

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7137 OF 2025

Rahul Wahal

...Petitioner

Versus

The Deputy Chief Labour Commissioner
Central Mumbai And Anr.

...Respondents

SANTOSH
SUBHASH
KULKARNI

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Mr. Rajesh Kamble, i/b Sanjay Shinde, for the Petitioner.
Ms. Tejas Kapre, AGP for State - Respondents.

CORAM: N. J. JAMADAR, J.

DATED: 15th SEPTEMBER, 2025

Oral Order:-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order passed by the Deputy Chief Labour Commissioner, Central Mumbai, in an appeal against the recommendation of the Internal Complaints Committee ("ICC") under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, ("the Act, 2013").
3. A complaint of sexual harassment was made by an employee against the petitioner in respect of an incident that occurred on 5th April, 2023. The ICC returned a finding that the allegation of sexual harassment against the petitioner was proved. The ICC made a recommendation that a minor

punishment – strong warning, alongwith a written apology by the petitioner that he shall not repeat the complaint, act/behaviour in future, be imposed on the petitioner. Pursuant to the said recommendation dated 8th June, 2023, the Disciplinary Authority issued a show cause notice to the petitioner on 14th July, 2023 on the premise that the penalty recommended by the ICC was not adequate. Eventually, the petitioner came to be terminated by an order dated 16th August, 2023.

4. The petitioner has challenged the said order of termination before the Central Industrial Tribunal. Simultaneously, the petitioner preferred an appeal purported under Section 18(1) of the Act, 2013 assailing the recommendation of ICC.

5. By the impugned order, the Appellate Authority - Deputy Chief Labour Commissioner, Central Mumbai, dismissed the Appeal opining that, in accordance with Regulation 85 of the Air India Express Ltd. Employees' Service Regulations, the appeal was required to be preferred before the Chief Executive Officer of Air India Express Ltd. It was also noted that, the petitioner has already challenged the order of termination before the Central Government Industrial Tribunal.

6. Mr. Shinde, the learned Counsel for the petitioner, would urge that the Appellate Authority has misconstrued the provisions contained in Section 18 of the Act, 2013. Under Regulation 85 of the Service Regulation, according to Mr. Shinde, an appeal can be preferred only against an order placing the employee under suspension, before the Appellate Authority as indicated in Table No.3 appended below the said Regulation. In the case at hand, since a recommendation was made to impose a minor penalty, the petitioner could not have preferred appeal before the Chief Executive Officer in accordance with the said Regulation.

7. I have perused Regulation 85, which deals with the appeals. Regulation 85 reads as under:

“85. Appeals:

i) An employee may Appeal against an order imposing upon him any of the penalties against the order of suspension. The Appeal shall lie to the authority specified in the Table no.3 below.

ii) An appeal shall be preferred within one month from the date of communication of the order appealed against. The appeal shall be addressed to the Appellate Authority specified in the Table no.3 and submitted to the Authority whose order is appealed against. The authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the appellate authority within 15 days. The appellate authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders within three months of the date of appeal. The Appellate Authority may pass an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

Provided that if the enhanced penalty which the Appellate Authority proposes to impose is a major penalty and an inquiry has not already been held in the case, the Appellate Authority shall direct that such an enquiry be held in accordance with the provisions of Regulation, the Appellate Authority shall give a show cause notice to the employee as to why the enhanced penalty should not be imposed upon him. The Appellate Authority shall pass final order after taking into account the representation, if any submitted by the employee.”

8. Regulation 85 *prima facie* covers the cases of imposition of penalty as well. The right to file an appeal does not seem to be restricted to the orders of placing an employee under suspension only. Since under the Service Regulation, appeal to an Authority is provided, the petitioner ought to have preferred the appeal before the said Authority.

9. A useful reference in this context can be made to the decision of the Supreme Court in the case of ***Nisha Priya Bhatia vs. Union of India and another***¹ wherein the Supreme Court held that the legal machinery to deal with the complaints of sexual harassment at workplace is well delineated by the enactment of the said Act, 2013 and the Rules framed thereunder. There can be no departure whatsoever from the procedure prescribed under the Act, 2013 and Rules, 2013 either in matters of complaint or of inquiry thereunder. The inquiry under the Act, 2013 is a separate inquiry of a fact-finding nature. Post the conduct of a fact-finding inquiry under

1 (2020) 13 Supreme Court Cases 56.

the 2013 Act, the matter goes before the department for a departmental enquiry under the relevant departmental rules and, accordingly, action follows. The said departmental enquiry is in the nature of an in-house mechanism wherein the participants are restricted and concerns of locus are strict and precise. The ambit of such inquiry is strictly confined between the delinquent employee and the department concerned having due regard to confidentiality of the procedure.

10. In any event, since the petitioner has already assailed the order of termination which was passed on the recommendation of ICC, at this stage, there is no propriety in entertaining the petition against the impugned order. Needless to clarify that, the petitioner may avail the remedy of an appeal before the Competent Authority as provided under Regulation 85 of the Regulations.

11. Keeping open the said liberty the petition stands disposed.

12. The time spent by the petitioner in prosecuting the appeal before the Deputy Chief Labour Commissioner, Central Mumbai, shall be accounted for, if the issue of limitation arises for consideration.

[N. J. JAMADAR, J.]