

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 02ND DAY OF DECEMBER 2020 / 11TH AGRAHAYANA,
1942

WP (C) .No. 9219 OF 2020 (B)

PETITIONER:

DR. PRASAD PANNIAN
AGED 45 YEARS
S/O. JAYARAJAN.P. ASSOCIATE PROFESSOR,
DEPARTMENT OF ENGLISH AND COMPARATIVE
LITERATURE, CENTRAL UNIVERSITY OF KERALA,
TEJASWINI HILLS, PERIYA (P.O.), KASARAGOD 671
316. RESIDING AT SAROJAM, PERIYE BAZAR, P.O.
PERIYE, KASARAGOD 671 320.

BY ADV. SMT. SURYA BINOY

RESPONDENTS:

- 1 THE CENTRAL UNIVERSITY OF KERALA
REPRESENTED BY ITS REGISTRAR, TEJASWINI HILLS
PERIYA (P.O.), KASARAGOD 671 316.
- 2 THE VICE CHANCELLOR.,
CENTRAL UNIVERSITY OF KERALA,
TEJASWINI HILLS PERIYA (P.O.), KASARAGOD 671
316.

- 3 INTERNAL COMMITTEE CONSTITUTED UNDER
SECTION 4 OF THE SEXUAL HARASSMENT OF WOMEN AT
WORKPLACE (PREVENTION, PROHIBITION AND
REDRESSAL) ACT, 2013,
CENTRAL UNIVERSITY OF KERALA, REPRESENTED BY ITS
PRESIDING OFFICER,
TEJASWINI HILLS PERIYA (P.O.), KASARAGOD 671
316.
- 4 THE PRESIDING OFFICER,
INTERNAL COMMITTEE CONSTITUTED UNDER
SECTION 4 OF THE SEXUAL HARASSMENT OF WOMEN AT
WORKPLACE (PREVENTION, PROHIBITION AND
REDRESSAL) ACT, 2013,
CENTRAL UNIVERSITY OF KERALA, REPRESENTED BY ITS
CHAIRPERSON,
TEJASWINI HILLS PERIYA (P.O.), KASARAGOD 671
316.
- 5 PROF.G. GOPA KUMAR,
S/O. T P GOPALA PILLAI, VICE CHANCELLOR,
CENTRAL UNIVERSITY OF KERALA,
TEJASWINI HILLS PERIYA (P.O.), KASARAGOD 671
316.
RESIDING AT
GANGATHRI TC 4/449 (1), GANGOTHRI, AMBALAMUKKU,
KAWDIYAR P.O. THIRUVANANTHAPURAM 695 003.
- 6 DR. K. JAYAPRASAD,
AGED 59 YEARS
S/O. KUTTAPPAN, PRO-VICE CHANCELLOR,
CENTRAL UNIVERSITY OF KERALA,
TEJASWINI HILLS PERIYA (P.O.), KASARAGOD 671
316.

RESIDING AT
NARAYANEEYAM, B6 AMRITANAGAR, KAIMANAM,
PAPPANAMCODE, THIRUVANANTHAPURAM 18.

7 DR. VELLIKKEEL RAGHAVAN,
ASSISTANT PROFESSOR, DEPARTMENT OF ENGLISH AND
COMMEMORATIVE LITERATURE, CENTRAL UNIVERSITY OF
KERALA, TEJASWINI HILLS, PERIYE (P.O.),
KASARAGOD 671 316.

8 MS. JAINCY JOHN,
RESEARCH STUDENT, DEPARTMENT OF ENGLISH AND
COMPARATIVE LITERATURE CENTRAL UNIVERSITY OF
KERALA, PERIYE (P.O.), KASARAGOD 671 316.

R1-4 BY SRI.V.SAJITH KUMAR, SC, CENTRAL
UNIVERSITY OF KERALA

R7 BY ADV. SHRI.GODWIN JOSEPH

R8 BY ADV. SMT.REKHA VASUDEVAN

R8 BY ADV. SMT.V.DEEPA

R8 BY ADV. SRI.B.AKSHITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN HEARD ON
24.11.2020, ALONG WITH WP(C).10370/2020(U), THE COURT ON
02.12.2020 PASSED DELIVERED THE FOLLOWING:

WP(C) Nos.9219 & 10370/2020

-:4:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 02ND DAY OF DECEMBER 2020/11TH AGRAHAYANA,
1942

WP (C) .No.10370 OF 2020 (U)

PETITIONER:

DR. PRASAD PANNIAN
AGED 45 YEARS
S/O. JAYARAJAN P, ASSOCIATE PROFESSOR,
DEPARTMENT OF ENGLISH AND COMPARATIVE
LITERATURE, CENTRAL UNIVERSITY OF KERALA,
TEJASWINI HILLS, PERIYA (PO), KASARAGOD 671 316
RESIDING AT SAROJAM, PERIYE BAZAR, P.O PERIYE,
KASARAGOD 671 320

BY ADV. SMT. SURYA BINOY

RESPONDENTS:

- 1 THE CENTRAL UNIVERSITY OF KERALA
REPRESENTED BY ITS REGISTRAR,
TEJASWINI HILLS, PERIYE P.O, KASARAGOD 671 316
- 2 THE VICE CHANCELLOR,
CENTRAL UNIVERSITY OF KERALA, TEJASWINI HILLS,
PERIYE (PO)
KASARAGOD 671 316

WP(C) Nos.9219 & 10370/2020

-:5:-

3 REGISTRAR,
CENTRAL UNIVERSITY OF KERALA, TEJASWINI HILLS,
PERIYE (PO), KASARAGOD 671 316

R1-3 BY SRI.V.SAJITH KUMAR, SC, CENTRAL
UNIVERSITY OF KERALA

THIS WRIT PETITION (CIVIL) HAVING BEEN HEARD ON
24.11.2020, ALONG WITH WP(C).9219/2020(B), THE COURT ON
02.12.2020 PASSED THE FOLLOWING:

"C.R."

O R D E R

Dated this the 2nd day of December, 2020

Shaffique, J.

These cases had been referred to us based on a reference order dated 15/9/2020. The substantial issue raised in the writ petitions was whether a complaint given by the 8th respondent in WP(C) No. 9219/2020 can be the basis of an enquiry under the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'the 2013 Act').

2. The writ petitioner contended that the allegations in the complaint given by the 8th respondent did not disclose any form of sexual harassment coming within the purview of the 2013 Act. Reference was also placed to the judgment of the learned Single Judge of this Court in **Anil Rajagopal v. State of Kerala and Others** [2017 (5) KHC 217], wherein the learned Single Judge after referring to the definition of 'sexual harassment' under Section 2(n) of the 2013 Act and S.3(2) held at paragraph 9

as under:

"9. As already noticed, there is no sexual harassment complained of and a solitary allegation of any or all of the acts enumerated under S.3(2), cannot constitute an offence under the Act of 2013. Any such act should be connected with and in relation to any act or behaviour of sexual harassment. This Court also does not find any allegation of a promise, threat or an offensive or hostile work environment or a humiliating treatment against the 6th respondent, from the complaint; which is in connection with an act or behaviour of sexual harassment. There is no allegation that the purported harassment was intended at sexual exploitation of the complainant; which can only be if there is any allegation as such of a sexual offence."

Learned Single Judge while considering the above matter however did not agree with the above proposition. It was held at paragraphs 6, 7 and 8 of the reference order as under:-

*"6. I am of the view that the definition given in Section 2 starts with "**unless the context otherwise requires**". Clause (n) provides that sexual harassment will **include** the acts and behaviour mentioned therein. Therefore, the act or behaviour provided therein is not exhaustive; thus it is an inclusive definition. Section 3 adds to some more circumstances which can be termed as sexual harassment. Both those provisions require to be construed having regard to the legislative intent behind the Act 2013. It is relevant to note that the Apex Court in the judgment in *Bharat Coking Coal Ltd. v. Annapurna Construction: (2008)**

6 SCC 732, while construing the definition of the term "court" in the Arbitration and Conciliation Act, 1996, which was also an inclusive definition as in the 2013 Act, reiterating the judgments in *State of Maharashtra v Indian Medical Assn*:(2002) 1 SCC 589 and *Pandey & Co. Builders (P) Ltd. v. State of Bihar* :(2007) 1 SCC 467, held that in given cases where the definition clause is prefaced by the words like 'unless the context otherwise requires' it can be opined that the legislature intended a different meaning. The aforesaid proposition was approved by a larger Bench of the Apex Court in *State of Jharkhand v. Hindustan Construction Co. Ltd.*: (2018) 2 SCC 602.

7.It is also relevant to note the judgment in *Tata Power Co. Ltd. v. Reliance Energy Ltd.*: (2009) 16 SCC 659 where the Apex Court construed the definition clause in Section 2 of the Electricity Act, 2003, which prefixed the words "unless the context otherwise requires". It was held that the meaning should be assigned "subject to the context". In para.97 of the judgment it was held as follows:

"97. However when the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context. The legal principle is that all statutory definitions have to be read subject to the qualification variously expressed in the definition clause which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have some what different meaning in different sections of the Act depending upon the subject or context. That is why all

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definitions in statutes generally begin with the qualifying words "unless there is anything repugnant to the subject or context". (See : Whirlpool Corpn. v. Registrar of Trade Marks: (1998) 8 SCC 1, Garhwal Mandal Vikas Nigam Ltd. v. Krishna Travel Agency: (2008) 6 SCC 741 and National Insurance Co. Ltd. v Deepa v. devi (2008) 1 SCC 414) xx"

The intent of the Act 2013, as seen from its statement of object and reasons, is to ensure an equitable, safe, secure and enabling environment for women to work with dignity, free from all sorts of sexual harassment and thereby to encourage women's participation in work, in recognition of their fundamental right under Article 19(1)(g) of the Constitution of India. It would also show that the same is enacted in discharge of its obligation and commitment under Article 11 of the Convention of Elimination of All forms of Discrimination (CEDAW) which mandates the parties to it to take all measures to eliminate all forms of discrimination against women and also in the light of the directions of the Apex Court in Visakha v. State of Rajasthan & others: (1997) 7 SCC 323. Any interference with the work of a woman employee or any act or behaviour which creates an intimidating or offensive work environment or even a humiliating treatment which is likely to affect her health or safety also amounts to discrimination against women which is liable to be eliminated and should constitute implicit sexual harassment. It is equally applicable to the women students/teachers in higher educations, which are governed by the UGC Regulations, 2015.

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*8. Therefore, I am of the view that the term 'sexual harassment' is to be construed in the light of the provisions contained in Section 2(n) read with Section 3 of Act 2013 as well as the provisions contained in Regulation 2(k) of the UGC Regulations, 2015 having regard to the circumstances arising in each case and a strict construction of an inclusive definition even when the circumstances mentioned in sub clause (i) to (v) of Section 3(2)/subclause (1) to (e) of Regulations 2(k)(ii) are available would defeat the very purpose of the Act. Therefore, I am of the view that the judgment in **Anil Rajagopal's** case (supra) to the extent it construed the provisions contained in Sections 2(n) and 3(2) of the Act, 2013 requires reconsideration."*

3. We heard the learned senior counsel Sri.S.Sreekumar appearing on behalf of the writ petitioner duly assisted by Smt.Surya Binoy. Senior counsel argued that the provisions of the 2013 Act cannot be given a wide interpretation as envisaged by the learned Single Judge in the reference order. It is pointed out that harassment can be meted out against an individual in different forms and only in instances where the harassment has an element of sexual advance in some form, it becomes a sexual harassment. A mere difference in sex between two individuals cannot give rise to a sexual harassment even though there might be harassment. To that extent, the learned Single Judge was not

justified in taking a view different from what is held in **Anil Rajagopal's case** (supra). That apart, it is argued that the provisions of the 2013 Act have to be given a strict interpretation since any action pursuant to a complaint of sexual harassment will affect the reputation and integrity of the opposite sex and such acts may lead to penal consequence as well.

4. We heard Sri.Sajith Kumar, learned standing counsel appearing on behalf of the University. Learned counsel supported the view taken by the learned Single Judge in the reference order. He also placed reliance on the judgment of the Apex Court in **Nisha Priya Bhatia v. Union of India and Others** [2020 (3) SCT 455 (SC)] wherein the Apex Court considered the question relating to sexual harassment in workplace and held at paragraph 102 as under:-

"102. The scheme of the 2013 Act, Vishaka Guidelines and Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) predicates that a non-hostile working environment is the basic limb of a dignified employment. The approach of law as regards the cases of sexual harassment at workplace is not confined to cases of actual commission of acts of harassment, but also covers situations wherein the woman employee is subjected to prejudice, hostility, discriminatory attitude and humiliation in

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day to day functioning at the workplace. Taking any other view would defeat the purpose of the law. A priori, when inaction or procrastination (intentionally or otherwise) is meted out in response to the attempt of setting the legal machinery in motion, what is put to peril is not just the individual cries for the assistance of law but also the foundational tenets of a society governed by the Rule of law, thereby threatening the larger public interests. The denial of timely inquiry and by a competent forum, inevitably results in denial of justice and violation of fundamental right. The factual matrix of the present case is replete with lack of sensitivity on the part of Secretary (R) qua the complaint of sexual harassment. To wit, time taken to process the stated complaint and improper constitution of the first Complaints Committee (intended or unintended) in violation of the Vishaka Guidelines, constitute an appalling conglomeration of undignified treatment and violation of the fundamental rights of the Petitioner, more particularly Articles 14 and 21 of the Constitution.”

5. We heard the learned counsel Smt.Rekha Vasudevan appearing on behalf of the 8th respondent. Learned counsel submits that sexual harassment can take different forms. First of all, definition of sexual harassment in the 2013 Act itself is not exhaustive, whereas it is inclusive in nature. Therefore, any form of sexual intimidation or discrimination or behaviour which tends to attract harassment only on account of difference in sex can

also be characterized as sexual harassment. She fully supports the view taken by the learned Single Judge in the reference order. She also placed before us judgment of a learned Single Judge of the Delhi High Court in ***Dr.Punita K.Sodhi v. Union of India and Others*** [WP(C) No. 367/2009 & CMs 828, 11426/2009]. In that judgment, the learned Single Judge of the Delhi High Court after a detailed analysis of the legal principles in the matter relating to sexual harassment held at paragraphs 79 and 80 as under:-

“79. The above decisions help in appreciating that a complaint of sexual harassment and sex based discrimination requires the body entrusted with the investigation of such complaint to undertake its task with the correct approach and sensitivity. If the entire complaint of the Petitioner is examined in the light of the above discussion, it is clear that the inquiry cannot be limited to the complaint of the Petitioner that Dr. Malik attempted to touch her at wrong places, while in the operation theatre in 2001. Incidents of sexual harassment ought not to be viewed in isolation. The other parts of the complaint are as relevant in determining whether there was any persistent conduct of the perpetrator which could be termed as sex based discrimination or harassment over a prolonged period. The humiliation faced by a victim of sexual harassment could remain with the victim. It is revisited and compounded when the victim and perpetrator have to continue to work in the same establishment. The imbalance in the power equation

between the perpetrator and the victim could exacerbate the problem. The impact of such incidents on the continuing working relationship of the perpetrator and the victim will also have to be considered in examining whether the complaint made of sexual harassment, even if belated, is justified. In a complaint of sexual harassment and sex based harassment or discrimination, which persists over a length of time, the defence of limitation or laches may not find relevance.

80. The Committee also appears to have overlooked the numerous other instances cited by the Petitioner in her complaint which partake of sex based harassment and discrimination. While sexual harassment would be a specie of sex based discrimination, the latter could encompass a whole range of commissions and omissions, not restricted to acts that partake of express unacceptable sexual acts or innuendoes. CEDAW too recognises that harassment can be 'sex based' and take various forms. The use of abusive and abrasive language and a certain imputation of the competence of a person only because such person is of a certain gender are matters that would be covered under the expression 'sex based' discrimination. For instance, the specific case of the Petitioner is that the language used by Dr. Malik in the memos and letters issued by him, questioning the integrity and competence of the Petitioner is plainly abusive. This has not been considered at all by the Committee. To borrow the articulation of the Supreme Court of Canada in Janzen, discrimination on the basis of sex may be defined as practices or attitudes which have the effect of limiting the conditions of employment of, or the employment opportunities available to, employees on the basis of a characteristic related to gender. It

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is important for committees dealing with complaints of sexual harassment to understand the above dimensions of sex based discrimination at the work place and not narrowly focus only on certain acts that may have been the trigger for a series of acts constituting sex based harassment or discrimination. Also, as pointed out in Ellison v. Brady, the Committee was required to focus on the perspective of the victim. The injunction to Courts that they "should consider the victim's perspective and not stereotyped notions of acceptable behavior" equally applies to Committees that enquire into allegations of sexual harassment and sex based discrimination."

6. Now let us consider the provisions of the 2013 Act. The Preamble to the Act reads as under:-

"An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto".

7. There is no dispute to the fact that sexual harassment of women at workplace results in violation of fundamental rights of equality, enshrined under Articles 14 and 15 of the Constitution of India and her right to live with dignity under Article 21 of the Constitution. It is to ensure a safe environment free from sexual harassment for women that the Act had been formulated. Section 2(n) defines sexual harassment as under:-

"2. Definitions. xxxx

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(n) "sexual harassment" includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—

- (i) physical contact and advances; or*
- (ii) a demand or request for sexual favours; or*
- (iii) making sexually coloured remarks; or*
- (iv) showing pornography; or*
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature."*

Apparently it is an inclusive definition and only a few unwelcoming acts or behaviour had been mentioned at sub-clauses (i) to (v). There might be other instances as well. Any such behaviour which is unwelcome could be either direct or indirect. Sub-clauses (i) to (v) are only instances of unwelcome acts or behaviour, but while interpreting a statute, we will have to derive the meaning of the word "sexual harassment" taking into account sub-clauses (i) to (v) as well. Sub-clauses (i) to (v) are all illustrations. But when an allegation of sexual harassment is made, though not coming within the parameters as specified in sub-clauses (i) to (v), the act should have something to do with a sexual advance either directly or by implication. Going by the statute, only a few unwelcome acts had been delineated under sub-clauses (i) to (v). It is possible that there might be other

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unwelcome acts or behaviour which would amount to a sexual advance or demand which the woman feels to be annoyed on account of the fact that she is a woman.

8. Section 3 of the 2013 Act deals with prevention of sexual harassment, which reads as under:-

“3. Prevention of sexual harassment.—(1) No woman shall be subjected to sexual harassment at any workplace.

(2) The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:—

(i) implied or explicit promise of preferential treatment in her employment; or

(ii) implied or explicit threat of detrimental treatment in her employment ; or

(iii) implied or explicit threat about her present or future employment status; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) humiliating treatment likely to affect her health or safety”.

Section 3 creates an absolute prohibition to subject a women to sexual harassment at workplace. There also, sub-section (2) of Section 3 emphasises on any act or behaviour of sexual

harassment. Clauses (i) to (v) are instances which may occur in a workplace. But still, a bare reading of sub-section (2) indicates that the circumstances mentioned in clauses (i) to (v) are not exhaustive. The words 'among other circumstances' clarifies the said position. Any such circumstances, if it occurs, or is present in relation to or connected with any act or behaviour of sexual harassment alone can be treated as sexual harassment. In other words, any act which tends to affect the women in the form of clauses (i) to (v) in Section 3(2) would amount to sexual harassment only if such eventualities occur and should be in relation to or connected with any act or behavior of sexual harassment. The purport of Section 3(2) is that, if any of the eventualities mentioned under clauses (i) to (v) or any other circumstances occur, it should be in relation to or connected with any act or behaviour of sexual harassment.

9. Therefore, in order to constitute sexual harassment, definitely there should be an attempt on the part of the wrongdoer to do some act which was unwelcome or by way of behaviour, either directly or by implication makes the victim to feel that it amounts to sexual harassment.

10. ***Visakha v. State of Rajasthan & Others*** [(1997) 7 SCC 323] came to be decided at a time when there was no statutory provision to provide for the effective enforcement of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces. Those guidelines were formulated to be strictly followed in all workplaces for the preservation and enforcement of the right to gender equality of working women. Directions issued by the Apex Court in the said judgment were to remain in force until suitable legislation is enacted to occupy the field. It is thereafter that the 2013 Act came into force, which provided for taking disciplinary action against such persons involved in sexual harassment of women at any workplace and also the penal consequences thereof. Chapter II of the Act dealt with constitution of Internal Complaints Committee and every employer of a workplace was bound to constitute a Committee known as the Internal Complaints Committee. The constitution of such Committees has also been specifically mentioned in Section 4. Chapter III deals with constitution of Local Complaints Committee which authority has to function in respect of

complaints of sexual harassment from establishments where the Internal Committee has not been constituted. Chapter IV deals with complaint. Section 9 is relevant, which reads as under:-

“9. Complaint of sexual harassment.— (1) *Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:*

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.”

The complaint that should be given in writing by an aggrieved

woman is with reference to “a complaint of sexual harassment at workplace”. Even an oral complaint can be given to the presiding officer or any member of Internal Committee in the event the complaint cannot be given in writing. There is a time limit specified for giving such complaint as well. Section 10 contemplates a conciliation on receiving such a complaint and if the matter is not settled through conciliation, an enquiry has to be conducted in terms with Section 11. The enquiry has to be conducted in accordance with the procedure prescribed as per service rules applicable to the respondent. In the case of a domestic worker, the Local Committee shall forward a complaint to the police for registering a case under S.509 of I.P.C. if *prima facie*, it is found that a case exists against the respondent. The Internal Committee is given the power of a civil Court while trying a suit under the Code of Civil Procedure, especially to summon and enforce the attendance of any person and examining him on oath, requiring the discovery and production of documents or any other matter as may be prescribed. Chapter V deals with such other steps that could be taken during the enquiry and after receiving the enquiry report. Section 13 is relevant, which 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 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:

Provide 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."

An order passed under Section 13(3) is also appealable u/s 18 of the Act to the appellate authority as may be prescribed.

11. A reading of the provisions of the Statute clearly envisages a complaint involving sexual harassment. Section 9 also makes it clear that the complaint in writing should be with reference to "a complaint of sexual harassment at workplace". Further, once the Internal Committee after enquiry arrives at a conclusion that the allegation against the respondent has been proved, it shall recommend to the employer to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent to determine compensation etc. Therefore, when the statute had been framed taking into account various aspects involved in the matter, the complaint should be one relating to sexual harassment. Section 3 of the Act is in the form of a prohibition.

The wordings used are “no woman shall be subjected to sexual harassment at any workplace.” The judgment of the Delhi High Court in **Dr.Punita K.Sodhi** (supra) also had been decided before the 2013 Act coming into force wherein the Court had gone to the extent of referring to discrimination on the basis of sex.

12. Apparently, the 2013 Act does not contemplate a situation of discrimination on the basis of sex whereas it specifically deals with sexual harassment in the workplace. **Nisha Priya Bhatia** (supra), was also a case where a complaint was filed on 7/8/2007. The victim was being harassed by asking her to join a sex racket running inside the organization for securing quicker promotions and upon refusal to oblige, she was subject to persecution. Enquiry was conducted in terms with the judgment in **Vishaka** (supra). It is in the said background that the Apex Court had the occasion to refer to the scheme of the 2013 Act, **Vishaka** (supra) guidelines and the Convention on Elimination of All Forms of Discrimination against Women (CEDAW). In the cases on hand, we are only concerned with the provisions of the 2013 Act.

13. In the reference order, the learned Single Judge proceeded on the basis that sexual harassment is to be construed in the light of the provision contained in S.2(n) read with Section 3 of the 2013 Act as well as the provisions of Regulation 2(k) of the University Grants Commission (prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015 ('UGC Regulations, 2015' for short). Even in the UGC regulations, 'sexual harassment' has been given a meaning. Under the UGC Regulations, 2015, 'sexual harassment' has been defined under clauses (i) and (ii) of Section 2(k). Clause (i) itself refers to "an unwanted conduct with sexual undertones" and then sub clauses (a), (b), (c), (d) and (e) are mentioned, which are almost similar to clauses (i) to (v) of Section 2(n) of the 2013 Act. Sub clause (2) of S.2(k) indicates "any one (or more than one or all) of the circumstances if it occurs or is present in relation or connected with any behaviour that has explicit or implicit sexual undertones and it is further specified under sub-clauses (a) to (e). Therefore, even going by the UGC Regulations, sexual harassment has to occur based on "an unwanted conduct with sexual undertone" or

“in relation or connected with any behaviour that has explicit or implicit" "sexual undertones". Therefore, the very concept of sexual harassment in a workplace against a woman should start from an express or implied sexual advance, sexual undertone or unwelcome behaviour which has a sexual tone behind it without which provisions of Act 2013 will not apply. In **Anil Rajagopal** (supra) also, this Court had while interpreting 2013 Act had arrived at the very same finding.

14. In the result, we do not think that **Anil Rajagopal** (supra) requires any reconsideration. We would only clarify that any form of sexual approach or behaviour that is unwelcome will come under the definition of 'sexual harassment' and it is not confined to any of the sub clauses mentioned in Section 2(n), which of course will depend upon the materials placed on record and on a case to case basis. But it is made clear that in order to take action under the 2013 Act, the acts complained of should come within the purview of S.2(n) and Section 3 of the Act or any other form of sexual treatment or sexual behaviour on the part of the respondent.

WP(C) Nos.9219 & 10370/2020

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The Registry shall place the matter before the learned
Single Judge.

Sd/-

A . M . SHAFFIQUE

JUDGE

Sd/-

GOPINATH P .

Rp

True Copy

JUDGE

PS to Judge