

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.91 OF 2023

RAFISA BI AGA

... PETITIONER

Versus

DIRECTORATE OF EDUCATION AND 7 ORS

... RESPONDENTS

Mr Rohit Bras De Sa, Advocate for the Petitioner.

Mr Pravin N. Faldessai, Additional Government Advocate for Respondent No.1.

Mr M. Naik, Advocate for Respondents No.2 and 3.

Mr Iftikhar Agha, Advocate for Respondents No.4 to 8.

CORAM:- M. S. KARNIK, J.

DATED :- 29th March, 2023

P.C.

Heard learned counsel Shri Rohit Bras De Sa, for the petitioner, Mr M. Naik, learned counsel for respondents no.2 and 3 and Mr Iftikhar Agha, learned counsel for respondents no.4 to 8.

2. The challenge in this petition under Article 227 of the Constitution of India is to the order dated 04.11.2022 passed by the respondent no.2. By this order the Unity High School Sexual

Harassment Committee came to a conclusion that the charges made by the petitioner in the letter dated 14.09.2022 were found not correct and up to the mark. The Harassment Committee found the petitioner's case as baseless. The petitioner was issued show-cause notice dated 14.10.2022 which is at page 71 of the paperbook. The petitioner was asked to attend the enquiry in respect of the allegations of sexual harassment. The petitioner was called upon to remain present for inquiry on 18.10.2022 at 10:00AM at the school premises. Since the petitioner was not present on 18.10.2022, despite issuance of notice dated 14.10.2022, the Harassment Committee proceed to pass the impugned order dated 04.11.2022.

3. I find substance in the contention of learned counsel for the petitioner Shri De Sa, that the notice dated 14.10.2022 was received by the petitioner on 19.09.2022. The acknowledgment on record indicates that the notice was served on the petitioner only on 19.09.2022. The respondent No.2 ought to have verified whether the complainant, i.e. the petitioner, has been duly served or not. In the absence of any service upon the petitioner and confirmation thereof, the Harassment Committee proceeded with the inquiry. The petitioner has, by a representation dated 03.11.2022, alleged foul play. In the said representation the reason has been stated that she could not remain present on the particular day because she had received the letter on the very day

the hearing was fixed.

4. Learned counsel for respondent no.2 submitted that even this communication dated 03.11.2022 addressed by the petitioner to the Committee was received after the impugned order was passed on 04.11.2022.

5. Suffice to observe that on the date fixed for hearing, the Harassment Committee proceeded with the hearing without verifying whether the notice of the hearing is duly served on the petitioner or not as the record indicates that notice was received by the petitioner only after the conclusion of the hearing. The impugned order passed is in complete breach of the principles of natural justice.

6. It is the submission of learned counsel Shri Agha, learned counsel for respondents no.4 to 8 that though they were present on 18.10.2022, the decision of the Committee was not communicated to them. In any case, I am interfering with the impugned order.

7. According to me, in a sensitive matter of like this, every possible opportunity ought to have been given to the petitioner to be present and substantiate her case.

8. The impugned order dated 04.11.2022 is, therefore, set aside. The complaint is remitted to the Committee. The complaint may be inquired into by the Harassment Committee in accordance with law. The petitioner to remain present before the Harassment Committee on 12.04.2023 at 10:00AM. It is made clear that there is no requirement of issuing a separate notice and this will be construed as sufficient notice to the petitioner.

9. The enquiry to proceed on its own merits in accordance with law after following the principles of natural justice. It is made clear that I have not expressed any opinion on the merits of the rival contentions.

10. The petition is disposed of. No costs.

M. S. KARNIK, J.