



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1635 OF 2021

Dr. Mohinder Kumar
Age 55 years, Assistant
General Manager (Retired),
NABARD, residing at B-301,
Aurigae Residency, Thakur
Complex, Kandivali (E), .. Petitioner
Mumbai - 400 101

Versus

1. The Chairman,
NABARD Head Office, Plot No.
C-24, G-Block, Bandra-Kurla
Complex, Bandra (East),
Mumbai - 400 051

2. Chief General Manager,
HRMD, NABARD Head Office,
Plot No. C-24, G-Block, Bandra-
Kurla Complex, Bandra (East) .. Respondents
Mumbai - 400 051

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Mr. Vishal P. Shirke, for the Petitioner.

Mr. S. P. Bharti, for the Respondents.

...

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED : 12th JANUARY, 2026

Judgment: [Per Manjusha Deshpande, J.]:-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. The order dated 24.09.2020 imposing penalty of

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‘Reprimand’ on the Petitioner, based on the recommendation in the report of the Central Complaints Committee (“**CCC**”) dated 30.6.2020 is assailed in this Writ Petition. The Petitioner has challenged the recommendation in the report as well as order of penalty, contending that though the penalty of ‘Reprimand’ seems to be innocuous, as a result of this order, a major penalty of compulsory retirement has been issued against him, for which one of the consideration is the order of ‘Reprimand.’

3. Mr. Vishal Shirke, learned counsel for the Petitioner at the outset would submit that, even if the Petitioner has been compulsorily retired consequent to the report of the CCC, he has challenged the order of compulsory retirement by availing an independent separate remedy, therefore, he is not challenging that order in the present Writ Petition. The relief claimed by him in the present Writ Petition is restricted only to the extent of recommendation in the report of the CCC and the penalty of ‘Reprimand’ imposed pursuant thereto.

4. It is submitted that the Petitioner was appointed as a Manager in National Bank for Agriculture and Rural Development (“**NABARD**”) on 25.09.2000, he was working in the Department of Economic Analysis and Research (“**DEAR**”) in Mumbai Head Office, in April, 2016. While working at DEAR he noticed that, a few lady officers and employees were in habit of getting together in morning hours and spending almost an hour in gossiping, loud

talking and disturbing the office environment. This was repeated in the afternoon as well as sometimes in the evening. These noises of laughing aloud, giggling, singing etc. disturbed the functioning of the office. The Petitioner, who was handling a complex work of preparing analytical and scientific research based reports in the field of agricultural economics, could not concentrate on his work. He was, therefore, constrained to bring this fact to the notice of Chief General Manager of DEAR through Senior Officer in Administrative Section. First of such complaint was made by the Petitioner on 07.06.2016, and it was followed by several other office notes i.e. on 20.01.2017, 23.02.2017 and 28.02.2017. Since no cognizance was taken of his complaints, he thought it appropriate to videograph the conduct of the lady staff members in his mobile phone who were continuously disturbing the office environment. This recording was made in order to present it as a evidence to Chief General Manager, of DEAR. Accordingly, the Petitioner recorded three videos on 20.11.2019, 21.11.2019 and 27.11.2019. He thereafter addressed an email on 05.12.2019 to the Chief General Manager, of DEAR along with the videos recorded by him, to support his complaint about disturbance created by the lady staff members.

5. In the meanwhile, the staff members, i.e. the lady officers against whom the complaint was made, by the petitioner appear to have got some information about the complaint made by the Petitioner, therefore, they have

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conspired against the Petitioner by filing a false complaint of sexual harassment against him. An undated complaint was addressed by the lady staff members to the Chief General Manager of DEAR, alleging that the Petitioner stared at ladies whenever they were in conversation amongst themselves or with senior officials, and he has recorded videos on 20.11.2019 and 21.11.2019, without their consent at the workplace whenever the ladies were communicating amongst themselves. It is submitted that, there was no allegation or a suggestion of any sexual harassment in the said complaint.

On receiving the said complaint, the Chief General Manager of DEAR forwarded it to the CCC constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short "the POSH Act, 2013"). The copy of the complaint was forwarded by the CCC to the Petitioner seeking his response to the allegations made against him on 27.11.2019.

6. It is submitted that when the said complaint was still pending, the DEAR has passed an order relieving the Petitioner with immediate effect on 02.12.2019. Although he was relieved, he was not granted any other posting but was directed to report to the CGM, HRMD, on 02.12.2019 itself. Accordingly he reported, however the Petitioner has not been granted any posting thereafter, he remained without any posting from 02.12.2019 onwards till his

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compulsory retirement vide order date 06.11.2022.

After the first complaint, it was followed by two more complaints of similar nature dated 27.11.2019 and 04.12.2019, wherein the complainants have expressed that, they were feeling threatened in the department, and apprehended that the Petitioner may put the videos on porn sites or he may morph them for wrong use. Therefore, it was requested that the Petitioner should be removed from the department or in the alternative, the ladies in the department should be sanctioned leave.

7. The Petitioner submitted his reply, thereafter, the hearing before the CCC was held on 24.11.2020 via CISCO Webex. It is alleged by the Petitioner that the members of the CCC conducted separate interaction with the individual complainants behind his back. The Petitioner had several grievances about the procedure adopted while conducting the inquiry by the CCC. The Petitioner received an email from CCC forwarding the report/findings recorded by the CCC, in respect of the complaints made against him, calling upon him to offer his comments. Accordingly, he filed his response on the findings recorded by the CCC via email dated 29.6.2020. After receiving the response of the Petitioner, the CCC submitted its report on 30.06.2020. In the report, the CCC has observed that the Petitioner was recording the videos with an intention to submit it to the HRMD. Therefore, the contents of videos would fall under the

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disciplinary aspect of the organization and not within the sexual harassment aspect, thus, the CCC held that, it was not a case of sexual harassment. However it has gone further and observed that the conduct of recording the video of ladies without their consent could not be justified and was objectionable. As such, the conduct of the Petitioner cannot be tolerated, since it created hostile environment within the department. The CCC further recommended that the Bank may take suitable action against the Petitioner under the provisions of NABARD (Staff) Rules 1982.

8. The learned counsel for the Petitioner submits that, on the aforementioned background it is evident that the CCC has exceeded its jurisdiction in recommending action against the Petitioner by holding that, recording of videos of ladies without their consent is objectionable. The powers of the CCC are limited to the extent of either exonerating the respondent, if the allegations are not proved, or if the allegations are proved, it can recommend to the employer to take appropriate action for sexual harassment, treating it as a misconduct, in accordance with the service Rules and thereafter impose penalty as provided in the service Rules.

In the present case, though the CCC has recorded a finding that the conduct of recording video do not amount to sexual harassment, yet it has recommended the Disciplinary Authority to take actions against the

Petitioner.

9. The learned counsel further submits that, pursuant to the recommendation made by the CCC, the Competent Authority, who is the Chief General Manager has imposed a penalty of 'Reprimand' on him as provided in Rule 47(1)(a) of the NABARD (Staff) Rules, 1982.

10. In fact, while passing the order date 24.09.2020, the Competent Authority himself has recorded that, although the petitioner had taken video without the permission of the women staff, he has not misused it, in spite of which, a penalty of 'Reprimand' has been imposed on him without issuing any notice or calling his explanation. The penalty of 'Reprimand' is clearly imposed on the basis of the recommendation in the report of the CCC, which is contrary to its own findings, recording that the conduct of the Petitioner does not fall within the definition of 'sexual harassment'. As such, the recommendation made by the CCC in the report dated 30.06.2020, as well as the penalty of 'Reprimand' imposed by the CGM and the Competent Authority, are required to be quashed and set aside.

11. In response to the submission made by the learned counsel for the Petitioner, the learned counsel for the Respondent submits that, the Petitioner is an employee of National Bank for Agriculture and Rural Development (NABARD), hence his service conditions are governed by the NABARD (Staff) Rules, 1982. At the

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outset, he raises a objection to the maintainability of the Writ Petition on the ground that instead of challenging the impugned order as provided in Rule 48 of the NABARD (Staff) Rules, 1982, the Petitioner has filed the present Writ Petition, which is not maintainable. The present Writ Petition involves disputed question of facts, which would require evidence to be led by the parties before the CCC. The Petitioner has recorded the videos of women employees without their permission, which caused unrest amongst them, therefore, the order of 'Reprimand' came to be issued. The complaints made by the lady staff members had both sexual harassment component as well as general office discipline component. Hence, although the CCC has recorded that there is no sexual harassment, it was found that the conduct of the Petitioner was against the discipline of the office, hence, taking a lenient view, the least of the penalties i.e. 'Reprimand' was awarded by the Competent Authority, which requires no interference in the present Writ Petition.

12. It is submitted that, after receiving the complaint from the lady staff members, an opportunity was given to the Petitioner to put forth his case, and after granting sufficient opportunity to the Petitioner, the Committee has submitted its report.

13. So far as the relieving order of the Petitioner issued on 02.12.2019, it is submitted that the behavior of the Petitioner, with the lady staff members was creating

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an unhealthy environment in the office, therefore, an order relieving the Petitioner from the DEAR came to be issued. He was in a habit of commenting on their behavior, which vitiated the office decorum. The Petitioner had continuous issues with colleagues and seniors. Thus, according to him, in spite of the behavior of the Petitioner taking a lenient view, the penalty of 'Reprimand' has been imposed on him, which does not require any interference, thus, no interference is warranted either in the Report of the CCC or in the order of 'Reprimand' issued by the Competent Authority, as such the Writ Petition deserves to be dismissed.

14. We have heard the respective counsel and we have also gone through the documents placed on record with the assistance of the parties. According to us, the issue raised in the present writ Petition is whether the CCC had the jurisdiction to make a recommendation, to take action against the Petitioner, when it has recorded that there is no sexual harassment by the Petitioner, and whether the Competent Authority is justified in passing an order of 'Reprimand', on the basis of the recommendation of the CCC?

15. Admittedly, the complaint made by the lady staff members of the Respondents was forwarded to the CCC, which is constituted for deciding the complaints under the POSH Act, 2013. The CCC has conducted inquiry into the allegations made in the complaint against the

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Petitioner. Rule 45A of the NABARD (Staff) Rule, 1982 provides that, no employee of the Bank shall indulge in any act of 'sexual harassment' against any woman at the workplace. An explanation has been provided in the said Rule, as to what would amount to sexual harassment. Rule 45A reads thus:

45A Prevention of sexual harassment :- No employee of the National Bank shall indulge in any act of sexual harassment of any woman at the work place.

Explanation : For the purpose of this Rule, sexual harassment includes such unwelcome sexually determined behaviour, whether directly or otherwise, as

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

16. The Committee i.e. Central Complaints Committee ("CCC") is constituted by the Respondents for addressing the grievance against the complaints of sexual harassment in their establishment. Therefore, the provisions of the Sexual Harassment of Women at Workplace, (Prevention, Prohibition and Redressal) Act, 2013 are squarely applicable to the respondents. Sexual harassment is defined in Section 2(n) of the said Act, which reads thus:

“2(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;”

17. Upon going through the definition of sexual harassment given in the Act as well as the explanation provided under Rule 45A of the NABARD (Staff) Rules, 1982, it can be easily discerned that, both the definitions are more or less similar and it contemplates an unwelcome act or behaviour of an individual, which is directly or by implication of sexual nature, may it be physical, or by way of remarks, or conducting in such a manner that is unwelcome to a woman. In the present case, the CCC has conducted the inquiry by calling upon the lady staff members of the NABARD, who filed complaints against the Petitioner, and after hearing their side, has also granted an opportunity to the Petitioner to put forth his side. The Petitioner has conceded to the fact that he did record the lady staff members, whenever they gathered together in groups and chatted, thereby causing disturbance. Thus, the question before the Committee was whether video recording the group of lady staff members, interacting within the

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group, without their consent would constitute “sexual harassment” under the POSH Act, 2013.

18. After taking into consideration the definition of sexual harassment, the Committee has recorded a finding that, merely video recording *per se* would not fall in any of the acts, which would constitute “sexual harassment” under the Act. The video recording would have come within the purview of ‘sexual harassment’, if the lady officers/complainants were recorded in a compromising position or such videos were used for demanding sexual favour. However, the complainants have conceded that, the Petitioner has merely recorded their chatting and coming together and it was not their case that, the video recording was used for demanding sexual favour or blackmailing them to succumb to his demand of sexual favour. In fact, it is conceded that none of the complainants were individually video recorded by the Petitioner. It was their unanimous stand that there was no sexual harassment angle, but it was simply causing them harassment. Thus, the CCC has recorded a finding that there is no element of ‘sexual harassment’ in recording the videos of the complainants, i.e. the lady staff members in the office of DEAR. Even the apprehension of the complaints that, the petitioner might use the videos has been turned down by the CCC by observing that, since the videos have not been misused, mere apprehension of complainants do not fall within the jurisdiction of the CCC to initiate any action under the POSH Act, 2013.

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19. In spite of recording a clear finding that the conduct of recording of videos by the Petitioner does not fall within the purview of sexual harassment under the POSH Act, 2013 or Rule 45A of the NABARD (Staff) Rules, 1982, the CCC has recommended that the conduct of the Petitioner cannot be justified, and in order to maintain the discipline of the organization, the Bank needs to take suitable action under the provisions of the NABARD (Staff) Rules, 1982. Based on the recommendation of the CCC, the Chief General Manager of the Competent Authority has imposed a penalty of 'Reprimand'.

Upon going through the order of penalty imposed by the Competent Authority dated 24.9.2020, it is evident that the disciplinary authority has imposed the penalty of 'Reprimand' solely on the basis of the recommendation made by the CCC. The CCC is a Committee specially constituted to address the grievances of sexual harassment, hence once the Committee has formed an opinion that the conduct of the Petitioner did not constitute 'sexual harassment', it could not have recommended any action against the Petitioner. It should have simply closed the matter and dismissed the complaint.

20. Section 13(2) of the POSH Act, 2013 provides that if the internal Committee arrives at a conclusion that the allegations 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. Section

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13(2) of the Act is reproduced hereinunder, which reads thus:

“13(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.”

21. Thus, in view of the express provision as stated referred hereinabove, the CCC has exceeded its jurisdiction by making recommendation to the Competent Authority to take suitable action against the Petitioner. Similarly, acting on the recommendation of the CCC, the Competent Authority has committed an error by imposing penalty of ‘Reprimand’ without application of his mind or making any independent inquiry, thus the order passed by the Chief General Manager and Competent Authority dated 24.9.2020 deserves to be quashed and set aside.

As a result, the Writ Petition is allowed. The recommendation made by the Central Complaints Committee in its report dated 30.6.2020 along with the order passed by the Chief General Manager dated 24.9.2020, are quashed and set aside.

Rule is made absolute in the above terms.

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signed by
RUSHIKESH
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(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

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