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

\+ W.P.(C) 10132/2018

MS. SHAILY GAUR .....Petitioner

Through: Mr. Mohd. Irshad Hanif, Adovcate.

versus

UNION OF INDIA AND ANR. .....Respondents

Through: Mr. Vinay Mohan Sharma, Mr. Ravinder Kumar Yadav, Mr. Kanishak Yadav, Mr. Paras Juneja, Advocates for Respondent No. 2 (NIXI)

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **13.03.2026**

1. The Petitioner calls in question the termination order dated 13th July, 2018,3 issued by Respondent No. 2, National Internet Exchange of India ("*NIXI*"), whereby her employment was brought to an end with immediate effect. The prayer is for quashing of the said order, reinstatement with consequential benefits, and a further direction for constitution of an internal committee to inquire into the allegations of sexual harassment said to have been raised by the Petitioner.

2. Certain foundational facts are not in dispute. The appointment letter dated 19th May, 2006 placed the Petitioner on probation for three months and reserved NIXI a right to terminate during probation on one month's notice. The note dated 1st September, 2006 records that her probation case

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was placed for favourable consideration, and the Screening Committee Minutes of February 2007 show that she was recommended at the entry level of Group A. The confirmation letter dated 28th February, 2007 then confirmed her as Management Executive with effect from 1st March, 2007, as Grade A employee, and at the same time expressly reserved to the company a right to terminate her services on three months' prior notice, with a reciprocal stipulation for resignation by the employee. Later pay-revision letters continued to reiterate the same termination condition.

3. The controversy arose after the Petitioner had remained on maternity leave and earned leave. On 27th April, 2018, NIXI issued a communication styled as "*renewal of appointment*" on contractual basis until 31st March, 2019, along with terms and conditions. The Petitioner objected by email dated 3rd May, 2018, asserting that she was a permanent employee since 1st March, 2007 and that her case ought to have been processed for increment rather than extension of contract. Reminders followed. Thereafter, on 11th July, 2018, work allocation was altered and the Petitioner's functions were reduced to "*General Administration (office maintenance) excluding major non technical procurements*", with reporting to General Manager, Business Development ["*GM(BD)*"]. On 13th July, 2018, the Petitioner sent a compliance email referring to her earlier complaint about the conduct of GM(BD), and the same day the impugned termination order was issued. The order states that the employment contract stood terminated with immediate effect and that three months' basic salary in lieu and all due entitlements would be paid with reference to the offer letter dated 27th April, 2018.

Contentions

4. The Petitioner's case, in substance, is that she entered the service of

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NIXI on 19th May, 2006 as a Management Trainee and successfully completed the probation period. It is her contention that her performance was found satisfactory and, pursuant to the recommendation of the Screening Committee, her services were confirmed. According to her, from that point onward she formed part of the regular establishment of Respondent No. 2 and continued to discharge her functions in that capacity for more than a decade, during which period her pay and emoluments were revised from time to time in the ordinary course. She relies upon the contemporaneous service record, including the noting recording clearance of probation, the Screening Committee proceedings, and the confirmation letter, to submit that her status as a confirmed employee stood recognised long before the dispute in question arose.

5. The Petitioner further contends that NIXI is not an ordinary private employer but an entity functioning under the administrative control of the Ministry of Electronics and Information Technology and entrusted with functions of public importance relating to the internet infrastructure of the country, including management of the "*.IN*" registry. On that basis, it is urged that NIXI answers the description of "State" or an instrumentality of the State within the meaning of Article 12 of the Constitution and is therefore amenable to the writ jurisdiction of this Court.

6. The Petitioner also places reliance on the Human Resource Policy Manual and Service Rules of NIXI, which, according to her, govern the conditions of service of employees of NIXI. She points out that the policy contemplates a probationary period for new recruits, after which the employment stands confirmed upon satisfactory completion, and further provides guidelines for separation of employment, including the requirement

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of written notice and the involvement of the HR department and departmental heads in the process. The Petitioner submits that these provisions reflect a structured service framework which, according to her, was not adhered to in the present case.

7. On facts, the Petitioner alleges that during her employment she was subjected to objectionable and unwelcome conduct by the GM(BD). She states that she resisted such conduct and raised complaints in that regard before the management. According to her, the matter did not receive due attention and instead resulted in hostility from the said officer as well as the CEO of NIXI. She further states that she proceeded on maternity leave with effect from 1st September, 2017 and thereafter remained on earned leave until 1st July, 2018 on account of the health condition of her child.

8. The Petitioner asserts that while she was still on leave, NIXI issued a communication dated 27th April, 2018 treating her engagement as contractual and proposing an extension of such engagement until 31st March, 2019, along with terms and conditions requiring her acceptance. She objected to the said communication by email dated 3rd May, 2018 and subsequent reminders, asserting that she had long since been confirmed as a regular employee and that her services could not be retrospectively converted into a contractual engagement after more than a decade of confirmed service.

9. The Petitioner states that she resumed duties on 2nd July, 2018. Upon rejoining, she claims to have noticed certain irregularities in the functioning of the office, including alleged irregular recruitment and financial discrepancies, which she states were brought to the notice of senior management. She also reiterates that the conduct of the GM(BD) continued

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to cause her concern and that she addressed communications complaining of such behaviour. According to her, instead of addressing these issues, the management first withdrew the HR and Administrative responsibilities earlier entrusted to her, placed her under the reporting control of the officer against whom she had complained, and shortly thereafter issued the impugned order dated 13th July, 2018 terminating her services with immediate effect.

10. On this foundation, the Petitioner contends that the impugned action is arbitrary, *mala fide* and vitiated by victimisation. She submits that after having been confirmed in service and having served for over a decade, her employment could not lawfully be brought to an end in such abrupt fashion without adherence either to the service framework reflected in the employer's own HR Policy or to the basic requirements of fairness and natural justice. She further contends that the description of her engagement as contractual in the termination order is incorrect and that the termination was in reality a retaliatory measure following her objections to the contractual communication and her complaints regarding sexual harassment and other irregularities.

11. In law, the Petitioner invokes Articles 12, 14, 16 and 311 of the Constitution and contends that NIXI, being an instrumentality of the State, is bound to act in a fair, reasonable and non-arbitrary manner. It is submitted that the impugned termination, having been effected without notice, reasons, or opportunity of hearing, is violative of the principles of natural justice. The Petitioner further asserts that, she had a legitimate expectation of being treated in accordance with the service framework governing employees of NIXI. Also, once complaints of sexual harassment had been raised, NIXI

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was under a statutory obligation to address the same in accordance with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013[1], rather than place the Petitioner under the control of the officer against whom the complaint was directed and thereafter terminate her services. Reliance is also placed on ***Central Inland Water Transport Corporation Ltd. & Anr. v. Brojo Nath Ganguly & Anr.***[2] to contend that a termination clause operating in an arbitrary or unconscionable manner cannot be enforced where public law principles are attracted.

12. NIXI contests the writ at the threshold. It pleads that it is a Section 25 company limited by guarantee, not for profit, without share capital, and not funded by budgetary support of the Government. It is accordingly contended that NIXI is neither "*State*" nor an instrumentality of the State within the meaning of Article 12 and that the present writ petition is not maintainable.

13. In its written submissions and reply, NIXI relies on the appointment letter, confirmation letter, subsequent revision letters, and the communication dated 27th April, 2018 to contend that the Petitioner's employment was governed by express contractual stipulations permitting termination upon notice or payment in lieu thereof, and that the impugned termination was effected in accordance with those terms with payment of three months' salary and due entitlements. NIXI also denies the allegations of sexual harassment, victimisation, financial irregularity and *mala fides*, and states that the change in work allocation was merely an administrative measure. It further relies on decisions such as ***K.K. Saksena v. International***

[1] "POSH Act"
[2] (1986) 3 SCC 156.

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Commission on Irrigation and Drainage & Ors.[3] and ***Binny Ltd. & Anr. v. V. Sadasivan & Ors.***[4] to contend that a writ under Article 226 would not ordinarily lie in matters arising out of private contractual employment lacking a public law element.

14. Three issues arise for determination. First, whether the action impugned in the present case is open to judicial review under Article 226. Second, if it is, whether the termination order dated 13th July, 2018 is vitiated by arbitrariness, unfairness, *mala fides*, or any other public law infirmity notwithstanding the termination clauses contained in the Petitioner's service record. Third, whether any further direction survives for consideration in relation to the Petitioner's complaint of sexual harassment.

Analysis

15. At the outset, this Court proceeds on the footing most favourable to the Petitioner, namely, that NIXI is amenable to writ jurisdiction and that its action can be tested on the anvil of Article 14. It is settled that the mere presence of a contract does not, by itself, oust the writ jurisdiction of this Court where the impugned action is that of the State or of an authority subject to public law obligations. State action does not become immune from scrutiny merely because it arises from an underlying contractual dispute. The requirement of fairness, reasonableness and non-arbitrariness continues to apply.[5] At the same time, that proposition must be kept within its proper bounds. A writ may lie to test whether the impugned action is arbitrary or unfair. It does not follow that every dispute arising out of a

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[3] (2015) 4 SCC 670.
[4] (2005) 6 SCC 657.
[5] See: ***ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.*** (2004) 3 SCC 553; ***Shrilekha Vidyarthi (Kumari) v. State of U.P.*** (1991) 1 SCC 212.

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contract of employment must necessarily result in judicial interdiction, much less reinstatement.

16. The real question, therefore, is not whether this petition can be entertained at all, but whether the Petitioner has been able to demonstrate a public law infirmity in the impugned action. On that issue, the Court must examine the nature of the employment, the governing service documents, the character of the termination, and the extent to which the Petitioner's challenge discloses something more than a complaint that the contract ought not to have been brought to an end. The decisions in ***K.K. Saksena*** and ***Binny Ltd.*** remain instructive in this area. They emphasise that even where a writ petition is maintainable against a body performing public functions, the Court must determine whether the impugned action lies in the domain of public law as distinguished from private law. Judicial review under Article 226 is concerned with the public law element of the decision, and not with enforcing purely contractual obligations or every private-law incident of a contract of service as though it were specifically enforceable in writ proceedings.

17. Tested on that standard, the Petitioner's case does not advance beyond the realm of a contractual service dispute. The record does show that she had been confirmed in service and had continued for several years thereafter. However, the same record also shows that the confirmation letter, as well as the later pay revision letters, preserved in favour of NIXI an express right to terminate the employment upon notice or payment in lieu thereof. The Petitioner has not been able to show that she held a civil post under the Union or the State, or that her tenure was protected by any statutory service rules having overriding force. The dispute, therefore, remains one arising out

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of a contract of service. Once the Court examines the impugned action on merits and finds no manifest arbitrariness, punitive camouflage, or other public law vice sufficient to displace the contractual framework, the Petitioner cannot seek reinstatement merely by invoking Article 14.

18. Even on merits, the Petitioner cannot get past the service record. The confirmation letter dated 28th February, 2007 no doubt confirmed her service and placed her in Grade A. That, however, did not confer a protected tenure immune from termination upon notice or payment in lieu thereof. The letter of confirmation itself expressly reserved NIXI the right to terminate the employment on three months' prior notice, and the later pay revision letters reiterated the same condition. The Petitioner's submission that confirmation and long continuance in service had the effect of overriding that stipulation cannot be accepted. Confirmation in these circumstances meant no more than that probation had ended and that she continued in the regular pay structure of the organisation. It did not nullify the express term governing termination.

19. The HR Policy Manual and Service Rules do not improve the Petitioner's position. Far from overriding the appointment documents, the manual itself expressly provides that "*if an employee's appointment order or contract letter mentions something specific which differs from what is mentioned in this document, then that specific clause will prevail*". The manual further clarifies that its provisions would apply only where the appointment or contract documents are silent. Once that primacy clause is kept in view, the Petitioner cannot rely upon selected portions of the manual to nullify the express termination provisions incorporated in her appointment and subsequent service documents. The manual may regulate internal

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administrative processes, but it does not invalidate contractual stipulations governing the tenure of employment.

20. The provisions of the manual relating to separation also do not advance the Petitioner's case. The section dealing with employees "*Leaving NIXI*" itself contemplates termination of employment with notice or salary in lieu thereof, and refers to different notice periods depending on the stage and circumstances of service, including a shorter notice period during probation and a longer notice period after confirmation. In any event, the manual does not create a statutory tenure or confer protection against termination independent of the terms contained in the appointment documents. Once the confirmation letter expressly reserves in favour of the employer a right to terminate the employment upon notice or payment in lieu thereof, the Petitioner cannot find a claim for reinstatement merely by pointing to internal policy dealing with managerial processes surrounding separation.

21. The Petitioner urged that the impugned termination was not an ordinary contractual severance, but an act of *mala fide* retaliation. According to her, it followed complaints of sexual harassment against the GM(BD) and her objections to irregularities in the functioning of the office. These allegations cannot be brushed aside lightly. The record does show that on 6th July, 2018, the Petitioner wrote that the conduct of GM (BD) was "*intimidating and harassing, and beyond acceptable professional boundaries*". It also shows that on 13th July, 2018, while responding to the altered reporting structure, she expressly referred to the objectionable behaviour of GM (BD), protested against being placed under him, and reiterated that she had already brought the matter to the notice of the CEO.

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The record therefore does show that the grievance had in fact been voiced by the Petitioner before and around the time the impugned order came to be issued.

22. That, however, is not the same thing as a concluded finding that the termination stood proved to be punitive, retaliatory, or motivated by victimisation. NIXI has squarely denied the allegations of sexual harassment, denied any retaliatory intent, and denied that the Petitioner had raised genuine issues of irregularity. It has also maintained that the alteration in work allocation was administrative in character and that the termination was effected strictly in terms of the governing service documents. On the material available, disputed questions of motive, harassment, retaliation, and alleged whistleblower reprisal cannot be conclusively tried. Those issues would require evidentiary examination. Writ jurisdiction is not appropriate for returning definitive findings on such contested questions of fact where the foundational assertions themselves are in dispute.

23. The Petitioner's reliance on Article 311 is misplaced. Article 311 protects persons who hold civil posts under the Union or a State. No material on this record establishes that the Petitioner held such a civil post. Service under a company incorporated under the Companies Act does not become service under the Union merely because governmental elements may be visible in the company's structure or supervision. NIXI's pleadings also specifically dispute that position. In any event, the present record falls well short of what would be required to attract the constitutional protection available to civil servants.

24. Insofar as the prayer relating to constitution of an Internal Committee is concerned, that aspect has, during the pendency of proceedings, been

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taken care of. The Petitioner has placed before this Court the order dated 8th January, 2026 passed in W.P.(C) 1013/2021. That order records that Respondent No. 2 had already reconstituted the ICC by office order dated 29th September, 2021.

25. In view of the aforesaid subsequent development, the specific relief sought in the present petition for a mandamus directing constitution of the Internal Committee does not survive for independent adjudication. The issue of constitution and reconstitution of the ICC has already been carried to this Court in separate proceedings and stands dealt with in the above referred proceedings. At the same time, that later order cannot be read as returning any finding that the allegations of sexual harassment stand proved, or that the impugned termination must, for that reason alone, be treated as retaliatory. The present writ petition must therefore be determined on its own footing so far as the challenge to the termination order is concerned.

26. The reliance on ***Central Inland Water Transport*** does not carry the Petitioner's case to the relief of reinstatement. That decision arose in the context of a government company held to be an instrumentality of the State, where a service rule conferred an unguided power to terminate the services of permanent employees on notice without assigning reasons. The Supreme Court struck down that provision as unconscionable and opposed to public policy, having regard to the inequality of bargaining power between the employer and the employee and the absence of any procedural safeguards. ***Binny Ltd.*** explains that principles of that nature, though applicable in an appropriate public law setting, cannot be mechanically extended to every contract of employment. Once this Court finds that the dispute is, in substance, one concerning enforcement of a contract of service and does not

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fall within a recognised public law exception warranting reinstatement in writ jurisdiction, the said line of authority cannot be invoked to secure the relief sought.

27. There is also no substance in the submission that because no reason was assigned and no show-cause notice preceded the impugned order, the termination must for that reason alone fall. That argument would have force where the employer purported to punish for misconduct or to inflict a civil consequence in the exercise of public power requiring observance of *audi alteram partem*. Here, however, the order on its face is a simpliciter termination invoking the contractual right to end the employment on payment in lieu.

28. The Petitioner's challenge to the communication dated 27th April, 2018, whereby her engagement was sought to be treated as contractual up to 31st March, 2019, also does not carry the matter further. She did object to that communication and maintained that she had long since stood confirmed as a regular employee. That objection does expose an inconsistency in NIXI's narrative, having regard to the earlier confirmation and the subsequent service record. Even so, the point is not decisive for the present controversy. Quite apart from the communication dated 27th April, 2018, the confirmation letter and the later pay revision letters preserved in favour of NIXI an express right to terminate the employment upon notice or payment in lieu thereof. The validity of the impugned termination, therefore, does not turn on whether the communication dated 27th April, 2018 was correctly issued or formally accepted by the petitioner.

Conclusion

29. For the reasons aforesaid, the challenge to the termination order fails.

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The impugned order dated 13th July, 2018 does not warrant interference in exercise of jurisdiction under Article 226. The prayer for reinstatement with consequential benefits is, accordingly, declined.

30. Insofar as the prayer relating to constitution of the Internal Complaints Committee is concerned, the same does not survive for independent consideration in view of the subsequent order dated 8th January, 2026 passed in W.P.(C) 1013/2021 and the directions issued therein.

31. The writ petition is, accordingly, dismissed.

32. It is clarified that dismissal of the present writ petition shall not preclude the Petitioner from availing such remedies as may otherwise be open to her in law, whether in relation to any claim arising out of the contract of employment before the competent civil, labour or other forum, or in relation to any complaint or proceeding maintainable in accordance with law concerning the allegations of sexual harassment. All rights and contentions in that regard are left open.

SANJEEV NARULA, J

MARCH 13, 2026/ab

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