HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE DEBANGSU BASAK
AND
THE HON'BLE JUSTICE MD. SHABBAR RASHIDI

MAT 1539 of 2023
CAN 1 of 2024
with
MAT 1538 of 2023

DEBJANI SENGUPTA
Versus
THE INSTITUTE OF COST ACCOUNTANTS OF INDIA AND ORS.

For the Appellant	:	Mr. Kallol Basu Mr. Suman Banerjee Mr. Atreya Chakraborty, Advocates
For the respondent no. 4	:	Mr. Anjan Kumar Mukherjee, Advocate
For the respondent no.7	:	Mr. Nayan Chand Bihani, Sr. Adv. Ms. Papiya Banerjee Bihani Mr. Soumya Mukherjee, Advocates
Heard on	:	05.12.2024
Judgment on	:	05.12.2024

DEBANGSU BASAK, J:

1. Two appeals are taken up for analogous hearing as they are at the behest of the same appellant and between the same parties. Both the appeals involve similar issues.

2. Appellant filed a writ petition being WP No. 4806(W) of 2019 which was disposed of by a judgment and order dated May 3, 2019. Appellant applied for review of the judgement and order dated May 3, 2019 being RVW 128 of 2019 which was dismissed by a judgment and order dated July 4, 2023. The two appeals are directed against the judgement and orders dated May, 2019 and July 4, 2023.

3. Learned advocate appearing for the appellant submits that, appellant lodged a complaint under Section 9 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 on November 17, 2016 against the private respondent. Proceedings before the Internal Complain Committee (ICC) constituted under the provisions of the Act of 2013 commenced. ICC made a recommendation dated April 31, 2017 under Section 13(3) of the Act of 2013 in respect of such complaint.

4. Learned advocate appearing for the appellant submits that, appellant lodged an FIR dated May 22, 2017 with the police station. Such police compliant resulted in a charge sheet. The criminal proceedings are pending.

5. Learned advocate for the appellant submits that, being aggrieved by the recommendation of the ICC, private respondent filed a writ petition being WP 329 of 2017. Appellant also filed a writ petition being WP 15088 (W) of 2017 seeking implementation of the recommendation dated April 21, 2017. Both the writ petitions were heard and disposed of by an order dated July 18, 2017 by granting liberty to the private parties to approach the statutory appellate authority under Section 18 of the Act of 2013.

6. Learned advocate appearing for the appellant submits that, the appellant preferred an appeal before the Deputy Labour Commissioner (Central) DCLC on July 21, 2017. Such appeal was returned to the appellant on September 12, 2017 claiming that DCLC was not the appellate authority. Aggrieved by such communication, appellant filed a writ petition being WPA 25485(W) of 2017 which is pending.

7. Learned advocate appearing for the appellant submits that, appellant received a writing dated February, 19, 2019 issued by the President of the Institute from where the appellant came to know that the private respondent was issued a show-cause notice on September 12, 2018 and that, on consideration of the response of the private respondent to such show-cause notice, the President of the Institute remitted the matter to the ICC with a direction for submission of a fresh report.

8. Learned advocate appearing for the appellant submits that, the President of the Institute acted without jurisdiction in remitting the matter to the ICC for fresh consideration. He submits that, the order of the ICC is not capable of the review by the employer. In support of his contentions he draws the attention to this Court to the provisions of the Act, 2013. According to him, employer cannot direct ICC to reconsider its decision.

9. Learned advocate appearing for the appellant submits that, the recommendation of the ICC became binding as against the private respondents since the private respondent did not prefer any appeal against such recommendation. He draws the attention to the Court to the provisions of Section 13 and Section 26 of the Act

of 2013 and submits that, since the recommendations of the ICC is binding upon the employer and the employee not taking any steps in terms of such recommendations, both the private respondents and the employer can be proceeded against. He submits that, the recommendations of the ICC require the employer to deduct certain amount from the salary of the private respondent. Such deduction be made by the employer from out of the salary or pensionary benefits receivable by the private respondent.

10. Learned advocate appearing for the appellant relies upon ***(1997) 6 Supreme Court Cases 241 (Vishaka and Others Versus State of Rajasthan and others) and (2013)1 Supreme Court Cases 297 (Medha Kotwal Lele and others Versus Union of India and others)*** and contends that, the recommendations of the ICC under the Act of 2013 are binding. Relying upon ***(2020) 13 Supreme Court Cases 56 (Nisha Priya Bhatia Vs. Union of India and another)*** learned advocate appearing for the appellant submits that, since the recommendations of the ICC are binding upon the employer, an initiation of disciplinary proceedings in consonance with the service rules is neither warranted nor required.

11. Learned advocate for the appellant submits that, notwithstanding the private respondents superannuating from his services as on September 30, 2024, employer can proceed to deduct the money that was directed by ICC to be deducted from out of the salary receivable by the private respondent.

12. Learned advocate appearing for the private respondent submits that, on the private respondent superannuating from the service on September 30, 2024, no disciplinary proceeding can be initiated as against the private respondent. He

submits that, the recommendations of the ICC, even if are held to be binding requires initiation of a separate disciplinary proceeding to decide the quantum of punishment, if any. According to him, the scheme of the Act, 2013, is such that, on conclusion of the proceedings of the ICC and the appellate authority, the recommendations, if any, are required to be considered by the employer by initiation of a disciplinary proceeding. In the facts and circumstances of the present case since the private respondent superannuated from service on September 30, 2024 no disciplinary proceeding can be initiated as against the private respondent.

13. Learned advocate appearing for the private respondent submits that on one hand the appellant claims that the service rules governing the service of the private respondent during his employment was not gazetted, on the other hand, the appellant claims that the disciplinary proceedings can be initiated in terms of the very same service rules. He submits that, such stand of the appellant is contradictory to each other. He contends that the private respondent is governed by the then prevailing service rules during his employment which do not contemplate initiation of a disciplinary proceeding subsequent to the superannuation of the private respondent. According to him, since no disciplinary proceeding was initiated prior to the private respondent superannuating from his service and since, service conditions of the private respondents do not permit continuation or initiation of a fresh disciplinary proceeding, no disciplinary proceeding can be initiated as against the private respondent now.

14. Learned advocate appearing for the private respondent relies upon ***(1997) 8 Supreme Court Cases 60 (State Bank of India Vs. A.N. Gupta and others);***

(2014) 7 Supreme Court Cases 260 (Dev Prakash Tewari Vs. Uttar Pradesh Co-operative Institutional Service Board, Lucknow and others) and ***(1999) 3 Supreme Court Cases 666 {Bhagirathi Jena vs. Board of Directors, O.S.F.C. and Others]*** in support of his contentions.

15. Learned advocate appearing for the private respondent submits that both ***Medha Kotwal Lele and others (supra)*** and ***Vishaka and others (supra)*** were prior to the coming into effect of the Act of 2013. According to him both the authorities of the Supreme Court noted that the Vishaka guidelines will be prevailing upon the scenario till such time the enactment come into being. According to him, once the Act of 2013 came into effect from January 2013, the directions contained in ***Vishaka (supra)*** and ***Medha Kotwal Lele*** **(supra)** ceased to prevail over the statutory provisions. In any event, he submits that, on superannuation of the private respondent no disciplinary proceeding can be initiated.

16. Learned advocate appearing for the employer submits that the concerned employee superannuated from his services on September 30, 2024.

17. On consideration of the rival contentions of the parties and materials on record, we find that a complaint under the Act of 2013 was lodged by the appellant before us which resulted in a report dated April 21, 2017 being made by the ICC. Such report contains the following recommendations:-

> "*1. ICC recommends that the earned leave taken by the complainant during her medical termination of pregnancy should be turned into proper medical leave as per the service rules of the*

Institute and reimbursement of the medical expenses should be awarded for that period to the complainant.

2. After due consideration of the investigation of this case, ICC has come to the conclusion that the respondent should be awarded major penalty of Reduction in the Grade for Five Years (static) along with Removal of the Management Authority comprising sanctioning leaves and doing appraisals for five years. The above penalty is considered by the ICC in synchronization with the Sexual Harassment Policy and Disciplinary Procedures of the Institute of Cost Accountants of India.

3. ICC also recommends the organizational counseling to the complainant and the respondent according to the Sexual Harassment policy of the Institute.

4. ICC also recommends that a copy of the summary report should be sent immediately to the National Commission for Women by the Secretary of the Institute.

5. ICC observed that at HQ employees are working in a closed environment and they don't discuss their personal and professional issues with either HR or Administration. HR/Administration department should take some steps in this regard to make employees comfortable so that they can come out with their grievances.

6. ICC strongly recommends to the Institute to constitute a VIGILANCE Committee which will look into all the administrative complaints and grievances.

7. The above mentioned steps will reduce the confusion between SH cases and administrative cases.

8. The guidelines of the SH cases clearly drafted by the Ministry of Women and Child Welfare along with the Act attached with this report for further reference and redressal in future."

18. Initially no appeal was carried as against such recommendation of ICC as provided under the Act, 2013. Both the private parties filed two several writ petitions. Appellant sought implementation of the recommendations of the ICC while the private respondents challenged the same in the two separate writ petitions that they filed. Both the writ petitions were disposed of by a common order permitting both the private respondents to prefer the statutory appeal.

19. Appellant preferred an appeal to the DCLC claiming it to be the appellate authority who returned such appeal claiming that it was not invested with the appropriate jurisdiction under the Act, 2013.

20. Appellant challenged the refusal of the DCLC to entertain the appeal in a writ petition which is pending.

21. ***Vishaka (supra)*** and ***Medha Kotwal Lele*** **(supra)** issued certain directions with regard to dealing with complains at the work place. Both noted that, such directions will be in effect till such time an appropriate enactment is made

governing the field. The Act of 2013 came into effect on and from December 9, 2013.

22. The complaint of the appellant before the ICC in terms of Act of 2013 is subsequent to the Act of 2013 coming into effect. The complaint of the appellant and the recommendation of the ICC are, therefore, governed by the provisions of the Act, 2013.

23. Section 13 of the Act of 2013 is relied upon on behalf of the parties. Relevant portion of Section 13 of the Act is as follows:-

> "(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:"*

24. Section 13 deals with the Inquiry Report. Sub-Section (1) thereof stipulates that on completion of the inquiry the ICC will provide a report of its finding to the employer. Sub-Section (2) of Section 13 provides for a situation where the ICC arrives at the conclusion that the allegation against the respondent is not proved. ICC then reports that no action is required to be taken. Sub-Section (3) of Section 13 governs the situation where ICC arrives at the conclusion that the allegation against the respondent stood proved. On arriving at a finding that the allegation stood proved, ICC is required to make recommendation to the employer on any of the two counts provided therein. It can recommend action being taken against the respondent in accordance with the provisions of the service Rules applicable to the delinquent or where such service Rule does not exist in the manner as may be prescribed. It can also recommend deduction from the salary or wages of the delinquent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heir.

25. Sub-Section (3)(ii) of Section 13 comes into operation if ICC recommends deduction from the salary or wages of the delinquent any quantified sum which ICC considers it appropriate to be paid to the aggrieved woman. This power of the ICC is notwithstanding anything in the service Rules applicable to the delinquent.

26. There are two provisos to Section 13(3) which need not be alluded to in the facts of the present case.

27. We noted the recommendations of the ICC in the preceding paragraphs. Such recommendations do not fulfil the criteria under Sub-Section (3)(ii) of Section 13. ICC

did not quantify any sum to be deducted from out of the salary or the wages of the private respondent to be paid to the aggrieved woman.

28. Authorities cited at the Bar suggest that, recommendations of the ICC is not to be treated as a preliminary Inquiry Report. Rather it is to be treated as an Inquiry Report in a disciplinary proceeding. In any disciplinary proceeding, after submission of the Inquiry Report, the Disciplinary Authority is required to consider such Inquiry Report and arrive at a finding as to whether it will accept such Inquiry Report and implement it. In the event the Disciplinary Authority is of the view that further action is required to be taken on the basis of the Inquiry Report, it is incumbent upon the Disciplinary Authority to allow the delinquent one opportunity to respond to the Inquiry Report, consider the response of the delinquent to such Inquiry Report and arrive at a finding of punishment.

29. In the facts and circumstances of the present case, Institute did not initiate disciplinary proceeding to impose a major punishment as against the private respondent.

30. As noted above, private respondent superannuated on September 30, 2024. No disciplinary proceeding stood initiated prior to his superannuation. No disciplinary proceeding can be initiated today, subsequent to his superannuation. We are not entering into the arena where the service Rules governing the service of the private respondent which the appellant claims do not exist and which the private respondent claims to be in existence, as decision on such arena is not required. Even if we are to take such service Rules governing the field of the service of the private respondent, the same does not permit initiation of a disciplinary proceeding subsequent to the superannuation of the private respondent. Independent of such service Rules also,

nothing is placed before us to suggest that a disciplinary proceeding can be initiated as against the private respondent subsequent to his superannuation.

31. Learned Single Judge by the impugned judgment and order dated May 3, 2019 was pleased to set aside the order dated February 19, 2019 of the Chairman of the Institute on the ground of procedural impropriety and violation of principles of natural justice. Learned Single Judge directed the employer to take immediate steps to initiate disciplinary proceedings as against the private respondent and issue charge sheet.

32. Since as on today, the portion of the judgment and order dated May 3, 2019 which directs the employer to initiate disciplinary proceeding and issue charge sheet as against the private respondent is incapable of being given effect to, we modify such portion of the impugned judgment and order dated May 3, 2019 by holding that the employer need not do so.

33. We find no infirmity in the learned Single Judge refusing to review the judgment and order dated May 3, 2019 as on the date of the judgment and order dated July 4, 2023 passed in the Review application, the private respondent was still in service.

34. MAT 1539 of 2023 along with MAT 1538 of 2023 along with the connected applications are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

35. I agree.

(Md. Shabbar Rashidi, J.)

SB/tbsr/Dd

Signed By :
DEBABRATA
DAS
High Court of
Calcutta
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2024 04:45:39 PM