



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9473 OF 2025**

Sardar Dastur School's Trust & Anr

..Petitioners

Versus

Ashish Dattatraya Indore & Ors

...Respondents

Mr. Karl Tamboly, with Amiesh Jadhav, Hormuz Mehta and Virgil
Branganza, i/b JSA, for the Petitioners.

Mr. Rahul S. Kadam, for Respondent No.1.

Ms. T.J. Kapre, AGP, for Respondent Nos. 2 & 3-State.

CORAM: N. J. JAMADAR, J.

DATED : 5th AUGUST 2025

ORAL ORDER :

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 24th April 2025 passed by the Presiding Officer, School Tribunal, Pune, in Appeal No. 1 of 2021 whereby, the School Tribunal has set aside an order of termination of Respondent No.1 dated 8th December 2020 and directed the reinstatement of Respondent No.1 in service.
3. In the wake of a complaint of sexual harassment of a co-employee, an inquiry was conducted by the Internal Complaints Committee under the provisions of Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act 2013.

4. The Internal Complaints Committee gave its report on 6th November 2020, and recommended the employer to take appropriate action, after considering the report submitted by the Internal Complaints Committee and the gravity of the misconduct and the applicability of the governing service rules.

5. It appears that the Petitioners served a copy of the said report on the Respondent No.1 on 11th November 2020. Alleging that there was no response to the said report, by the Respondent No.1, by an order dated 8th December 2020, the Respondent No.1 was dismissed from service with immediate effect.

6. Aggrieved, the Respondent No.1 preferred an Appeal before the School Tribunal. By the impugned order the learned Presiding Officer, School Tribunal, was persuaded to allow the Appeal observing, *inter alia*, that the inquiry conducted by the Internal Complaints Committee was vitiated as there was violation of principles of natural justice and an effective opportunity of hearing was not given to the Respondent No.1.

7. The School Tribunal, however, gave liberty to the Petitioners to hold a fresh inquiry against Respondent No.1 from the stage of evidence after informing the names of witnesses and supplying the documents to be used against Respondent No.1 in advance. The School Tribunal also directed the Petitioner to complete the inquiry on or before 14 August

2025. And the suspension of Respondent No.1 was continued till completion of fresh inquiry or 14 August 2025, whichever is earlier.

8. Mr. Tamboly, the learned Counsel for the Petitioners, submitted that in the light of the material on record, it cannot be said that Respondent No.1 was not given an effective opportunity of hearing. Respondent No.1 had participated in the inquiry before the Internal Complaints Committee. The Respondent No.1 has tendered the questions which he intended to put during the course of cross-examination of the complainant and the Internal Complaints Committee had obtained answers from the Complainant on the said questions. Thus, the Respondent No.1 was given an efficacious opportunity of hearing. The Tribunal thus could not have set aside the order of dismissal on the said count.

9. In opposition to this, Mr. Kadam, the learned Counsel for Respondent No.1, submitted that the Petitioner-employer had not conducted further inquiry as envisaged by Section 13 of the Act of 2013. Though the Internal Complaints Committee has recommend that the action be taken against the Respondent No.1, in accordance with the extant Service Rules, the employer straightaway terminated the Respondent No.1 on the basis of the Report of the Internal Complaints Committee. The said course of action is in teeth of the provisions contained in Section 13 of the Act of 2013.

10. To lend support to this submission, Mr. Kadam placed a strong reliance on the judgments of the Supreme Court in the cases of **Dr Vijaykumaran C.P.V. Vs Central University of Kerala & Ors.**¹ and **Nisha Priya Bhatia V/s. Union of India and Anr.**²

11. Mr. Tamboly attempted to wriggle out of the situation by submitting that after the report was submitted by Internal Complaints Committee, a copy of the report was served on the Respondent No.1 on 11th November 2020, calling upon him to give reply/comments in writing, if any. However, since no reply was given by the Respondent No.1, the Petitioner imposed the penalty of dismissal.

12. I am afraid, the mere service of the report of the Internal Complaints Committee tantamounts to an inquiry contemplated by the governing Service Rules. Section 13 of the Act, 2013 delineates the procedure to be adopted upon the completion of the inquiry by the Internal Committee or the Local Committee. It reads as under :

“13. **Inquiry Report** : - (1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the

1 (2020) 12 SCC 426.

2 (2020) 3 SCC 56

conclusion that the allegation against the Respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(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 :

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman :

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.”

13. In the facts of the case at hand, where the Internal Committee came to the conclusion that the allegations against Respondent No.1 have been proved, sub-Section (3) of Section 13 is attracted. Under the said sub-Section, the Internal Committee, upon returning affirmative findings, has to make recommendation to the employer (i) to take action for sexual harassment as misconduct in accordance with the governing service rules and (ii) to deduct a sum from the salary or wages of the Respondent to be paid to the aggrieved person.

14. In the case at hand, the Internal Committee, as envisaged by Section 13(3)(i) of the Act, 2013, indeed recommended the action for sexual harassment as misconduct in accordance with the provisions of the service rules. Thereafter, it was incumbent upon the employer to hold a regular inquiry for the stated misconduct in accordance with the governing service rules.

15. In the case of **Dr. Vijayakumaran C.P.V. (supra)**, the Supreme Court enunciated that the allegations to be inquired into by the Internal Committee or Local Committee being of sexual harassment defined in Section 2(n) read with Section 3 of the Act, 2013, and, being serious a matter bordering on criminality, it would certainly be not advisable to

confer the benefit on such employee by merely passing a simple order of termination. Such complaints ought to be taken to its logical end by not only initiating departmental or regular inquiry as per the service rules, but also followed by the other actions as per law. In such cases, a regular inquiry or departmental action as per service rules is also indispensable so as to enable the employee concerned to vindicate his position and establish his innocence.

16. In the case of **Nisha Priya Bhatia (supra)**, the Supreme Court emphasised the imperativeness of the second inquiry as per the governing rules. The observations of the Supreme Court in paragraph No.97 are instructive, and, hence, extracted below :

“97. Be that as it may, in our opinion, the petitioner seems to have confused two separate inquiries conducted under two separate dispensations as one cohesive process. The legal machinery to deal with the complaints of sexual harassment at workplace is well delineated by the enactment of The Sexual Harassment of Women at Workplace Act, 2013 (hereinafter “2013 Act”) and the Rules framed thereunder. There can be no departure whatsoever from the procedure prescribed under the 2013 Act and Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (for short, “the 2013 Rules”), either in matters of complaint or of inquiry thereunder. The sanctity of such procedure stands undisputed. The inquiry under the 2013 Act is a separate inquiry of a fact-finding nature. Post the conduct of a fact-finding

inquiry under the 2013 Act, the matter goes before the department for a departmental inquiry under the relevant departmental rules [CCS (CCA) Rules in the present case] and accordingly, action follows. The said departmental inquiry 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 concerned department having due regard to confidentiality of the procedure. The two inquiries cannot be mixed up with each other and similar procedural standards cannot be prescribed for both. In matters of departmental inquiries, prosecution, penalties, proceedings, action on inquiry report, appeals etc. in connection with the conduct of the government servants, the CCS (CCA) Rules operate as a self-contained code for any departmental action and unless an existing rule is challenged before this Court on permissible grounds, we think, it is unnecessary for this Court to dilate any further.”

17. In the instant case, the second stage inquiry as envisaged by Section 13 of the Act, 2013 was not at all instituted and conducted by the employer. In view of the aforesaid exposition of law, failure to hold such an inquiry vitiates the dismissal order. The fact that a copy of the report of the Internal Committee was served on the Respondent No.1 can under no circumstances be a substitute for an inquiry under the governing services rules as the obligation to furnish a copy of the inquiry report flows from the provisions contained in Section 13(1) of

the Act, 2013, which mandates that “such report be made available to the concerned parties”.

18. The order of dismissal, therefore, cannot be sustained on account of this serious defect in procedure which has caused grave prejudice to the Respondent No.1. However, this Court finds it rather difficult to appreciate the view of the School Tribunal that the very inquiry by the Internal Committee was vitiated on account of the failure to adhere to the principles of natural justice.

19. Indisputably, Respondent No.1 participated in the proceedings before the Internal Committee. Respondent No.1 was given an efficacious opportunity to put forth his defence. The Committee gave opportunity to the Respondent No.1 to submit the questions which he intended to put to the Complainant. The Internal Committee obtained answers of the Complainant in regard to those questions. In the totality of the circumstances, considered through the prism of the nature of the allegations, the procedure adopted by the Internal Committee cannot be said to be completely in negation of the principles of natural justice.

20. As this Court is persuaded to give an opportunity to the Petitioners to hold an inquiry in accordance with the governing service rules, the Court considers it appropriate to refrain from making an elaborate analysis of the material on record. Suffice to note that, in the wake of the allegations, the Respondent No.1 had given written

responses addressed to the complainant, before the employer and the Internal Committee. The Internal Committee was, thus, required to take a view of the matter on the basis of the entire material.

21. The allegations of breach of principles of natural justice are required to be viewed in the context of the nature of the inquiry, uncontroverted facts, the nature of the infractions and the possibility of real prejudice to the party, who complains of the violation of the principles of natural justice.

22. A profitable reference, in this context, can be made to the decision of the Supreme Court in the case of State of **Uttar Pradesh V/s. Sudhir Kumar Singh and Ors.**³, wherein after an elaborate analysis, the Supreme Court enunciated the principles which ought to guide the determination where the violation of principles of natural justice is alleged. The Supreme Court culled out the principles, as under :

“42. An analysis of the aforesaid judgments thus reveals:

42.1 Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2 Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be

3 (2021) 19 SCC 706

caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3 No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4 In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5 The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

23. Applying the aforesaid tests to the facts of the case at hand, this Court finds that the Respondent No.1, in the context of the nature of the allegations and the entirety of the material on record, had an efficacious opportunity of hearing. Moreover, remitting the matter at this stage to the Internal Committee, where the parties have moved in

their lives, including the complainant who has left employment of the Petitioners, would be singularly inadvisable.

24. I am, therefore, inclined to interfere with the impugned order to the extent it directs holding a fresh inquiry by the Internal Committee from the stage of recording of evidence. Instead, it would be in the fitness of things to give the Petitioner an opportunity to hold an inquiry in accordance with the service rules governing Respondent No.1 on the basis of the recommendations of the Internal Committee, within a period of 90 days from the date of uploading of this order.

25. As a necessary corollary, the suspension of Respondent No.1 is required to be continued for a period of 90 days from the date of uploading of this order or the completion of the inquiry and the order by the employer, whichever is earlier.

26. The Writ Petition, thus, deserves to be partly allowed.

27. Hence, the following order :

ORDER

- (i) The Writ Petition stands partly allowed.
- (ii) The impugned order stands quashed and set aside to the extent it directs holding of a fresh inquiry by the Internal Committee from the stage of recording of evidence.
- (iii) The Petitioner – employer, on the basis of the report of the Internal Committee, shall conduct a departmental inquiry, as envisaged

by Section 13(3)(i) of the Act, 2013, in accordance with the governing service rules, within a period of 90 days from the date of uploading of this order.

(iv) The Respondent No.1 shall remain suspended for a period of 90 days from the date of uploading of this order or till the completion of the inquiry and passing of the order by the employer, whichever is earlier.

(v) All contentions of all the parties are kept open for consideration in the said inquiry.

(vi) By way of abundant caution, it is clarified that the observations in this order are confined to determine the legality, propriety and correctness of the impugned order and the Departmental Inquiry Committee or the employer shall not be influenced by any of the observations made hereinabove in the conduct of the inquiry or passing the order, as the case may be.

(vii) The Writ Petition stands disposed.

[N. J. JAMADAR, J.]