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**(2020) 07 SHI CK 0303**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ Petition No. 1628 Of 2020**

Aditi Bramta

APPELLANT

Vs

State Of H.P. And Ors

RESPONDENT

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**Date of Decision :** 09-07-2020

**Acts Referred:**

Sexual Harassment Of Women At Workplace (Prevention Prohibition And Redressal) Act, 2013 — Section 2(n)(ii), 2(n)(iii), 3(2)(iv), 10, 10(2), 11, 13, 15  
Indian Penal Code, 1860 — Section 506

**Citation :** (2020) 07 SHI CK 0303

**Hon'ble Judges :** Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

**Bench :** Division Bench

**Advocate :** Pranay Pratap Singh, Srishti Chauhan, Ajay Vaidya, J. L. Bhardwaj

**Final Decision :** Disposed Of

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## Judgement

Tarlok Singh Chauhan, J

1. The petitioner claims herself to be a victim of sexual harassment at whose instance an Internal Complaints Committee, under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short, "the Act"), was constituted by respondent No.3 to look into the allegations levelled by her against respondent No.5. The committee in its recommendations, dated 8.11.2019 (Annexure P- 14), came to the conclusion that the allegations so levelled were covered under Section 3(2)(iv) and partially under Section 2 (n)(ii) of the Act.

2 It is these recommendations that are now sought to be enforced by the petitioner by way of the instant petition and the same read as under:-

"With due regards it is submitted that Internal Complaint Committee to prevent sexual harassment of women at workplace, IGMCI Shimla was constituted vide letter no. HFW(MC)2G-7/09-2014-16 NO. 19427 dated 11-9-2019. The undersigned was appointed as Chairperson of the said committee on 11-09-

2019, a file was received from Dr. Neelam Sharma, former Chairperson of ICC for the aforesaid complaint. After conducting subsequent meetings with regard investigating the contents of the complaint, statements of the witnesses from both the parties (i.e. complainant and the respondent) were submitted to the committee.

Taking into the account all facts and circumstances emanated from the written statements of complainant, respondent and witnesses, the committee is of the considerate view that the allegations labeled against the respondent are prima facie covered under section 3 (2)(iv) and also partially under section 2(n)(iii) of the definition of the Sexual Harassment of Women at Workplace (Prevention Prohibition and Redressal) Act 2013.

In addition to above it is relevant to submit here that during the investigation one of the witness working in the same department has complained of threatening by respondent. In view of the same the committee unanimously is of the opinion that the respondent may be shifted to some other department as the authorities may deem fit.

This is for your information and further necessary action please."

3 Since the aforesaid recommendations were bereft of any reasoning, therefore, this Court vide its order dated 25.6.2020 directed the respondents-Department to produce records of the inquiry.

4 We have perused the inquiry report and find that Internal Complaints Committee has not followed the procedure that is envisaged under Section 11 of the Act, which reads as under:-

"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."

5 Even the procedure that has been provided under Section 13 of the Act has not been followed. It shall be apposite here to refer to Section 13 of the Act, 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."

6 Therefore, in the given facts and circumstances, this Court is left with no other option, but to direct respondent No.3 to constitute a new committee strictly in accordance with the provisions of the Act, who, after following the procedure envisaged under the Act, shall submit its report within a statutory period of 90 days, as provided under the Act. This period shall be computed from the date of receipt of copy of this judgment.

7 Before parting, it needs to be observed that we have not rendered any opinion muchless any finding on the relative merits of the case of the petitioner or respondent No.5. It is further made clear that the inquiry that was conducted earlier will have no relevance to the inquiry to be now held in compliance to the orders of this Court.

8 The petition stands disposed, of in the aforesaid terms, so also the pending application(s), if any, leaving the parties to bear their own costs.