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

+ **W.P.(C) 7159/2024**

RAKESH KUMAR GUPTA

..... Petitioner

Through: Ms. Archana Gaur and Ms. Ridhima
Gaur, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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17.05.2024

CM APPL. 29884/2024 (Exemption)

Allowed, subject to all just exceptions.

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1. The Petitioner has approached this Court primarily challenging the Report of the Internal Complaints Committee (ICC) dated 27.07.2017 whereby the ICC has disposed of the complaint with the following conclusion:

“CONCLUSION:

Prima facie it appears that he just wants to get away from the proceedings.

In the light of available evidences & circumstances the charges levelled against Sh. R. K. Gupta, Vice Principal still stand.”

2. Section 18 of the Sexual Harassment of Women at Workplace

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(Prevention, Prohibition and Redressal) Act, 2013 (*hereinafter referred to as 'the POSH Act'*) provides for an alternate efficacious remedy to a person who is aggrieved by any finding of the Internal Complaints Committee (ICC). Section 18 reads as under:

“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 subsection (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.”

3. It is stated that though Section 18 provides that the appeal should be filed within a period of 90 days of the recommendations of the ICC, the fact that the Petitioner is a 100% visually handicapped and also the fact that he is already facing disciplinary proceedings against him with his hand tied to his back and the back being pressed against the wall, the Petitioner was not able to approach the Appellate Authority under the POSH Act.

4. In the facts of the present case and particularly keeping in mind that the Petitioner was 100% blind and was already facing disciplinary enquiry and, therefore, he was not able to file an appeal, this Court is inclined to exercise its jurisdiction under Article 226 of the Constitution of India and



permit the Petitioner to file an appeal under Section 18 of the POSH Act challenging the report of the ICC in spite of the fact that nearly seven years have passed after the said report was released by the ICC.

5. It is made clear that if the Petitioner, who is a 100% visually handicapped, approaches the Appellate Authority by filing an appeal within a period of four weeks from today, the Appellate Authority is directed not to dismiss the appeal on the ground of limitation. The Petitioner is entitled to raise the issue regarding all procedural infirmities, including the infirmities under Section 13 and also regarding his contention that the ICC has not been constituted in accordance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

6. With these observations, the writ petition is disposed of, along with pending application(s), if any. It is made clear that this Court has not made any observations on the merits of the case.

SUBRAMONIUM PRASAD, J

MAY 17, 2024

S. Zakir