

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.2009 OF 2023
PRAMA BHATTACHARJEE
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.

AND

W.P.A. No.1134 OF 2023
JAYANTA RANA
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.

For the petitioner and
private respondent
(W.P.A. No.1134 of 2023)

: Mr. Kallol Basu, Adv.,
Mr. Suman Banerjee, Adv.

For the petitioner and
private respondent no.6
(W.P.A. No.2009 of 2023)

: Mr. Debashis Banerjee, Adv.,
Mr. Rakesh Jana, Adv.

For the College

: Mr. Anindya Bose, Adv.,
Mr. Dipendu Mandal, Adv.

For the UGC
(W.P.A. No.2009 of 2023)

: Mr. Anil Kumar Gupta, Adv.,

For the State
(W.P.A. No.1134 of 2023)

: Mr. Tapas Kr. Dey, Adv.

For the State
(W.P.A. No.2009 of 2023)

: Mr. Manas Kumar Sadhu, Adv.,

Hearing concluded on

: 27.07.2023

Judgment on

: 12.12.2023

Kausik Chanda, J.:-

The petitioner in WPA No.2009 of 2023, serving as an Assistant Professor in the Department of English at Netaji Satabarshiki Mahavidyala, lodged a complaint under the Sexual Harassment of Women at Workmen (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to “the Act of 2013”), against respondent no.5 in WPA No.2009 of 2023, an Associate Professor of the said College.

2. On the basis of the complaint, a proceeding was initiated by the Internal Complaints Committee of the College (hereinafter referred to as “the ICC”). The said committee, after enquiring into the allegations, dropped the proceedings against respondent no.5 citing limited material evidence and the absence of specified witnesses.

3. The decision of the committee as communicated to the petitioner on August 17, 2022, was challenged by the petitioner by filing a statutory appeal under Section 18 of the Act of 2013, before the Additional Labour Commissioner, Government of West Bengal, appointed under Clause (a) of Section 2 of the Industrial Employments (Standing Orders) Act, 1946.

4. By an order dated January 19, 2023, the said Appellate Authority rejected the appeal on the ground that the appropriate forum of adjudication of the appeal is the Appellate Authority under Regulation 8 (5) of the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women’s Employees and Students in

Higher Educational Institutes) Regulations, 2015 (hereinafter referred to as “UGC Regulations, 2015”).

5. The order of the Appellate Authority has been assailed in WPA No.2009 of 2023.

6. It appears that being cognizant of the aforesaid ICC report, the Additional Director of Public Instructions, Chairperson of the Enquiry Committee, ICC, Educational Directorate, West Bengal by an order dated December 28, 2022, requested the College to reconstitute the ICC as per University Grants Commission’s norms and submit the report to the Educational Directorate after ratification from the Governing Body of the College.

7. By filing WPA No.1134 of 2023, respondent no.5 in W.P.A. No.2009 of 2023 has challenged the said order dated December 28, 2022.

8. In view of the shared facts and legal issues, the aforesaid two writ petitions were heard together.

9. It has been submitted by the petitioner in WPA No.1134 of 2023 that it is beyond the scope and jurisdiction of the University Grants Commission to designate a separate body or authority for adjudication of a statutory appeal preferred under Section 18 of the Act of 2013.

10. The petitioner argues that Regulation 2(g) of the UGC Regulations, 2015, defines the Executive Authority of the Higher Educational Institution as the Chief Executive Authority of the Higher Educational Institution, in which the general administration of the institution is vested, and for public

funded institution, the Disciplinary Authority. It is thus apparent that the Executive Authority, in the Higher Educational Institutions, is the Disciplinary Authority and a Disciplinary Authority cannot act as an Appellate Authority over and above an enquiry report recommending disciplinary actions.

11. It has been submitted that in view of the judgment delivered by the Supreme Court reported at **(2020) 13 SCC 56 (*Nisha Priya Bhatia v. Union of India*)**, the findings or recommendations of an Internal Complaints Committee are in the nature of a fact-finding report based on which the Disciplinary Authority would initiate further disciplinary action. Therefore, the Disciplinary Authority cannot act as an Appellate Authority over the recommendations or findings of the Internal Complaints Committee.

12. It has been further submitted that Section 18 of the Act of 2013 provides 90 days' time to prefer an appeal from the recommendations of the ICC while UGC Regulations, 2015 provides for a limitation to 30 days.

13. The petitioner has argued that she has a right to prefer an appeal against the impugned recommendation of the ICC under Section 18 of the Act of 2013 since the relevant College Campus falls within the purview of the definition of "College" under Section 2(1) of the West Bengal College Teachers (Security of Service) Act, 1975 (hereinafter, referred to "the said Act of 1975"). The service of the petitioner is guided as per the provisions of the said Act. No Appellate Tribunal has been constituted in terms of

Section 14 of the said Act of 1975. Therefore, the Appellate Authority prescribed under Rule 11 of the Sexual Harassment of Women at Workmen (Prevention, Prohibition and Redressal) Rule, 2013 (hereinafter referred to as “the Rules of 2013”), is the Appellate Authority as notified under Clause (a) of Section 2 of the Industrial Employments (Standing Orders) Act, 1946.

14. On behalf of the petitioner in WPA No.2009 of 2023, it has been submitted that the UGC Regulations, 2015, are the applicable regulations in the present case. The relevant College comes within the definition under Section 12A (1)(b) of the University Grants Commission Act, 1956. The UGC Regulations, 2015 are applicable to the relevant College as the same is a “Higher Educational Institute”. Therefore, under Regulation 8(5) of the UGC Regulations 2015, an appeal should be preferred against the finding of the Internal Complaints Committee before the Executive Authority of the Higher Educational Institutes, which is the Governing Body of the College in the present case. In this regard, reliance has been placed upon the two judgments passed by two Single Benches of this Court in W.P. No.14093 (W) of 2018 (*Dr. Rajnarayan Roy v. State of West Bengal*) and in W.P. No.2991 (W) of 2016 (*Pradip Mandal v. Union of India*).

15. It has been further submitted that the State authorities have no jurisdiction to make any comment on any of the aspects of the ICC proceedings which are within the exclusive domain of the statutory authority of the College. It has been submitted that the West Bengal Universities and Colleges (Administration and Regulations) Act, 2017,

cannot override the provision of the University Grants Commission Act, 1956. Therefore, the order dated December 28, 2022, suffers from an inherent lack of jurisdiction.

16. It has further been submitted that the report of the ICC is not a preliminary report. A conjoint reading of Section 13 of the Act of 2013 and Rule 9 of the Rules of 2013, clearly suggests that after the report of the ICC, the employer is to decide the quantum of punishment under the service rules implying that the report of ICC is to be treated as an enquiry report, not as a preliminary enquiry report.

17. It has been argued that the UGC Regulations of 2015 do not take away or abridge any rights or obligations conferred under the Act of 2013. The Act of 2013 is not a complete Code.

18. It has been further contended that the Governing Body of a College, while acting as Appellate Authority does not become a judge of its own cause since the report of the ICC is not to be construed as the report of the Governing Body and the Governing Body is not sitting over in appeal against its own report.

19. On behalf of the University Grants Commission, it has been submitted that prior to the Act of 2013 came into force, on January 8, 2013, the University Grants Commission had passed an order to constitute a Task Force to review the measures for ensuring the safety of women on campuses and programmes for gender sensitisation.

20. The Task Force in its report recognised that all women and some men can become the target of sexual harassment and violence. The report of the Task Force found that the Act of 2013 only addresses the issue of protection of women employees and is not gender neutral. Men employees, if subjected to sexual harassment, cannot claim protection or relief under the law.

21. Based on the recommendation of the Task Force, in the year 2015, the University Grants Commission has exercised the powers under Section 26 (1) (g) of the University Grants Commission Act, 1956 read with Section 20 (1) of the said Act came out with the regulation namely, the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Education Institutions) Regulations, 2015. The Regulation came into effect on May 2016.

22. It has been submitted that the UGC Regulations, 2015 is not in derogation with the Act of 2013, in fact, it is an additional measure taken to safeguard the interest of students and other minor male individuals. Thus, the Commission with exclusive regulatory and monitoring power over the institutions, recommended the institutions to follow the UGC guidelines accompanied with the UGC Regulations, 2015 for all purposes.

23. The University Grants Commission argued that every Higher Educational Institution is bound to follow the UGC Regulations, 2015.

24. Before delving into the arguments as advanced by the parties before this Court, it is necessary to note the relevant statutory frameworks.

25. The Act of 2013 is an enactment of the Parliament following the directive of the Supreme Court passed in the case reported at **(1997) 6 SCC 241**(*Vishaka v. State of Rajasthan*).

26. Rules of 2013 have been framed by the Central Government following the power granted under Section 29 of the said Act of 2013.

27. The appeal against the recommendations of the ICC has been provided under Section 18 of the Act of 2013 and Rule 11 of the Rules of 2013 in the following manner:

“Act. 18. Appeal.—(1) Any person aggrieved from the recommendations made under sub-section (2) of Section 13 or under clause (i) or clause (ii) of sub-section (3) of Section 13 or sub-section (1) or sub-section (2) of Section 14 or Section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules 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.”

...

“Rule 11. Appeal.—Subject to the provisions of Section 18, any person aggrieved from the recommendations made under sub-section (2) of Section 13 or under clauses (i) or clause (ii) of sub-section (3) of Section 13 or sub-section (1) or sub-

section (2) of Section 14 or Section 17 or non-implementation of such recommendation may prefer an appeal to the appellate authority notified under clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).”

28. It cannot be disputed that the service of the petitioner is guided as per the provision of the West Bengal College Teachers (Security of Service) Act, 1975 and no Appellate Tribunal has been constituted in terms of Section 14 of the said Act of 1975.

29. The Government of West Bengal, however, in exercise of the power conferred by Clause (a) of Section 2 of the Industrial Employments (Standing Orders) Act, 1946, has appointed Additional Labour Commissioner, Government of West Bengal to be the Appellate Authority of the said Act.

30. The petitioner in W.P.A. No.2009 of 2023 was also communicated by the State that said Additional Labour Commissioner is the Appellate Authority under Section 18 of the said Act of 2013.

31. The UGC Regulations, 2015, on the other hand, is a delegated legislation framed under Section 26 (1)(g) of the University Grants Commission Act, 1956. Section 26 is quoted below:

“26. Power to make regulations.—(1) The Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder,—

(a) regulating the meetings of the Commission and the procedure for conducting business thereat;

(b) regulating the manner in which and the purposes for which persons may be associated with the Commission under Section 9;

(c) specifying the terms and conditions of service of the employees appointed by the Commission;

(d) specifying the institutions or class of institutions which may be recognised by the Commission under clause (f) of Section 2;

(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction;

(f) defining the minimum standards of instruction for the grant of any degree by any University;

(g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities.

(h) regulating the establishment of institutions referred to in clause (ccc) of Section 12 and other matters relating to such institutions;

(i) specifying the matters in respect of which fees may be charged, and scales of fees in accordance with which fees may be charged, by a college under sub-section (2) of Section 12-A;

(j) specifying the manner in which an inquiry may be conducted under sub-section (4) of Section 12-A.

(2) No regulation shall be made under clause (a) or clause (b) or clause (c) or clause (d) 17[or clause (h) or clause (i) or clause (j)] of sub-section (1) except with the previous approval of the Central Government.

(3) The power to make regulations conferred by this section [except clause (i) and clause (j) of sub-

section (1)] shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the regulations or any of them but no retrospective effect shall be given to any regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable.”

32. Regulation 8(5) of the UGC Regulations, 2015 is reproduced below:

“8. Process of conducting Inquiry: - (5) An appeal against the findings or/recommendations of the ICC may be filed by either party before the Executive Authority of the HEI within a period of thirty days from the date of the recommendations.”

33. It is also necessary to quote Regulation 2(g) of the UGC Regulations, 2015 which defines the Executive Authority of the Higher Educational Institutes as follows:

“2. Definitions. - (g) “Executive Authority” means the chief executive authority of the HEI, by whatever name called, in which the general administration of the HEI is vested. For public funded institutions the Executive Authority means the Disciplinary Authority as indicated in Central Civil Services (Classification, Control and Appeal) Rules, 1965 or its equivalent rules;”

34. A plain reading of the aforesaid provisions makes it clear that as per the UGC Regulations, 2015, the relevant College being a Higher Educational Institution, the Executive Authority of the College is the Governing Body, which is the Disciplinary Authority of the petitioner as well.

35. It is, therefore, clear that in the instant case, while under the UGC Regulations, 2015, the appellate authority against the recommendations of the ICC is the Governing Body, under the Act of 2013, it is the authority as notified under Clause (a) of Section 2 of the Industrial Employments (Standing Orders) Act, 1946.

36. There cannot be any doubt that in case of any conflict, an Act of Parliament shall prevail over a delegated legislation operating in the same field.

37. In this regard, reliance may be placed upon the judgment reported at **(1985) 1 SCC 641 (*Indian Express Newspapers (Bombay) Private Ltd. v. Union of India*)**. The relevant segment of the said judgment is quoted below:

“75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation.
...”

(emphasis supplied)

38. The same view has been taken in paragraph 34 of the judgment reported at **(2022) 7 SCC 323 (*Indian Ex-servicemen Movement v. Union of India*)**.

39. It cannot be said that UGC Regulations, 2015 is special in nature while Act of 2013 is a general Act when both trace their origin from ***Vishaka's case (supra)*** with an aim to prevent, prohibit, and redress sexual harassment in the workplace. It is important to note that the definition of “workplace” under the Act of 2013 includes an “Educational Institution.”

40. It is necessary to take note of the powers and functions of the University Grants Commission as outlined under Chapter III of the said Act of 1956. It is also crucial to appreciate that the Commission’s Rule-making power as conferred under Section 26 (1) (g) of the University Grants Commission Act, 1956, has to be read in the context of its powers and functions.

41. Again, the aforesaid powers and functions of the University Grants Commission are circumscribed by Entry-66 of List-I in the Seventh Schedule of the Constitution of India and are limited to “Co-ordination and determination of standards in institutions for higher education or research and scientific technical institutions.”

42. However, without examining the issue as to whether the University Grants Commission lacked competence to enact UGC Regulations, 2015, it can safely be said that if there is any conflict between the UGC Regulations,

2015, with the Act of 2013 along with its corresponding Regulations framed by the Central Government, the latter shall prevail.

43. Therefore, the provisions of the Act of 2013 shall prevail over the UGC Regulations, 2015. The same view has been taken by a learned Single Judge of Punjab and Haryana High Court in CWP No.960 of 2019 (O&M) [*Dr. Tanya Mander v. Rajiv Gandhi National University of Law (Punjab)*]. Therefore, the Appellate Authority, in the present case, is the Additional Labour Commissioner as notified under Clause (a) of Section 2 of the Industrial Employments (Standing Orders) Act, 1946.

44. I also accept the contention of the petitioner in W.P.A. No.2009 of 2023 that if the Disciplinary Authority assumes an appellate role over the recommendation of the ICC and expresses its view, then the exercise of power under Section 13(3) of the Act of 2013 will be a futile formality.

45. The judgments delivered in W.P. No.14093 (W) of 2018 (*Dr. Rajnarayan Roy v. State of West Bengal*) and W.P.2991(W) of 2016 (*Pradip Mandal v. Union of India*) did not consider the existence of Appellate Authority under Section 18 of the Act of 2013 as appointed by the State.

46. In the facts of this case, it is not necessary for this Court to address the other legal issues as addressed by the parties.

47. In view of the above discussions, the order dated January 19, 2023, issued by the Appellate Authority under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 as well as

the order dated December 28, 2022, issued by the Additional Director of Public Instructions, Chairperson of Enquiry Committee, ICC, are set aside.

48. The Additional Commissioner, Government of West Bengal, being the Appellate Authority under the Act of 2013, shall decide the appeal preferred by the petitioner in W.P.A. No.2009 of 2023 in accordance with law preferably within a period of three months from the date of communication of the order.

49. Accordingly, W.P.A. No.2009 of 2023 and W.P.A. No.1134 of 2023 are disposed of.

50. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)