

IMPORTANCE OF CONCILIATION IN SEXUAL HARASSMENT PROCEEDINGS

INTRODUCTION:

In an order passed on 8th November, 2024 in the case of Dr. Kali Charna Sabat v. Union of India through National Institute of Technology & Others (hereinafter referred to as the “**Case**”), the Madhya Pradesh High Court bench of Justice Sanjay Dwivedi (the “**Court**”) held *inter alia* that an Internal Committee (“**IC**”) or Local Committee (“**LC**”) (as applicable) constituted as per the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”) is obligated to attempt to settle a complaint brought before it by way of conciliation. The Court further stresses the importance of conducting sexual harassment inquiries in accordance with the principles of natural justice, as required under the POSH Act, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (“**POSH Rules**”) and the applicable service rules (if any).

BACKGROUND:

Dr. Kali Charna Sabat (“**Petitioner**”) was the Assistant Professor in the Department of Materials and Metallurgical Engineering of Maulana Azad National Institute of Technology Bhopal (“**Institute**”). In the writ petition filed by the Petitioner (“**Petition**”), the Petitioner *inter alia* had alleged that he had been wrongfully suspended and eventually terminated from his service at the Institution basis an investigation conducted by the Institution’s IC which was not only in violation of the POSH Act, POSH Rules and the services rules but also in violation of the principles of natural justice. The Petitioner also alleged that the sexual harassment complaint filed against him was malicious and was not in compliance with the requirements laid down under the POSH Act.

In this Petition, the Petitioner had also alleged that the sexual harassment complaints were false and that these were not filed by the alleged aggrieved women but was filed by certain male students under the influence of one Dr. C. Sasikumar (“**Respondent 3**”) who apparently had personal issues with the Petitioner. Denying all of the Petitioner’s claims, the respondents also raised a preliminary objection that the Petition filed by the Petitioner before the Court was not maintainable under Article 226 of the Constitution of India (“**Constitution**”) as Section 27 of the National Institute of Technology Act, 2007 (“**NIT Act**”) precludes the same. Section 27 of the NIT Act basically states that any dispute arising out of a contract between the Institute and any of its employees shall, at the request of the employee concerned or at the instance of the Institute be referred to a Tribunal of Arbitration.

ISSUES BEFORE THE COURT:

Basis the submissions made before the Court, the Court framed the following issues:

- i. Whether the Petition is maintainable before the Court?
- ii. Whether inquiry conducted by the respondents against the Petitioner was in accordance with law and the procedure prescribed therein?
- iii. During the course of inquiry whether the inquiry committee followed the principles of natural justice or not?
- iv. Whether the inquiry is vitiated on the ground that the same has not been done in accordance with law and the manner in which it should have been done as per law and it deserves to be set aside as principles of natural justice has not been followed?

ANALYSIS OF THE COURT:

On the issue of maintainability of the Petition, the Court held that the Petition was maintainable because Section 27 of the NIT Act does not preclude the Petitioner from availing the remedy available under Article 226 of the Constitution, but it only provides a choice to the employee to refer a dispute to the arbitration tribunal.

On the second and the third issue, the Court held that the Institution's IC failed in its mandatory obligation to attempt to reconcile matters between the aggrieved woman and the Petitioner in accordance with Section 10 of the POSH Act. Observing that the inquiry report had been prepared and submitted by the Institution's IC without giving hearing the Petitioner's in violation of the POSH Act and the POSH Rules and that he had not been given the opportunity to cross-examine the witnesses, the inquiry conducted by the Institution's IC was not in accordance with the POSH Act and the POSH Rules and that it violated the principles of natural justice.

On the last issue, basis the observations made by the Court, including that the Institution's IC had prepared their report solely basis complaint filed and reply submitted by the respondents, the Court held that inquiry was conducted in violation of the principles of natural justice and in a manner contrary the POSH Act, POSH Rules and the Central Civil Services (Classification, Control & Appeal) Rules, 1965, which governed the Petitioner. On this, the Court allowed the Petition filed by the Petitioner as set aside the suspension and termination orders passed by the Institution against the Petitioner.

CONCLUSION:

The Court in this case *inter alia* reiterated the importance of strictly abiding by the provisions of the POSH Act and the POSH Rules and demonstrated the perfect example of how non-compliance of these provisions would impact the legality and enforceability of the IC's inquiry report.

A critical element testing the soundness of an inquiry conducted by the Institution's IC was whether the Institution's IC even attempted to reconcile the matter between the Petitioner and the aggrieved women. Through this order, the Court emphasized the obligation on the ICs and LCs to attempt to settle the issue by conducting conciliation proceedings before conducting an inquiry into the complaint filed by an aggrieved woman under Section 11 of the POSH Act. However, it is imperative to note that if parties settle the issue via conciliation, then no further inquiry can be conducted by the IC/LC and that monetary settlements cannot form the basis of such conciliation.

Lastly, when conducting the inquiry, it is imperative to follow the principles of natural justice, which include allowing parties an opportunity to be heard and permitting cross examination of witnesses.

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