counter affidavit filed by him on behalf of the department in M/s.Heaven Engineering's case.

24. The petitioner has submitted that Rule 7 of the POSH Rules has been violated in the instant case. Rule 7 starts with the phrase "Subject to the provisions of Section 11". Therefore, it is clear that Rule 7 applies only to those cases where there are no relevant service rules applicable to the concerned complaint. Therefore, Rule 7 applies only when there are no service rules applicable. Rule 7 of the POSH Rules reads as follows:

"7. Manner of inquiry into complaint.- (1)

Subject to the provisions of section 11, at the time of



filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.

(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).

(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.

(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be: Provided that such termination or ex-



parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present."

25. Section 28 of the POSH Act also makes it clear that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and therefore, the contention of the petitioner that the Act will override the concerned service rules is not tenable. Section 28 of the POSH Act, 2013 reads as follows:

"28. Act not in derogation of any other law.—
The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."



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26. The DOPT Office Memorandum lays down a clear step by step process in investigating complaints filed under POSH Act. On receipt of a complaint, facts of the allegation are required to be verified which is a preliminary enquiry / fact finding enquiry or investigation. The Complaints Committee conducts the investigation. They may then try to ascertain the truth of the allegations by collecting the documentary evidence as well as recording statements of any possible witness including the complainant. There is a two-stage process and in the first stage, there is only an investigation or a preliminary enquiry into the averments made in the complaint and the second stage is, when they act as an inquiry authority. In the present case, only a mere fact finding enquiry is going on and if the second respondent Committee is satisfied that the complainant has made out a *prima-facie* case, the second respondent Committee would proceed in accordance with the Office Memorandum. It is pertinent to note that paragraph No.8 of the Office Memorandum specifically provides for the power to record statements and Rule 7 has been specifically made subject to Section 11 of the POSH Act. If the second respondent Committee proceeds



to issue charge sheet, list of witnesses and other relevant details will be given along with the charge sheet to the petitioners.

27. Section 11 of the “POSH Act”, 2013 makes it clear that the inquiry will be conducted in the manner prescribed by the service rules.

Section 11 of the “POSH Act” reads 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) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(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 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.”

28. The second respondent (Internal Complaints Committee) shall submit the inquiry report on completion of the inquiry along with its findings to the employer. The employer in the instant case is the CBIC. The second respondent (Internal Complaints Committee) in case it comes to the conclusion that the allegation against the petitioner has not been proved, it shall recommend to the employer that no action is required to be taken in the matter. In case, the second respondent (Internal Complaints Committee) arrives at the conclusion that the allegation against the petitioner has been proved, it shall recommend to the employer;



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a) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the petitioner or if no such service rules have been made in such manner as prescribed;

b) to deduct, notwithstanding anything in the service rules applicable to the petitioner, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved women or to her legal heirs, as it may determine in accordance with the provisions of Section 15 of the Act, provided that in case the employer is unable to make such deduction from the salary of the petitioner due to his being absent from duty, cessation of employment, it may direct the petitioner to pay such sum to the aggrieved women, provided further that in case the petitioner fails to pay the sum referred to in clause (ii), the internal complaints committee may forward the order for recovery of the sum as arrears of land revenue to the concerned District Officer. The employer shall act upon the recommendation of the internal complaints committee within sixty days of its receipt by him.



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30. Section 14 of the POSH Act, 2013 also gives protection to the petitioner, in case the complaint lodged by the fourth respondent against him is false or is a malicious complaint. It makes it clear that in case the second respondent (Internal Complaints Committee) comes to the conclusion that the allegation against the petitioner by the fourth respondent is malicious and the complaint has been made knowing it to be false, it may recommend to the employer to take action against the women or the person who has made the complaint in accordance with the provisions of the service rules applicable or where no such service rules exists, in such manner as may be prescribed. The POSH Act also provides protection to the petitioner, in case the second respondent (Internal Complaints Committee) arrives at the conclusion that any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exists in such manner as may be prescribed.



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31. Section 14 of the POSH Act, 2013 reads as follows:

“14. Punishment for false or malicious complaint and false evidence.—(1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an



inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.”

32. There are adequate safeguards provided in the POSH Act, 2013 for both the complainant and the respondent, the petitioner herein. The inquiry is conducted by the second respondent Committee only as per the service rules, as seen from Sections 13 and 14 of the Act.

33. Section 19 (i) of the POSH Act, 2013 makes it mandatory for any employer to treat sexual harassment as a misconduct under the service rules and initiate action against the employee for such misconduct.



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34. The writ petition has been filed ignoring the fact that alleged sexual harassment by the petitioner constitutes a misconduct not alone under Section 19 (i) of the POSH Act, 2013 but also under the Central Civil Services (Conduct) Rules, 1964 vide Rule 3-C. The Internal Complaints Committee is constituted not under the POSH Act, 2013 but under the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The writ petition seeks to challenge action taken against the petitioner regarding his conditions of service. The grounds urged in the writ petition raises issues relating to fairness / bias/ jurisdiction, etc., of respondents 1 to 3 in initiating the impugned action against him that allegedly threaten his rights as a Government servant. The issues raised by the petitioner in this writ petition fall within the scope of the Administrative Tribunals Act, 1985 and are excluded from being put to challenge directly under Article 226 of the Constitution of India as held by the Honourable Supreme Court in ***L.Chandrakumar Vs. Union of India & Others*** reported in ***1997 (3) SCC 261***. Relevant paragraphs of the judgment are as follows:

"93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional



powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective



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High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

.....

99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our



*Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. **The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.***



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35. Thus, the Honourable Supreme Court held that while the Constitutional remedy of the judicial review under Article 226 of the Constitution of India is not completely excluded, yet, it can be exercised in relation to service matters only as against orders passed by the Administrative Tribunals. No Government servant will be entitled to approach the High Court as a Court of first instance challenging an order passed by the Government regarding a service matter. Infact, the Honourable Supreme Court has held that even in a case where the vires of a statute is challenged, it will not be open for the litigants to directly approach the High Courts.

36. The contention of the petitioner is that since there is alleged violation of principles of natural justice, bias and lack of jurisdiction on the part of the respondents, including the ground of time barred complaint, the High Court can exercise its jurisdiction under Article 226 of the Constitution of India and the availability of alternative remedy has no bar is untenable. Infact, as declared by the Honourable Supreme Court in

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L.Chandrakumar Vs. Union of India & Others reported in ***1997 (3) SCC***

261 and as per the aforesaid provisions of the Administrative Tribunals Act, 1985, the Tribunal is the only forum and not an alternative forum and the High Court is divested of its jurisdiction over service conditions of Civil Servants as a Court of first instance. Thus, there is no question of invoking the discretionary powers of the High Court under Article 226 of the Constitution of India in relation to service matters of Government servants.

37. Section 14 of the Administrative Tribunals Act, 1985 deals with jurisdiction, powers and authority of the Central Administrative Tribunal. As seen from Section 14 of the Administrative Tribunals Act, 1985 that all service matters mentioned therein is exclusively vested with the Central Administrative Tribunal. Section 14 of the Administrative Tribunals Act, 1985 reads as follows:

"14. Jurisdiction, powers and authority of the Central Administrative Tribunal.—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and



authority exercisable immediately before that day by all courts except the Supreme Court in relation to—

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the



Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

Explanation.—For the removal of doubts, it is hereby declared that references to “Union” in this subsection shall be construed as including references also to a Union territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of subsection (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations [or societies] owned or controlled by Government, not being a local or other authority or corporation [or society] controlled or owned by a State Government: Provided that if the Central Government considers it expedient



so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations [or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts except the Supreme Court in relation to—

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to



the service of such person in connection with such affairs."

38. Therefore, the Administrative Tribunal is the only forum to adjudicate "service matters". The preamble of the Administrative Tribunals Act, 1985 also makes it clear that the Administrative Tribunal is the only forum to adjudicate "service matters". The preamble of the Administrative Tribunals Act, 1985 reads as follows:

"An Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of [any corporation or society owned or controlled by the Government in pursuance of article 323A of the Constitution] and for matters connected therewith or incidental thereto"

39. "Service matter" is defined in Section 3 (q) of the Administrative Tribunals Act, 1985 and it covers a very wide field and there is nothing to



suggest that the provisions dealing with the jurisdiction of the Tribunal should receive a narrow interpretation. Section 3 (q) of the Administrative

Tribunals Act, 1985 reads as follows:

"3 (q) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation [or society] owned or controlled by the Government, as respects—

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;"

It may also be noted that Section 3 (q) defines service matters to include disciplinary matters or any other matter whatsoever.



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40. The Honourable Supreme Court in the case of ***Himachal Pradesh***

State Electricity Board, Shimla and others Vs. Tirath Raj and others

reported in ***1995 (5) SCC 678*** held that 'conditions of service' to be of such a wide expression that an attempt of enumeration would be "really so dangerous from the point of view of the employees themselves that by exclusion you say that the others are not".

41. The Honourable Supreme Court also held in the case of ***State of H.P. and Another Vs. Pawan Kumar Rajput and Others*** reported in ***2006 (9) SCC 161*** that the High Court should not have entertained a writ petition in a case relating to posts under the State Government.

42. The Honourable Supreme Court also held in another decision in the case of ***V.Ramasubramani Vs. Central Administrative Tribunal and Others*** reported in ***2013 SCC Online Mad 3010*** that even cases relating to alteration of Date of Birth fell within the exclusive jurisdiction of administrative tribunal and no other Court was competent to decide the matter.



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43. By virtue of Section 29 of the Administrative Tribunals Act, all pending cases were transferred from the High Courts to the Administrative Tribunals excepting Appeals pending before the High Court. Thus, the entire reading of the Act makes it clear that the present writ petition is not maintainable.

44. The Honourable Supreme Court in the case of ***Medha Kotwal Lele and others Vs. Union of India and others*** reported in ***2013 (1) SCC 311*** has also issued the following directions:

"2. Notice had been issued to several parties including the Governments concerned and on getting appropriate responses from them and now after hearing the learned Attorney General for UOI and the learned counsel, we direct as follows:

"Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka case [(1997) 6 SCC 241 : 1997 SCC (Cri) 932] , SCC at p. 253, will be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964



(hereinafter called the 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."

45. Infact, based on the aforesaid judgment of the Honourable Supreme Court, the Central Civil Service (Conduct) Rules, 1964 was amended and Rule 3-C was introduced, which prohibits sexual harassment of working woman which reads as follows:

"Rule 3 - C

(1) No Government servant shall indulge in any act of sexual harassment of any women at any workplace.

(2) Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at the work place.

Explanation. - (I) For the purpose of this rule, -

(a) "sexual harassment" includes any one or more of the following acts or behaviour (whether directly or by implication) namely : -



- (i) physical contact and advances; or*
- (ii) a demand or request for sexual favours; or*
- (iii) making sexually coloured remarks; or*
- (iv) showing pornography; or*
- (v) any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.*

(b) the following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment : -

- (i) implied or explicit promise of preferential treatment in employment; or*
 - (ii) implied or explicit threat of detrimental treatment in employment; or*
 - (iii) implied or explicit threat about her present or future employment status; or*
 - (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or*
 - (v) humiliating treatment likely to affect her health or safety.*
- (c) "workplace" includes,-*



(i) *any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government;*

(ii) *hospitals or nursing homes;*

(iii) *any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;*

(iv) *any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;*

(v) *a dwelling place or a house.”*

46. Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 prescribes the procedure for enquiry and imposition of penalty for the misconduct which has been amended and a proviso to sub-section (2) was introduced which is extracted below:



"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."

47. Thus the subject matter of the writ petition deals with the action of the respondent department with regard to a "Misconduct" under the service rules and the constitution and the conduct of the Internal Complaints Committee under the Service Rules. Undoubtedly, this falls within the definition of Section 3(q)(iv) of the Administrative Tribunals Act, 1985, which is excluded from the purview of the writ jurisdiction.



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48. The petitioner is yet to participate in the inquiry proceedings conducted by the second respondent Committee. He has only sent a reply, submitting his explanation for the accusation made against him by the fourth respondent. The second respondent Committee is yet to submit its inquiry report giving its recommendation either for or against the petitioner. Even before any progress is made in the inquiry with regard to the sexual harassment complaint given by the fourth respondent, the present writ petition has been filed by the petitioner which in the considered view of this Court is premature. When adequate safeguards are given to the respondent (the petitioner herein) in the POSH Act, 2013 in case the complaint is found to be false and malicious, the necessity for the petitioner to approach this Court under Article 226 of the Constitution of India does not arise. The complaint given by the fourth respondent on the face of it cannot be treated as a vague or a false one. The complaint narrates instances of innuendos made by the petitioner. Unless and until the same is enquired by the second respondent Committee, after hearing both the petitioner and the fourth respondent (Complainant), truth cannot be unearthed. Only after investigation by the second respondent Committee, it can also be found out



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whether the investigation was conducted in a fair and an unbiased manner.

Merely on conjectures and surmises, the petitioner's allegation of bias against some of the members of the second respondent Committee cannot be accepted by this Court. Even before participating in the inquiry proceedings, the petitioner has filed this writ petition, which in the considered view of this Court is premature and not maintainable. Excepting for making allegations of bias against some of the members of the second respondent Committee, the allegations are not supported by any undisputed evidence which will make any Court of Law to believe that those allegations are true. Any interference by this Court at this stage will defeat the very object of the POSH Act, 2013, which has been legislated to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaint of sexual harassment and matters related therewith or incidental thereto.

49. Section 9 of the POSH Act, 2013 reads as follows:

“9. Complaint of sexual harassment.—(1) Any aggrieved woman may make, in writing, a complaint of



sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months , if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.”



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50. The question of limitation in the present case is essentially a disputed question of fact, since the fourth respondent contends in her complaint that even after December 2021 which is the last specific incident of sexual harassment mentioned, she has been continuously harassed by repeated phone calls from the petitioner till the lodging of the complaint on 24.05.2022. However, the petitioner would contend that the complaint is barred by limitation as per Section 9 of the POSH Act, 2013. Being a disputed question of fact, it is for the inquiry committee to decide as to whether the complaint lodged by the fourth respondent is barred by limitation or not. The second proviso of Section 9 of the POSH Act, 2013 provides for a further period of three months, if the committee is satisfied that the fourth respondent has shown sufficient reasons for not preferring the complaint within a period of three months from the date of last incident. This Court under Article 226 of the Constitution of India cannot decide disputed questions of fact and it can be decided only by the second respondent based on oral and documentary evidence.

51. The case of the petitioner does not fall under any of the



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extraordinary circumstances for this Court to entertain this writ petition under Article 226 of the Constitution of India. Admittedly, the petitioner is a superior officer to that of the fourth respondent and they both have been appointed by CBIC. It is also not in dispute that the petitioner has met the fourth respondent and was introduced to her during the Finance Minister's programme in 2020 where the fourth respondent acted as an Emcee. The issues raised by the petitioner can be considered only by the second respondent (Inquiry Committee) only through oral and documentary evidence. Therefore, the writ petition challenging the constitution of the second respondent Committee to enquire into the sexual harassment complaint given by the fourth respondent against the petitioner cannot be entertained at this preliminary stage, that too, when the inquiry is conducted only as per the service rules of the employer namely the CBIC. The petitioner if aggrieved by the inquiry report to be submitted by the second respondent Committee after holding an inquiry can only approach the Central Administrative Tribunal as stipulated under Section 14 of the Administrative Tribunals Act, 1985.



52. Admittedly, the petitioner has challenged his suspension before the Central Administrative Tribunal, raising the very same grounds that have been raised in this writ petition with regard to the constitution of the second respondent Committee. The inquiry in the application in O.A.No.609 of 2022 before the Central Administrative Tribunal has not progressed in view of the pendency of this writ petition. There cannot be two parallel proceedings, raising the very same grounds which may result in conflicting decisions. When the Central Administrative Tribunal is the competent forum, that too, when the inquiry is conducted only as per the service rules, the present writ petition under Article 226 of the Constitution of India is not maintainable.

53. The learned counsel for the petitioner relied upon the following authorities during the course of his arguments and none of the judgments aid the petitioner for the following reasons:

a) *Union of India Vs. Rema Srinivasan Iyengar in W.P.No.10689 of 2019*. In **Rema Srinivasan Iyengar's** case, the complainant raised issues with the composition of the ICC and therefore, requested for the local



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committee to enquire into the complaint. In the context of discussing the procedure adopted by the local committee, a finding was given that there is no concept of preliminary enquiry under the POSH Act. However, that case did not deal with an ICC which was governed by specific service rules. Section 11 of the POSH Act also makes it clear that the inquiry will be conducted in the manner prescribed by the service rules. In the present case, the service rules governing the complaint lays out a clear two tier structure of investigation followed by inquiry. Furthermore, in **Rema Srinivasan Iyengar's** case, the complainant has challenged the composition of ICC only before the Central Administrative Tribunal and not by filing a writ petition before this Court under Article 226 of the Constitution of India;

b) ***L.S.Sibu Vs. Air India Ltd.*** reported in **(2016) 2 KLJ 434**. The petitioner relies on this Judgment for the proposition that the service rules cannot supersede the statutory provisions given under the POSH Act. There is no conflict between the Office Memorandum and the statutory provisions. The POSH Act itself provides for the manner of inquiry to be done in accordance with the applicable service rules. The Judgment in **L.S.Sibu's** case was rendered in the context of a challenge to a report by the ICC



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Committee on the grounds of Principles of Natural Justice. In the present case, the Office Memorandum provides for a clear mechanism whereby there is a two step investigation in the inquiry process. The DOPT. O.M. also states that once the investigation is complete, the Committee may choose to frame charges upon which all documents and statements will be given to the petitioner. He will be given a chance to lead evidence and cross examine witnesses already examined. Therefore, the procedure contemplated under the DOPT. O.M. satisfies the requirement of Principles of Natural Justice and thus the judgment of **L.S.Sibu's** case will not apply. Further, in the instant case, the petitioner was given a copy of the complaint and was asked to submit his reply to the same. Lastly, even in **L.S.Sibu's** case, the ICC report was set aside and they were asked to file a fresh report, whereas, the petitioner in the instant case wants the investigation to be stopped altogether which is not permissible in law. It should also be noted that Rule 7 specifically states that it is subject to the provisions of Section 11. Therefore, Rule 7 has no applicability to cases where there exists specific service rules for a complaint under section 11 of the POSH Act.



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c) *Union of India Vs. S.K.Das* reported in (2016) SCC Online Delhi

5578. The judgment will have no bearing on the facts of the present case.

Charge sheet and the list of witnesses will be issued to the petitioner if the enquiry committee finds that there exists sufficient merit in the complaint and proceed to frame charges against the petitioner. Since the investigation is still at the preliminary stage, there is no question of charge sheet and the list of witnesses being issued. Infact, at paragraph 14 of the judgment, the High Court holds that the procedure contemplated under the service rules needs to be followed, which is directly contrary to the proposition sought to be argued by the learned counsel for the petitioner;

d) *Vivek Thiyagi Vs. State of Haryana in CWP 32707, 32708 and 32712 of 2019*. The judgment will have no application to the facts of the present case. The aforesaid case was one where there was no disputed questions of fact involved and therefore, it was held to be clearly time barred. In the instant case, the fourth respondent has alleged that there has been continuous sexual harassment by the petitioner till the date of the complaint. Even after the petitioner moved out of the Customs Commissionerate to the



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G.S.T. Department, the fourth respondent has also narrated instances of sexual harassment and to find out the date of the last such sexual harassment involves a disputed questions of fact and cannot be decided in a writ petition without oral and documentary evidence;

e) *M.P. Agro Development Corporation Vs. Jahankhan* reported in (2007) 10 SCC 88. The aforesaid judgment merely lays down the general principle that High Court can intervene if there is a violation of Principles of Natural Justice. Since at this stage, this Court does not find any violation of Principles of Natural Justice, the above said decision has no applicability;

f) *Union of India Vs. V.S.Jaitha* reported in 2016 SCC Online Ker 16750. In this Judgment, it was decided that the disciplinary authority cannot decide, if the provisions of Section 2 (n), i.e., "sexual harassment" has occurred in the complaint. The complaint refers to various instances of unwelcome gestures made by the petitioner which may fall within the definition of "Sexual Harassment" as per the provisions of the POSH Act and Service Rules. It is upto the ICC to verify the complaint and decide based on oral and documentary evidence whether those incidents will fall within the definition of "Sexual Harassment". In any event being a mixed



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question of fact and law, it cannot be decided in this writ petition but can be decided only by the second respondent Committee;

g) *State of Madhya Pradesh Vs. Sheetla Sahai* reported in 2009 (8)

SC 617. The Judgment has no application to the present case as it is a case regarding launching of prosecution against the accused under Section 197 of Cr.P.C.

54. For the foregoing reasons, this Court is of the considered view that the writ petition is not maintainable. In the result, the writ petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petitions are closed.

09.09.2022

nl/ab

Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order



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To
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1. Central Board of Indirect Taxes & customs
Represented by the Chairman,
North Block,
New Delhi – 110 001.
2. Internal Complaints Committee,
Headed by Ms. Prachi Saroop IRS,
Principal Additional Director General
Directorate General of Vigilance,
West Zonal Unit,
New Custom House,
Annex Building, 7th floor,
Mumbai – 400 001.
3. The Principal Chief Commissioner,
Central Goods Services Tax & Central Excise,
Tamil Nadu & Puducherry Zone,
121, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.
4. The Chief Commissioner,
Chennai Customs Zone,
Customs House, No.60,
Rajaji Salai, Chennai – 600 001.



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ABDUL QUDDHOSE, J.

nl/ab

Pre-Delivery order in
W.P.No.17798 of 2022

09.09.2022