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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: July 18, 2022

% *Judgment pronounced on: September 21, 2022*

+ W.P.(C) 844/2017, CM APPL. 3856/2017, CM APPL. 13245/2017,
CM APPL. 20192/2018, CM APPL. 44896/2021, CM APPL.
23048/18

LAKHWINDER P. SINGH Petitioner

Through: Mr. Ashish Dixit, Advocate

versus

IIHMR AND ORS Respondents

Through: Mr. Ashok Mital, Adv. for R-1.
Mr. Divyam Nandrajog, GNCTD,
Panel Counsel with Ms. Vimla
Sachdeva and Mr. Jasmeet Jolly,
Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J.

1. Present writ petition has been filed challenging the impugned judgment dated 09.12.2016 passed by the Ld. Presiding Officer, Industrial, New Delhi in RCA No. 02/2016. The Ld. Tribunal dismissed the appeal preferred by Petitioner and held that the same is not maintainable on the ground that the enquiry report of the Internal Complaints Committee does not contain any recommendations as prescribed under Section 13 (3) of the Sexual Harassment of Women at Workplace



(Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'the Act'). The Petitioner seeks the quashing of Internal Complaints Committee Report submitted by the Internal Complaints Committee constituted by Respondent No. 1 under the provisions of Prevention of Sexual Harassment Act, 2013 of the Internal Complaints Committee constituted under Section 4 of the Act.

2. The Petitioner joined Respondent No. 1 as an Assistant Professor in 1996. In 2011, the Petitioner was appointed as Director of Delhi campus of Respondent No.1. Respondent No. 2 who was appointed on contractual basis w.e.f. 27.10.2014 submitted complaint against Petitioner on 03.06.2015. The Internal Complaint Committee (ICC) conducted a detailed inquiry and submitted its report on 09.06.2015 and *inter alia* held that the petitioner cannot be absolved from the charges of sexual harassment. The petitioner being aggrieved by the enquiry conducted by the ICC preferred an appeal before the Ld. Industrial Tribunal.
3. Ld. Industrial Tribunal after interpreting Section 13 of the act held that since there were no recommendations submitted by ICC, the petitioner has no right to prefer an appeal and hence, it is not maintainable. Respondent No. 1 terminated the services of Petitioner on 16.12.2016.

Contention of the petitioner:

4. Learned Counsel for the petitioner submits that the principle of natural justice has been blatantly and deliberately ignored by the ICC. The committee also did not follow Rule 7 (4) of the Rules framed under the Act which mandates that the committee shall make inquiry in accordance with principles of natural justice. The learned counsel for



the petitioner in this regard has relied upon *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra & Ors. AIR 2013 SC 58*.

5. Learned Counsel for the petitioner submits that the witnesses were examined even before the complaint was supplied to the petitioner. The copy of the complaint was given to the Petitioner on 23.06.2015 but the Committee had already examined 8 witnesses by that time. Learned counsel for the petitioner submits that the constitution of the committee is itself bad in law. The external member is employed with another sister concern of Respondent No.1 namely "Bhoruka Charitable Trust" and he further reports to Dr. S.D. Gupta, who was authorized to contest the appeal on behalf of Respondent No. 1.
6. Learned counsel for the petitioner further submits that no opportunity was given to the petitioner for verbal cross examination of the complainant. Reliance has been placed upon *Prof SP Narang vs. University of Delhi bearing WP (C) No. 3705/2002 dated 31.07.2017 and Prof. Bidyug Charaborty v. Delhi University & Ors. 2009 (112) DRJ 391 (DB)*.

Contention of respondent:

7. Learned Counsel for the petitioner submits that the Industrial Tribunal erred in holding that the appeal was not maintainable in the absence of any recommendation. Learned counsel submits that the petitioner could not have been terminated till the same is recommended by ICC under Rule 9 of the Rules under the Act.
8. Learned counsel for the petitioner further submits that the sexual harassment law is being misused for harassment and persecution of petitioner. It has been alleged that certain officials conspired against the



petitioner and misused the legislation to ensure that the Petitioner is disgraced and thrown out of the organization.

9. Learned counsel for the respondent submits that IIHMR/ Respondent no. 1 is a premier institute and has a policy of zero tolerance on sexual harassment and is committed to provide safety of women at work place. It has been submitted that as soon as an allegation was levied against the petitioner of sexual harassment, an Internal Complaint Committee was constituted.
10. Learned counsel for the respondent further submits that the petitioner preferred an appeal against the report of the ICC before the Industrial Tribunal, Delhi. The Industrial Tribunal opined that as per section 13& 18, only recommendation of the ICC can be challenged in an appeal and was pleased to dismiss the appeal. It is pertinent to note that during the pendency of the said appeal, the contempt petition filed by the petitioner before this Court was also dismissed.
11. It is further submitted by the learned counsel of the respondent that the present writ petition is not maintainable against the respondent as the respondent is neither a Government body nor a university and is an institute run by the registered society.
12. Learned counsel for the respondent further submits that the petitioner cannot dictate any term to the ICC about conducting the inquiry because he participated in the entire proceedings and was provided adequate opportunity to defend his case. Learned counsel for the respondent further submitted that the ICC had come to the conclusion only after considering all the statements and evidences and did not rely on any secondary information and hence, the petitioner cannot claim



any exclusive right of job. Learned counsel for the respondent submitted that sufficient opportunity was given to the petitioner for verbal cross examination of the complainant and the enquiry was conducted in accordance with the principles of natural justice and the relevant rules.

13. Section 13 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides as under:

“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. Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

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”

14. Section 18 of the Act provides:



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

15. The conjoint reading of Section 13 and 18 of the Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013 would make it clear that an appeal can be filed in the event only if the allegation against the employee has not been proved or the committee arrives at the conclusion that the allegations has been proved and recommendation has been made to take action for sexual harassment as a misconduct in accordance with the provisions of the Service Rules. The report can also be challenged if any direction is made to make any deduction from salary or wages of the respondent. In the present case, the committee in its report concluded that *“Given all these points, questions and doubts, it would not be reasonable for the Committee to absolve the respondent from the alleged sexual harassment.”*
16. The bare perusal of finding of the committee would make it clear that the committee has not made any recommendation for an action as provided under Section 13 (3) of the Act. Learned labour court/tribunal has taken a view that in absence of any recommendation, the appeal filed by the appellant was not maintainable. Before proceeding further,



it is also necessary to have a look at the termination order of the petitioner, which is reproduced hereinbelow:

“Ref: IIHMR/HR/TS/ 2016

Date: December, 16, 2016

ORDER

As I have been informed that some cases of sexual harassment have surfaced in the International Institute of Health Management Research (IIHMR), Delhi in last two years. As Professor Lakhwinder Pal Singh, Director, IIHMR, Delhi was also appropriately cautioned on December 24, 2015 for being vigilant on the highly sensitive cause of preventing sexual harassment and making the campus a safe work place for the female colleagues.

However, despite the explicit warning, a criminal case under section 354, 354 A and 509 of the Indian Penal Code has been registered (FIR no 255/2016 dated August 08, 2016) against Professor Lakhwinder Pal Singh in Police Station, Dwarka, New Delhi wherein charges of outraging modesty of a woman have been leveled by none other than his own Personal Assistant. Besides this, similar complaints have also been registered with National Commission for Women (NCW). Even this matter was taken up by the Internal Complaints Committee (ICC) of the Institute constituted in pursuance of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which also did not absolve Prof. L.P. Singh.

As the record of the IIHMR further reveals that some 15 female employees have left the organization during Professor Lakhwinder Pal Singh's tenure as director and one of them have categorically stated in her exit feedback that the IIHMR is not a conducive place to work for female employees. In backdrop of this situation. Professor L P Singh also suo motu submitted his resignation owing to sub optimal performance on August 21, 2014.

As IIHMR is a premiere institution of Health Management Research wherein majority of the students, faculty and staff are women. The Institute has a policy of zero tolerance towards incidents of sexual harassment. The recent incidents of sexual



harassment have vitiated the safe working environment to women in the campus and at the same time such matters have also adversely impacted the image and reputation of this knowledge institution.

Consequently, the overall performance of the Institute has substantially deteriorated and the learning ambience and work culture of the institute became the first casualty. Looking to the present state of affairs pervading in the Institute, It is not administratively possible to keep the reins of the IIHMR in his hands. Therefore, the services of Prof. L.P. Singh, Director, IIHMR are hereby terminated.

Furthermore, Prof. L.P. Singh was initially appointed as Assistant Professor at IIHMR Jaipur campus on January 15, 1996 and with passage of time he was promoted to the post of Professor. From IIHMR Jaipur he was given charge of Director, IIHMR, Delhi with a lien on the original post of Professor. Keeping his conduct and sub optimal performance in mind his services as professor are no more required in Jaipur campus either and hence are terminated with immediate effect. Therefore, as required under the service contract signed with him, a money equal to the sum of his three months basic salary through Bank transfer to his Bank account as severance pay.

The finance and administration cell of the IIHMR are hereby further directed to settle all his due claims within seven days of this order.”

17. The termination order dated 16.12.2016 does not speak at all about any recommendation made by the internal complaint committee. It merely states that the matter was taken up by the committee on the allegations levelled by the personal assistant of the petitioner. The respondent/ institute taking into account the overall conduct of the petitioner and the fact that the overall performance of the institute has substantially deteriorated, reached to the conclusion that it is not administratively possible to keep the reins of the IIHMR in the hands of the petitioner.



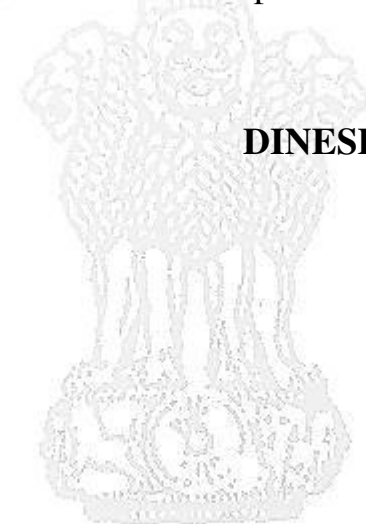
Thus, the termination does not seem to be an outcome of any recommendation made by the committee. The averments made by the petitioner that principles of natural justice has not been followed by the committee by conducting the proceedings cannot be taken into account as the learned trial court has rightly come to the conclusion that appeal under Section 18 of the Act was not maintainable in absence of any recommendation made by the ICC under 13 (3) of the Act.

18. In view of the above observations, the petition along with the pending application is dismissed and stands disposed of.

DINESH KUMAR SHARMA, J

SEPTEMBER 21, 2022

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