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HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 17-08-2021

Pronounced 25-10-2021

WPCR No. 174 of 2018

- Dr.(Smt.) Savitri Tripathi W/o Shri D.R. Tripathi, Aged About 53 Years Occupation Service Working As Professor In English Department And Posted At Government J.P.Verma P.G. Arts And Commerce College, Bilaspur, R/o 9/79, Green Park Colony, P.S. Civil Lines, District Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Higher Education Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. State Of Chhattisgarh Through The Secretary, Home Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
3. Additional Secretary, Higher Education Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
4. B.L. Goyal Ex-Principal (Now Retired) Govt. J.P. Verma, P.G. Arts And Commerce College, Jarhabhata, Bilaspur, District Bilaspur Chhattisgarh. R/o L-9, Vinoba Nagar, Bilaspur Chhattisgarh.
5. U.N. Kurrey, Assistant Professor (English) Govt. College, Akaltara, District Janjgir Champa Chhattisgarh.
6. Commissioner, Bilaspur Division, District Bilaspur Chhattisgarh.
7. Superintendent Of Police, Bilaspur, District Bilaspur Chhattisgarh.
8. Collector, Bilaspur, District Bilaspur Chhattisgarh.
9. Station House Officer, Police Station Civil Lines, Bilaspur, District Bilaspur Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Awadh Tripathi, Advocate
For State	:	Mr. G.I. Sharan, Government Advocate
For Respondent No. 4	:	Mr. Kishore Bhaduri, Sr. Advocate with Mr. Sabyasachi Bhaduri, Advocate
For Respondent No. 5	:	Shri Arvind Shrivastava, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

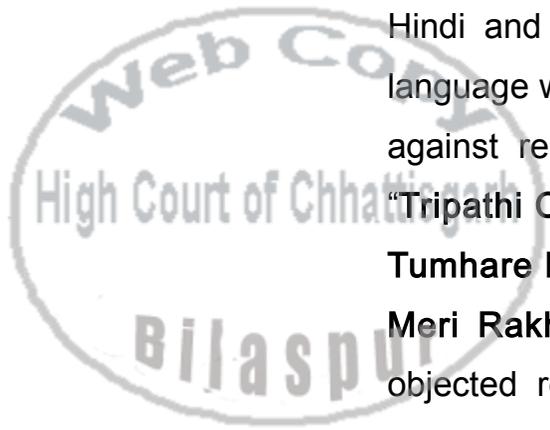
C.A.V. ORDER

1. The petitioner has filed the present petition contending that she is Senior Professor of English and at the relevant time, she was posted at Government J.P. Verma, P.G. Arts and Commerce College,



Bilaspur. Respondent No. 5 who is Assistant Professor in English and posted at Government College, Akaltara visited Government J.P. Verma P.G. Arts and Commerce College, Bilaspur on 26.09.2012 as well as on 27.09.2012 used obscene language about the petitioner. On 05.10.2012 after meeting with B.L. Goyal, now Retired Principal, J.P. Verma College outside of the room of the Principal, he used taunting words “ऐ सुनो मूझे तुमसे बात करना है चलो।” and directed her to come inside the English and Hindi Department. Petitioner looking to the attitude of respondent No. 5, stated that if he wants to talk with her talk here at Principal Chamber. Then he said that he belongs to reserved category as such she cannot take any action against him.

2. The petitioner orally informed the indecent behaviour of respondent No. 5 to respondent No. 4. Again on 12.10.2012 at 4 pm during the course of office hours, respondent No. 5 suddenly entered into the Hindi and English Department and started abusing her with filthy language which amounts to outrage the modesty of the petitioner and against reputation of the senior lady professor. He used words **“Tripathi Chalo Maja Kare Tum to Janti Ho Pichle Bara Varso se Tumhare Mere Saririk Sambandh Hai Aur Itne He Varso Se Tum Meri Rakhel Ho”** in presence of number of professors who have objected respondent No. 5. Therefore, on 13.10.2013, she made written complaint to the Principal, Government J.P. Verma P.G. Arts and Commerce College, Bilaspur. Thereafter, she again sent reminder letters on 19.12.2012 and 29.12.2012 copy was also sent to respondent No. 4 who became Additional Director, Higher Education Department, Regional Office, Government of Chhattisgarh.
3. Learned counsel for the petitioner would submit that as per the service condition, complaint can be filed for indecent behaviour which may misconduct under the service law and FIR can also be lodged under criminal law, therefore, petitioner informed the authorities to take action but no action has been taken, as such, she made a complaint to respondent No. 1 on 08.03.2013 copy of which sent to the Private Secretary of Hon'ble His Excellency Governor of State of Chhattisgarh and Chief Secretary, Government of Chhattisgarh. She received a letter dated 03.04.2013 written by the Additional Secretary of His Excellency Governor to respondent No. 1 to take appropriate





action on the complaint of the petitioner against respondent No. 5 but again no action was taken.

4. After much persuasion only a preliminary fact finding inquiry was conducted on 10.07.2013 directing the petitioner to appear before the authority on 05.08.2013 at about 11:30 a.m. in the room of the Principal. The preliminary enquiry was initiated under the supervision of Dr. Smt. Asha Kaushik, Principal, Govt. M.S. Naveen Girls College, Bilaspur and report dated 27.09.2013 was submitted to the Additional Director, Higher Education, Directorate, Govt. Science College, Raipur. In view of the report, the Additional Secretary vide letter dated 19.05.2014 sought information from respondent No. 4 about the action he has taken on the complaint for lodging FIR. Vide letter dated 23.05.2014 respondent No. 4 informed that he has not forwarded the copy of the complaint for lodging any kind of the report. The Special Duty Officer vide letter dated 31.10.2014 asked petitioner whether she has directly lodged any report against respondent No. 5. She replied vide letter dated 11.12.2014 that neither the principal after receiving complaint lodged any report nor has given permission or direction to the petitioner to lodge FIR, so she has not lodged the report directly. On the basis of preliminary enquiry, the respondent vide letter dated 13.11.2014 directed the Commissioner, Higher Education Department, Raipur to initiate proceeding against respondent No. 5. The above events of the case would demonstrate that the guidelines given by the Vishaka Committee has not been followed as the incident has been taken place in the workplace, therefore, the employer should have forwarded the copy of the complaint along with inquiry report to the police station, so the police can take cognizance on the complaint. But the respondents No. 1 to 4 have not performed their duty. The further contention of the petitioner is that respondent No. 4 should have lodged FIR also when the allegations are found proved against respondent No. 5 of using obscene language within workplace as per the judgment of the Hon'ble Supreme Court and should have taken steps in this regard. The learned counsel would refer para 17(4) of the Judgment passed by the Hon'ble Supreme Court in **Vishaka vs**





State of Rajasthan¹ which is extracted below:-

“4. Criminal Proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.”

5. The State and Respondents No. 4 and 5 have filed their returns.
6. It is contended by learned State counsel that a fact finding committee has been constituted in the workplace where the petitioner was working and would refer Sections 4 and 11 of the Act, 2013. He would submit that the allegation of the petitioner that petitioner was sexually harassed at workplace is not applicable to the present facts of the case as respondent No. 5 was working at Government College, Akaltara whereas the petitioner was working at J.P. Verma, P.G. Arts and Commerce College, Bilaspur. As such inquiry cannot be initiated against respondent No. 5 for sexual harassment at workplace. The petitioner has not lodged any report to the police for sexual harassment against respondent No. 5. The service law does not restrict any employee for making complaint or FIR to the police authorities. It is not obligatory on part of the employer to lodge FIR on the behest of the employee. On the basis of complaint, a departmental inquiry was conducted and Principal, Government M.S. Navin Girls College, Bilaspur was appointed as Enquiry Officer. In the departmental inquiry respondent No. 5 was found partial guilty as allegation No. 2 was not proved. Thereafter, Enquiry Officer has sent its report to the State Government, the State Government has considered the inquiry report and vide order dated 25.11.2017 issued warning to respondent No. 5 not to commit such incident in future and closed the departmental inquiry. Since, the allegation against respondent No. 5 is not within the workplace, the writ petition is devoid of merits, substance and deserves to be dismissed.

¹ (1997) 6 SCC 241



7. Respondent No. 4 has submitted that present petition is not maintainable as principal of *res sub judice* is applicable in the present case because the matter directly and substantially in issue in the present case is pending before this Court for adjudication in WPS No. 1760/2017, therefore, present writ petition is not maintainable. It has been further contended that it is third round of litigation arising out of same cause of action as in the earlier petition also in WPC No.700/2014 petitioner's grievance was harassment by respondent No. 5 and despite of the complaint filed, authorities are not taking action. The petition was disposed off on 16.04.2014 by this Court directing Commissioner, Higher Education Directorate to make necessary and proper inquiry in the complaint of the petitioner. Also, liberty to revive the petition was granted by this Court if complaint of the petitioner is not addressed within 3 months from the receipt of copy of the order. Since there was no direction by the High Court to respondent No. 4 to decide the complaint, therefore no cause of action will arise and respondent No. 4 is already retired from the service, therefore, he cannot take action against respondent No. 5 now. The complaint made by the petitioner is due to personal vendetta against respondent No. 4 and would pray for dismissal of the writ petition so far as it relates to respondent No. 4.

8. Learned counsel for respondent No. 5 would submit that on the facts and circumstances of the case, Acts, Rules and Regulation applicable at the relevant time do not impose any such obligation upon the authorities concerned to register FIR on the basis of complaint made by the petitioner. As per the complaint, departmental proceedings were initiated and inquiry was finally concluded, Vishaka Guidelines and the Act, 2013 have been followed. The petitioner has never made grievance that FIR should be lodged but made only prayer that "यथोचित कार्यवाही करने की कृपा करें ताकि मैं अपना कार्य शान्ति पूर्वक सम्पादित कर सकूँ". Therefore, the present petition for directing the authorities to lodge the FIR is erroneous, not liable to be accepted by this Court and the writ petition deserves to be dismissed.

9. The respondent authority has constituted the fact finding committee and levelled following charges against him.

“आरोप क्रमांक 01:—



यह है कि आपके द्वारा भा. जे.पी.वर्मा पी.डी.कला. एवं वाणिज्य महाविद्यालय बिलासपुर में कार्यालयीन समय में उपस्थित होकर वहां कार्यरत डॉ. श्रीमति सावित्री त्रिपाठी, पदोन्नत प्राध्यापक अंग्रेजी के साथ अभद्र व्यवहार किया गया तथा अ लील एवं अ गोभनीय भाषाओं का प्रयोग किया गया। आपका यह कृत्य छत्तीसगढ़ सिविल सेवा (आचरण) नियम, 1965 के नियम-3 एवं 7 का उल्लंघन है।

आरोप क्रमांक 02 :-

यह है कि आप दिनांक 26.09.2012 एवं 27.09.2012 को अनाधिकृत रूप से अपने कर्तव्य से अनुपस्थित रहे। आपका यह कृत्य छत्तीसगढ़ सिविल सेवा (आचरण) नियम, 1965 के नियम-3 एवं 7 का उल्लंघन है। ”

10. The committee constituted by the Principal has submitted Inquiry report on charge No. 1 as under :-

“साक्षी क्रमांक-7 डॉ० प्रतीक्षा मैराल जो कि अपचारी अधिकारी के वर्तमान पदस्थ शासकीय महाविद्यालय अकलतरा की प्राचार्य हैं। उनके द्वारा भी अपचारी अधिकारी के दिनांक 12.10.2012 के महाविद्यालय में उपस्थिति के संबंध में कोई साक्ष्य अपने परीक्षण में नहीं किया है। ऐसी स्थिति में अपचारी अधिकारी द्वारा उक्त आरोप के संबंध में किये गये प्रतिरक्षा कथन एवं प्रस्तुत अभिलेख पर विश्वास किये जाने का कोई आधार नहीं है जबकि विभागीय गवाहों एवं प्रस्तुत किये गये अभिलेख एक दूसरे का आधार नहीं है जबकि विभागीय गवाहों एवं प्रस्तुत किये गये अभिलेख एक दूसरे का समर्थन करते हैं जिस पर अविश्वास करने का कोई कारण नहीं है।

अतः सम्पूर्ण साक्ष्य एवं अभिलेखों के विवेचना उपरान्त अपचारी अधिकारी पर आरोपित आरोप क्रमांक-1 प्रमाणित पाया जाता है।”

11. I have heard learned counsel for the parties and perused the records.

12. From the materials placed on records, the following points are to be determined by this Court :-

1. Whether, the act committed by respondent No. 5 against petitioner would amount to sexual harassment within workplace as respondent No. 5 was not working in the same institution though petitioner and respondent No. 5 are appointed by the same employer i.e. Government of Chhattisgarh ?
2. Whether, respondent No. 4 being employer has failed to discharge his duty provided in the Act, 2013 by constituting committee and taking further action in compliance of judgment passed by the Hon'ble Supreme Court in case of **Vishaka (supra)**?

13. For better understanding the provisions, it will be appropriate for this Court to go through the genesis of enactment of the Act, 2013. This Act has been formulated in pursuance of the guidelines of the Hon'ble Supreme Court in case of **Vishaka (supra)** wherein in para 17 the Hon'ble Supreme Court has held as under :-

“17. The GUIDELINES and NORMS prescribed herein are as under:-



HAVING REGARD to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993,

TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in workplaces and that enactment of such legislation will take considerable time,

It is necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the Employer or other responsible persons in workplaces and other institutions:

It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- a) physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive Steps:

All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- (a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in





appropriate ways.

(b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal Proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary Action:

Where such conduct amounts to mis-conduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint Mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women.

Further, to prevent the possibility of any under pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.





The Complaints Committee must make an annual report to the government department concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Workers' Initiative:

Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in suitable manner.

10. Third-party harassment:

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993."

14. Pursuant to guidelines issued by Hon'ble Supreme Court the Parliament has enacted the Act, 2013. The relevant provisions which are necessary for adjudication of the points raised in the petition are Sections 2(g), 2(n), 2(o), 9, 11 and 13 of the Act, 2013 which are extracted below:-

(g) "employer" means—

- (i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;
- (ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.





(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

(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;

(o) “**workplace**” includes—

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertain mental, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;

(vi) a dwelling place or a house;





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.



11. Inquiry into complaint.

- (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if *prima facie* case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may



be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents; and
- (c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

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:

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.”

15. The Central Government in exercise of the power conferred under Section 29 of the Act, 2013 has framed Sexual Harrassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 which provides for complaint of sexual harrassment. Rule 6 is extracted below:-

“6. Complaint of sexual harassment. — For the purpose of sub-section (2) of Section 9,-

(i) where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by —

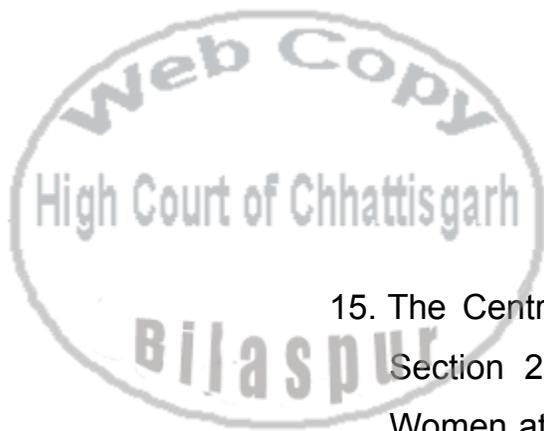
(a) her relative or friend; or

(b) her co-worker; or

(c) an officer of the Notional Commission for Women or State Women’s Commission; or

(d) any person who has knowledge of the incident, with the written consent of the aggrieved woman;

(ii) where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by-



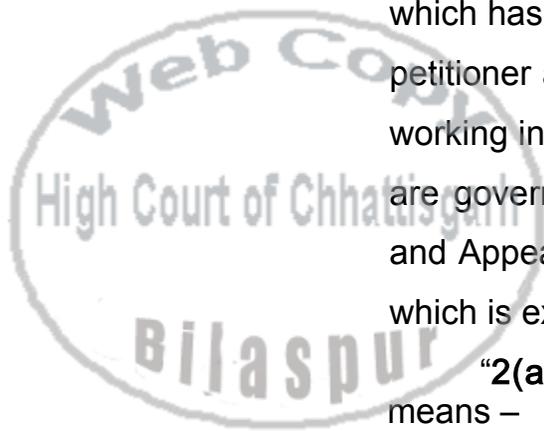


- (a) her relative or friend; or
 - (b) a special educator; or
 - (c) a qualified psychiatrist or psychologist; or
 - (d) the guardian or authority under whose care she is receiving treatment or care; or
 - (e) any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;
- (iii) where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent;
- (iv) where the aggrieved woman is dead, a complaint may *be* filed by any person who has knowledge of the incident, with the written consent of her legal heir.”

16. This rule deals with sexual harassment of women at workplace which has been defined in the Act, 2013 itself. It is undisputed that the petitioner and respondent No. 5 are employees of State Government working in the Higher Education Department. Their service conditions are governed by Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. Rule 2(a) defines the appointing authority which is extracted below:-

“2(a) “Appointing Authority” in relation to a Government servant means –

- I. the authority empowered to make appointments to the service of which the Government servant is for the time being a member or to the grade of the service in which the Government servant is for the time being included; or
- II. the authority empowered to make appointments to the post which the Government servant for the time being holds; or
- III. the authority which appointed the Government servant to such service, grade or post, as the case may be; or
- IV. where the Government servant having been a permanent member of any other service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that service or to any grade in the service or to that post, whichever authority is the highest authority;





17. From bare perusal of the rules, it is quite clear that they are appointed by State Government, Higher Education Department, as such, they are employed by the same employer. The employer has been defined in Section 2(g) of the Act, 2013 which means in relation to any department, organization, undertaking, establishment, enterprises, office, branch or unit of the appropriate government or a local authority, the head of that department and clause (II) of the Section provides that in any workplace not covered under clause (I) any person responsible for the management, supervision and control of the workplace will be called as employer, thus, Secretary Higher Education Department, Director of Higher Education Department and Principal of the Institution will be employer so far as the Act, 2013 is concerned, therefore, the contention of the respondents that petitioner and respondent No. 5 are deployed at different colleges, therefore, they cannot be treated as employees and respondent No. 4 can very well fall within ambit of employer under the Act, 2013, thus, respondent No. 1 and respondent No. 4 being employer should have taken action as per the Act, 2013 and they have failed to discharge their duties.

18. Further contention of respondent No. 5 that since respondent No. 5 was employed in different institution, therefore, any alleged act or omission done by him cannot be construed as sexual harassment at the workplace, this contention is also incorrect as the workplace has been defined in 2(o) of the Act, 2013. The petitioner was working at J.P. Verma, P.G. Arts and Commerce College, Bilaspur where respondent No. 5 has visited and has made certain obscene against petitioner, therefore, as per the Section 2(o) of the Act the incident has taken at workplace where petitioner was working. The workplace has to be considered, the place of working of the victim not on the basis of offender, as such, it is held that petitioner was subjected to harassment at workplace. Therefore, the points No. 1 and 2 are decided that the incident has taken place at workplace and since the incident has happened at workplace, either respondent No. 1 or respondent No. 4 should have taken action as per the judgment of **Vishaka (supra)** and the Act, 2013. The respondents No. 1 and 4 failed to discharge their obligation and thus failed to perform their



duty. Since more than 8 years have lapsed, the particulars of respondent No. 1 is not available on record and respondent No. 4 has already retired from service, this Court is restrained from issuing directions for taking any action against them, but this Court hope and trust that the State Government should see that in future if such exigency arise, any victim of sexual harassment at workplace should not run pillar to post to get her redressal.

19. The Hon'ble Supreme Court has again issued direction with regard to protection of women from sexual harassment in the workplace in **Medha Kotwal Lele and Others vs. Union of India and Others**² and held in paragraphs No. 44 and 45 as under:-

“44. In what we have discussed above, we are of the considered view that guidelines in Vishaka should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place.

44.1 The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (By whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

44.2 The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in clause (i) within two months.

44.3 The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and state level. Those States and/or Union Territories which have formed only one Committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such Committees an independent member shall be associated.”

45. We are of the view that if there is any non-compliance or non-

² (2013) 1 SCC 297





adherence to the Vishaka guidelines, orders of this Court following Vishaka and the above directions, it will be open to the aggrieved persons to approach the respective High Courts. The High Court of such State would be in a better position to effectively consider the grievances raised in that regard.”

20. In light of the judgments passed by the Hon'ble Supreme Court, it is directed that the Secretary / Director / their authorized persons from Higher Education or Principal of the College where the petitioner was posted, shall initiate proceedings against respondent No. 5 for registration of FIR on the basis of complaint made by the petitioner and materials collected by the facts finding Committee within two months from the date of receipt of copy of this order.
21. It is made clear that this Court has not given any opinion on the merits of the case. On registration of FIR, it is for the investigating authority to investigate the matter and submit its report to the concerned trial Court as per the procedure prescribed under the Criminal Procedure Code.

22. With this direction, the writ petition (criminal) is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge

