
(2016) 10 BOM CK 0106

In the Bombay High Court

Case No : Writ Petition No. 2641 of 2005 with Notice of Motion No. 248 of 2008
and Notice of Motion No. 372 of 2015

Dr. Smt. Vathsalya K. Shetty

APPELLANT

Vs

Brihanmumbai Municipal Corporation

RESPONDENT

Date of Decision : 25-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 AIRBomR 39

Hon'ble Judges : Anoop V. Mohta and A.A. Sayed, JJ.

Bench : Division Bench

Advocate : Ms. Manjula Rao with Mr. P.M. Havnur i/b Mr. P.M. Havnur, Advocates, for the Respondent No. 4; Mr. A.Y. Sakhare, Senior Advocate a/w Ms. Geeta Joglekar, Advocate, for the Respondent-MCGM; Ms. Nayna D. Buch i/b Mr. Shailesh K. More, Advocates, for the Peti

Final Decision : Dismissed

Judgement

A.A. Sayed, J. - The Petitioner is a Doctor (MDS) and Associate Professor in the Department of Conservative Dentistry at Nair Hospital Dental College, which is a Municipal Hospital Dental College (hereinafter referred to as "the said College") of the Respondent No.1-Corporation. The Petitioner alleges that she was subject to sexual harassment by the fourth Respondent who is also a Doctor (MDS) and Associate Professor and was the Acting/In-charge, Head of Department of Conservative Dentistry of the College at the time of filing of this Petition in August 2005. The Petitioner, by this Petition filed under Article 226 of the Constitution of India, has prayed for an order for appropriate action against the fourth Respondent for his alleged acts of sexual harassment. The Petitioner also sought a writ of mandamus against the Respondent-Corporation and its officials to quash an enquiry against her (in respect of a letter written by her and Dr. Ajay J. Thakore on 21 April 2015 through an Advocate to Dr. Pravin Solanki, a Lecturer, without informing their superiors.)

2. During the pendency of this Petition on the basis of an inquiry by a Core Committee against sexual harassment, on 16 January 2006, an order was passed by the Additional Municipal Commissioner (Competent Authority) punishing the fourth Respondent with stoppage of one increment for one year with temporary effect. By way of amendment, the Petitioner has challenged the said order dated 16 January 2006 passed by the Additional Municipal Commissioner (Competent Authority) to the extent of exoneration of the fourth Respondent of charges (a) and (b) which were in relation to her Complaints. Directions are also sought against the fourth Respondent to proceed on leave and if he refuses to proceed on leave to order his suspension from service. It is also prayed that the Respondent-Corporation and its officials be ordered and directed to reconsider the Core Committee Report and the evidence and order for the dismissal of the fourth Respondent. By way of a further amendment, the Petitioner has challenged the order dated 16 October 2007 passed in the internal Departmental Appeal whereby the fourth Respondent was exonerated from all charges levelled against him. By this amendment, the Petitioner also sought revocation of the order dated 20 February 2008 passed by the Respondent-Corporation promoting the fourth Respondent to the post of Professor, Head of the Department (HOD) Conservative Dentistry (this order was later withdrawn by the Respondent-Corporation, hence this prayer did not survive). Interim and ad-interim reliefs were also sought in the Petition.

3. The case of the Petitioner is that she is working in the Department of Conservative Dentistry since 1995 and she has put in 10 years service as a Doctor in the Hospital. She is also teaching students of the second year, third year and fourth year of BDS in the said College. She had also studied in the said College from the year 1984 to 1992 and did BDS and MDS and she was enjoying a good reputation in the Hospital as well as in the said College. The Petitioner had occasion to work in the past 10 years under the fourth Respondent being Senior by about three years. She studied together with the fourth Respondent in the said College for a period of seven years (1984-89 to 1990-92) and the fourth Respondent was senior to her by a year. The Petitioner as well as the fourth Respondent are teaching undergraduate dental students including male and female students in the Department of Conservative Dentistry. According to the Petitioner, she had received number of complaints from female students about the misbehaviour of the fourth Respondent while teaching in class-room as well as outside the class-room. She did not take a note of those complaints, but she realized about the misbehaviour of the fourth Respondent when she herself became the victim of his sexual harassment. By letter/Complaint dated 6 May 2004 addressed to the Municipal Commissioner, the Petitioner complained about the misbehaviour of the fourth Respondent with her and other lady students and staff. It was stated in the said Complaint that the behaviour and attitude of the fourth Respondent for the last few years was most undesirable and intimidating. She complained that he was very rude and overbearing with all the subordinates and colleagues and particularly with female staff. She stated that on many

occasions in the past she had to remind him of his behaviour, but to no avail. She complained that the fourth Respondent was deliberately misbehaving with her and other female students and staff, that he was threatening them with dire consequences if any protest was made and that the fourth Respondent was taking advantage of his position as Associate Professor and was exploiting the situation. She complained that on many occasions the fourth Respondent had always taken difficult posture and threatened her. She stated that she tried to avoid making any formal complaint as she did not want to make an issue, particularly because the fourth Respondent was her colleague for many years. She complained that the fourth Respondent had become more aggressive and difficult to live with assuming her silence as a sign of weakness.

4. On 8 May 2004, the fourth Respondent received a letter from Dr. Ajay J. Thakore, Head of Department of Conservative Dentistry that there is a Complaint against him by the Petitioner and he should give a Reply. According to the fourth Respondent, a copy of the Complaint made by the Petitioner was not given to him. On 10 May 2004, the fourth Respondent replied to Dr. Ajay J. Thakore and requested for a copy of the Complaint and stated that he would be unable to Reply to the same without knowing the details of the Complaint. According to the fourth Respondent, his friend tried to speak to Dr. Ajay J. Thakore. However, he told his friend that he would finish him. On 14 May 2004, the fourth Respondent received a letter from the Dean of the College to submit a copy of the Reply given by the fourth Respondent to Dr. Ajay J. Thakore without providing the original Complaint. On the same date i.e. on 14 May 2004, the fourth Respondent wrote a letter to the Additional Commissioner of Police (Central Region) with copies to the Municipal Commissioner and other Officials of the said College and to the Senior Inspector, Nagpada Police Station, stating that he was apprehending that a false case would be instituted against him and that the Petitioner and Dr. Ajay J. Thakore, Head of Department of Conservative Dentistry, are in a very close relationship which is common knowledge to everybody in the Hospital, and he apprehended some conspiracy and adverse action in future due to the recent developments.

5. According to the Petitioner, on 18 and 19 May 2004, serious incidents happened. The fourth Respondent pushed the Petitioner five times during these two days from back in the corridor of the Hospital. The last time it happened, her mobile fell on the ground. She, therefore, lodged a Complaint on 20 May 2004 at Nagpada Police Station. The Petitioner's statement was recorded and an offence was registered under section 354 of the Indian Penal Code. According to the fourth Respondent on 18 and 19 May 2004, MDS exam was being held in the Department, where Dr. Ajay J. Thakore was Examiner along with Dr. Mansingh Pawar, Dean of Government Dental College, Mumbai, Dr. A.P. Thiku from Lucknow, Dr. B. Sureshchandra from Mangalore. According to the fourth Respondent, though the Petitioner was on a summer vacation leave, she was conveniently present in the Department as she was called by Dr. Ajay J. Thakore even though there were three staff members and there were six post-graduate

students to help in the exam, though she was not appointed as an Expert Examiner for the said Exam. According to the fourth Respondent, Dr. Ajay J. Thakore lodged a false complaint against him to the Registrar, Mumbai University that he had tried to influence the external Examiners by making them stay in his house though they were booked to stay at YMCA, Mumbai Central.

According to the fourth Respondent, as a matter of fact the said Examiners were staying at their relatives' house at Borivali and Kandivali respectively as per the University TA/DA Bills and other records. According to the fourth Respondent Dr. Ajay J. Thakore personally accompanied the Petitioner to Nagpada Police Station to register the FIR (First Information Report) under section 354 of the Indian Penal Code and a Criminal case was pending against him in the Court of Metropolitan Magistrate, Mazgaon. According to the fourth Respondent, on 20 May 2004, the police had visited the College to arrest him without permission of the Dean and on 24 May 2004, he sought anticipatory bail.

6. On 24 May 2004 about 20 male and female staff members of the College wrote a letter to the Joint Municipal Commissioner and the Dean supporting the fourth Respondent and stating that there was a plot against him. According to the Petitioner in this letter, false and reckless allegations were made about the Petitioner's relations with Dr. Ajay J. Thakore with a view to tarnish her image and reputation. On 25 May 2004, the College Enquiry Committee had conducted an enquiry under the Chairmanship of Dr. Mrs. S.J. Nagda. On 6 June 2004, an enquiry was conducted at T.N. College under the Chairmanship of the Dean, Dr. Mrs. Koppikar. On 27 July 2004, three female students/interns wrote letters/ Complaints to Dr. Mrs. Alka Karande, Deputy Municipal Commissioner (Education), Women Grievance Cell, complaining against the behaviour of the fourth Respondent. The All India Democratic Women Association (comprising of five organisations i.e. Akhila Bharatiya Janvadi Mahila Sangathana, Bombay University and College Teachers Association/Union, CITU, Municipal Nurses Union and Majlis) wrote a letter on 27 July 2004 to the Municipal Commissioner about the misbehavior of the fourth Respondent, and thereafter on 30 July 2004, complaining that no action has been taken so far. On 31 August 2004, the representatives of All India Democratic Women Association met the Municipal Commissioner. On 1 September 2004, the representatives of the said Association wrote to the Municipal Commissioner putting on record assurances given in the meeting on 31 August 2004 that a decision would be taken within a week. On 9 September 2004, according to the fourth Respondent, the Petitioner in league with Dr. Ajay J. Thakore orchestrated a Morcha by certain Women Organisations by giving false information about him when he had gone to Brisbane, Australia, as a Country representative speaker in International Endodontic Conference. According to the fourth Respondent, the Petitioner and Dr. Ajay J. Thakore also got published false and malafide articles about against him in the local news papers and, therefore, he filed defamation case against them at Dadar Court. On 10 September 2004, a number of Women Organisations including above five organisations held a demonstration outside the gate of the College. A pamphlet

was published wherein it was stated that in spite of the serious Complaint of sexual harassment, the fourth Respondent continued without any punitive action against him. According to the Petitioner, a joint representation dated 14 September 2004 signed by number of students, was made against the behaviour of the fourth Respondent, addressed to the second Respondent-Deputy Municipal Commissioner. On 16 September 2004, the Petitioner sent notices through her Advocate, to all the signatories of the letter dated 24 May 2004 objecting to the allegations about the close relationship between the Petitioner and Dr. Ajay J. Thakore and that they had caused an act of defamation for which necessary action would be taken and called upon them to withdraw all the allegations and tender unconditional apology.

7. According to the Petitioner, a report appeared in the news paper "Asian Age" on 17 September 2004 titled "accused in sexual harassment case files counter complaint" in which it was stated that the Corporation had conducted enquiry against the fourth Respondent which was in his favour and that the Petitioner and Dr. Ajay Thakore had conspired against him for their personal gain. On 21 September 2004, the Petitioner wrote a letter to the Municipal Commissioner as also to the Dean and stated that she was not given any intimation about the enquiry report by the administration. On 30 September 2004, the Municipal Commissioner constituted a five member Core Committee against sexual harassment (hereinafter referred to as "the Core Committee") under Respondent No.2-Dr. Smt. Alka S. Karande, Deputy Municipal Commissioner (Education) as Chairperson. The other members of the said Committee were Dr. (Smt.) H.S. Dhavale (Professor and Head of Department of Psychiatry, Topiwala National Medical College), Mr. Mihir Desai (Advocate and representative of NGO), Smt. S.J. Billimoria, [Ex-Law Officer and Consultant, Mumbai Municipal Corporation (Retd.)] and Mr. V.S. Kamat (Deputy Municipal Commissioner). The Petitioner by letter dated 14 October 2004 was called upon to remain present before the Core Committee.

8. On 7 October 2004, the Additional Municipal Commissioner issued directions to hold an enquiry into the Petitioner's conduct stating that while working as Associate Professor in the College she had sent notice to Dr. Pravin Solanki, Lecturer, without informing about it to her superiors which amounts to gross misconduct on her part. On 28 February 2005, Dr. Ajay J. Thakore retired as the Head of the Department. On 17 March 2005, by an office order, the fourth Respondent was appointed as Acting/In-charge Head of the Department of the Conservative Dentistry. The Petitioner therefore sent notice through her Advocate dated 13 June 2005 objecting to the fourth Respondent's aforementioned appointment. On 4 July 2005 the Petitioner received a letter from the second Respondent, Dr. Smt. Alka Karande, wherein it was stated that the enquiry report of the Core Committee was submitted to the Additional Municipal Commissioner (Easter Suburbs) on 2 April 2005 and the Petitioner was requested to follow up the matter with the office of the Additional Municipal Commissioner (Eastern Suburbs). On 2 August 2005, the Petitioner filed the present Petition. On 1

December 2005, the Additional Municipal Commissioner (Eastern Suburbs) wrote to the Petitioner referring to her Application dated 19 May 2005 and 25 May 2005 and forwarded a copy of the enquiry Report of the Core Committee in respect of her Complaint dated 6 May 2004. The charges as framed by the Core Committee in the Report were as under:

"Charges

- a) On 18.5.2004 between 9.00 A.M. To 11.00 A.M. you deliberately pushed Dr. (Smt.) V.K. Shetty 5 to 6 times.
- b) On 19.5.2004, you again brushed her right shoulder five times deliberately, due to which her Mobile Phone fell down on the ground, causing her embarrassment.
- c) Your behaviour and attitude towards your colleague subordinates and the students particularly female staff members are undesirable and intimidate.
- d) Female students viz. Bhavika Vira, Ms. Amit Sharma, intern and Smt. Zainab Vasaiwala, intern have complained and confirmed your misbehaviour and derogatory statement towards female students and staff members.
- e) His above acts amount to sexual harassment towards female members at work place as contained in A/B of Guidelines No.VI which amounts to gross misconduct on his part."

Thus apart from the Petitioner's Complaint dated 6 May 2004, charges were also framed in respect of the alleged incidents on 18 and 19 May 2004 (in respect of which the Petitioner had filed an FIR) as also letters/Complaints of other three female students/interns.

9. According to the Petitioner when she filed the Petition she was not supplied with a copy of the Core Committee's report and pending the Petition and on the directions of this Court, a copy of the report dated 2 April 2005 was given to the Petitioner's Advocate. The Core Committee found the fourth Respondent guilty of charges (c) and (d) to the extent that it deals with Dr. (Ms.) Amit Sharma. So far as letters of Ms. Bhavika and Ms. Zainab are concerned, the Committee recorded that they did not appear before the Committee and therefore, they have not taken the contents of the said letters into account. The Committee recorded that the behaviour of the fourth Respondent is most unbecoming of the responsible post which he was holding, specially his behaviour towards students amounts to sexual harassment at work place. The Committee recommended that instead of imposing the highest punishment of dismissal, the fourth respondent should be imposed punishment of permanent stoppage of one increment with warning and both be reflected in his service record. So far as charges (a) and (b) are concerned, the Committee referred to the evidence of witnesses including Dr. Mansingh Pawar, Head of the Department, Government Dental College, Mumbai, and concluded that the incident on 19 May 2004 was not deliberate and further observed that on the basis of available evidence, it was not possible to come to a

definite conclusion whether there was repeated and deliberate brushing as contended by the Petitioner and that they cannot come to a positive finding against the fourth Respondent on these charges. The Committee observed that the criminal Complaint is still pending and the same will take its own course.

10. The Core Committee Report dated 2 April 2005 was put up before the Competent Authority, Additional Municipal Commissioner, (Eastern Suburbs). The Competent Authority in his order dated 16 January 2006 observed that there were total five charges against the fourth Respondent, out of which the first four were the main charges and the fifth one derived out of these four charges. The Competent Authority observed that first two charges (a) and (b) are out of the Complaint from the Petitioner for sexual harassment by the fourth Respondent and as per the Core Committee Report these charges are not proved. So far as the charges (c) and (d) are concerned, those were regarding general behaviour with the staff and students and there were many letters from both the sides but the Core Committee has not taken cognizance of the same as most of them did not appear before the Core Committee except one from the side of the Petitioner and few from the side of the fourth Respondent. The Competent Authority observed that the medical students are under stress to maintain relation with their Professors which is unfortunate but true as the students have to face these teachers not only in written examinations but also for oral and practical examinations. The Competent Authority observed that the Maharashtra University of Health Sciences had removed Dr. Thakore and the Petitioner from examining students of Nair Dental College recently i.e. June 2004 as they were convinced of the evidence that both had threatened the students. The Competent Authority observed that in these circumstances, it was difficult to accept the Core Committee's verdict in to against the fourth Respondent in case of charges (c) and (d) and as per the details recorded by the Core Committee, these charges, particularly sexual harassment at work place, cannot be said as proved fully. The Competent Authority observed that Core Committee has rightly passed strictures against the fourth Respondent but noted that most of the things are true for the Petitioner as well as Dr. Thakore and that Dr. Thakore was more responsible of the failure as Head of the Department for which the Core Committee has stated nothing. The Competent Authority observed that the three Professors had failed in the duties to bind students and the staff in congenial atmosphere resulting in disrepute to the Institution which has maintained high standards of values for many years and during the whole episode, the real harassment was to students and administration. The Competent Authority exonerated the fourth Respondent from charges (a) and (b) on the basis of the Report of the Core Committee. So far as charges (c) and (d) are concerned, the Competent Authority held that they are partially proved. The Competent Authority did not completely accept the recommendations of the Core Committee and ordered punishment of the fourth Respondent with stoppage of one increment for one year with temporary effect. The Competent Authority prima facie found that Dr. Thakore and the Petitioner had failed to create congenial and healthy atmosphere and due to which the

Institute has been put to disrepute and hence, a separate summary enquiry was directed against them.

11. The fourth Respondent filed a Departmental Appeal against the order dated 16 January 2006 of the Competent Authority and it was referred to two Additional Commissioners. The Departmental Appeal was jointly heard by the Additional Commissioner (City) and the Additional Commissioner (P) on 8 February 2007. It appears that there were certain issues which cropped up during the course of hearing of the Appeal raised by the fourth Respondent (not in relation to the Petitioner's Complaints) and the matter was referred back to the Core Committee (new) to look into the issues and directions were given to submit its findings to the concerned Additional Municipal Commissioner.

Accordingly, the Core Committee conducted the enquiry afresh on the additional issues by calling additional witnesses. The Core Committee submitted its Report dated 22 June 2007, in which it did not record any fresh findings or recommendations. In the meanwhile, on 13 February 2006, the present Writ Petition had come up for admission before the Division Bench of this Court. This Court admitted the Writ Petition and granted interim relief by restraining the fourth respondent from continuing as in-charge Head of the Department of Conservative Dentistry. The Court directed that the internal Appeal filed by the fourth respondent shall be decided on its own merits. In paragraphs 3 and 4 of the order dated 13 February 2006, the Division Bench observed thus :

"3. Mrs. Rao appearing for Respondent No.4 submits that the findings of the inquiry are not justified and that Respondent No.4 has filed an internal appeal. We expect that the Appeal will be decided on its own merits and therefore, we are not making any observations on the merits of the controversy. However, in view of the findings given by the Enquiry Officer as also the decision by the Additional Municipal Commissioner accepting particularly charge (c), in our view interim prayer (d), is just and necessary.

Accordingly we admit this petition. Petitioner will amend the petition appropriately within one week as permitted earlier. There will be interim relief in terms of prayer clause (d) restraining the continuation of Respondent No.4 as in-charge head of the department of Conservative Dentistry.

4. From the chart annexed to the reply by Associate Dean, it is seen that the Petitioner is the next person in the hierarchy in the concerned Department. The Petitioner is present in the Court. Shri Vashi on instructions from the Petitioner has stated that she has no objection if somebody else is appointed as head of the department or to hold the charge. The next person is one Mrs. Kulkarni. Mrs. Kulkarni or the Dean or any other head of the department be handed over the charge in the meanwhile."

12. After the aforesaid order dated 13 February 2006 of this Court was passed inter-alia directing that the Appeal of the fourth Respondent be decided on its own merits, on 23 October 2007 the Appellate Authority passed an order

allowing the Appeal and exonerating the fourth Respondent completely and expressed doubts about the veracity of the Complaint of the students after noticing the chain of events and that two of the Complaints were in the same handwriting.

13. On 10 June 2008, the Respondent-Corporation filed Notice of Motion No.248 of 2009 praying for vacating the interim order dated 13 February 2006 passed in the Petition on the ground that the fourth Respondent was exonerated of all charges in his Appeal and the fourth Respondent was required to be promoted as the Respondent-Corporation was facing difficulties because of deficiency of Professor in the Department of Conservative Dentistry. The said Notice of Motion was directed to be heard along with main Writ Petition by an order dated 14 January 2009.

14. Meanwhile, after disposal of the Appeal of the fourth Respondent, the Respondent-Corporation had promoted the fourth Respondent vide order dated 20 February 2008 and he was appointed as the Head of Department (HOD) of Conservative Dentistry by the then Dean of Nair Hospital Dental College. Sometime in March 2009, the Petitioner filed Contempt Petition No.28 of 2008 alleging contempt of the order dated 13 February 2006 whereby this Court had granted an interim injunction in terms of prayer clause (d) restraining the fourth Respondent from acting as In-charge of the Department of Conservative Dentistry in Nair Hospital Dental College. The Respondent-Corporation thereafter, withdrew the appointment order of the fourth Respondent on 05 March 2009. On 2 April 2013, the fourth Respondent was acquitted by the Magistrate of the charges under section 354 of the Indian Penal Code in the pending criminal proceedings.

15. On 15 September 2015, the fourth Respondent also filed Notice of Motion No.372 of 2015 inter alia praying for vacating the interim order dated 13 February 2006 of this Court as the Appellate Authority vide order dated 23 October 2007 had exonerated him from all charges and also since he was acquitted of the criminal charges vide judgment and order dated 2 April 2013 by the Metropolitan Magistrate. The fourth Respondent also prayed for grant benefits and promotions that are due to him from 28 February 2005 till date.

16. We may now refer to the case of the fourth Respondent in his Affidavit-in-Reply dated 13 September 2005, wherein he has inter alia stated as follows:

i) He completed his BDS in the year 1987 and MDS in the year 1989 from the Mumbai University through the Nair Hospital Dental College and thereafter he joined the said College on 23 March 1990 as a full time Lecturer. He was promoted as Associate Professor in 1995 and became eligible for the Professor's post in December 2000. He has been appointed as Examiner for BDS exam conducted by the Mumbai University since seven years as also by various Universities like Gujarat, Indore, Nagpur, Marathwada, Dharwad, Mangalore, Hyderabad, Calcutta, etc. in the last 10 years and as Post-graduate examiner for

the University of Ahmedabad, Mangalore, Hyderabad, Lucknow, Health Universities of Karnataka and Tamil Nadu in last 10 years;

ii) He was appointed as Convener for ad-hoc Board of studies in Clinical Dentistry by Mumbai University in 2000 for 3 years followed by appointment as Chairman, Board of Studies in Clinical Dentistry in 2003 for 3 years. By virtue of the second appointment, he was also member of Academic Council of the Mumbai University. He was appointed as a member, Board of Studies as Subject Expert by Nagpur University for five years from 2000-2005 and he was also External member of the Board of Studies for Post-Graduation in Rajiv Gandhi University of Health Sciences, Karnataka due to his academic excellence achieved in the speciality.

iii) In the year 2003, a student, Dr. Ashish Mandwe appeared for MDS examination, who was a student of Dr. Ajay Thakore but was extremely close to the Petitioner. During examination in the month of November 2003, Dr. M.G. Pawar, the then Head of the Department of Conservative Dentistry, Government Dental College, Mumbai and Dr. Suresh Chandra from Mangalore were Examiners at Nair Hospital Dental College complained that Dr. Ashish Mandwe had cheated in theory papers and this fact was communicated to him and the Petitioner, besides Dr. Thakore. The statement of the student Dr. Ashish Mandwe was that the Petitioner had helped him in the practical examination to which the Examiners had taken serious note and had taken action and he was declared failed in the examination.

iv) On 21 November 2003, he was promoted as Associate Professor of the Department of Conservative Dentistry. The Head of the Department, Dr. Ajay Thakore was to retire on 28 February 2005 and he was to be appointed as Head of the Department in his place by virtue of his senior most position in that Department of the College and in the Hospital and also because of his academic achievements besides numerous paper presentations and publications in various national journals. His appointment as Head of the Department was almost approved and confirmed, which was known to the entire faculty. On 11 March 2004, he got married and was on leave for some time. After his return, on 16 April 2004 there was discussion in respect of the corrections of papers amongst the Lecturers, wherein Dr. Saurabh Gupta, the Petitioner, one staff member and he himself were present. There was no talk between the Petitioner and him. On the contrary, Dr. Saurabh Gupta was reprimanded by Dr. Ajay Thakore in the presence of all. On 16 April 2004 and 30 April 2004 answer papers of the examination held in first week of April was completed by Dr. M.L. Kulkarni and him. Thereafter they were to take their summer vacation. No incident as alleged had happened in the Department.

v) His colleague Dr. R.P. Shetty informed him that the Petitioner had made a Complaint to Dr. Ajay Thakore, who forwarded it to the Municipal Commissioner and the said Complaint dated 6 May 2004 was in respect of some incident of 16 April 2004. The Dean of the College, Dr. S.G. Damle, on coming to know about the said Complaint, sent to the Municipal Commissioner directly by Dr. Ajay

Thakore, asked Dr. Ajay Thakore to seek his explanation on the alleged incident. Dr. Ajay Thakore, accordingly asked him to give his explanation on the Complaint dated 6 May 2004 made by the Petitioner. He also informed him that he was a witness to the said incident referred to in the Complaint dated 6 May 2004. Before he could furnish his explanation to Dr. Ajay Thakore about the alleged incident dated 16 April 2004, he had already forwarded the said Complaint of the Petitioner to Dr. Alka Karande, Deputy Municipal Commissioner and to the Municipal Commissioner. Dr. Ajay Thakore sent a letter dated 6 May 2004, seeking his explanation and he sent his reply vide letter dated 10 May 2004. On 14 May 2004 due to his apprehensions, he forwarded a letter dated 14 May 2004 to the Additional Commissioner of Police, Central Region, Shri Vinod Lokhande, with a copy marked to D.C.P., Zone-3, Senior Inspector of Police, Nagpada Police Station and also to his superiors including the Dean of the Nair Hospital Dental College Dr. Damle, besides the Additional Municipal Commissioner Shri Kant Singh and the Municipal Commissioner Shri Johny Joseph, expressing his apprehension of an attempt to defame him or filing a false police case against him. He later learnt that Dr. Ajay Thakore had deliberately approached the Sr. Inspector of Police (Nagpada) on 20 May 2005. He states that on 16 May 2004, he had received a letter from Dr. S.G. Damle, Dean of the College, asking for a copy of explanation given to Dr. Ajay Thakore, which was sent by him on 18 May 2004.

vi) Dr. Ajay Thakore was on vacation from 18 to 31 May 2004 and he was put In-charge of the Department. The Petitioner also was on vacation during that time. During that period, examination was being conducted. There were two more Lecturers, Dr. Mrs. Mrunalini Kulkarni and Dr. Saurabh Gupta working in the Department of Conservative Dentistry along with him. During these 2 days i.e. 18 and 19 of May 2004, Dr. Ashish Mandwe who was a repeater was the only one candidate to give the examination. On 18 and 19 May 2004 neither he nor any other person were made aware that Dr. Thakore was to come on 18/19 May 2004 as an Examiner though he was on leave. However, he came to College as an Examiner on both the days. The Petitioner who was on vacation, came to the Examination Hall as Expert for the said practical examination and the Petitioner had not taken the permission of the Dean of the College and/or sought his permission to remain present at the examination held on 18/19 May 2004, in spite of knowing that he was officially heading the Department on both these days. On the said date, 10 staff of the Department i.e. 3 staff and 7 P.G. students were present for the said examination. However, the examination had concluded without any problem.

vii) Dr. Ajay Thakore did not mention or enquire from him or issued any show cause notice of the alleged incident on 18/19 May 2004. On 20 May 2004, he was required to go to Nasik for University work with prior permission from Dean, Dr. S.G. Damle. On 20 May 2004 the Petitioner and Dr. Ajay Thakore personally went to Nagpada Police Station and lodged a Complaint against him under section 354 of the Indian Penal Code. Pursuant to the said Complaint, the Police

Officer from Nagpada Police Station came to the Dental College with a letter addressed to Dr. S.G. Damle, Dean and Joint Municipal Commissioner to arrest him. At that moment, Dr. S.G. Damle was not available in the College as he had gone out on official work. Dr. Ajay Thakore, though on vacation, signed the said letter as an Associate Dean of the Institution and granted permission to the police to get him arrested. He was informed about the said incident by one of his colleagues and therefore, on 21 May 2004 after coming from Nasik, he proceeded to take up steps for seeking bail. On 22/23 May 2005 being holidays, he could not move the Court for bail. On 24 May 2005, his wife approached the Chairperson of the State Women Commission, requesting her for intervention in this case, as the Complaint lodged by the Petitioner against him was outright false. He later came to know that the other Professors of the College and staff members of the College submitted a memorandum against Dr. Ajay Thakore and the Petitioner for their conduct. On 24 May 2004, Times of India published a report of lodging of FIR and his name was published as Accused in the said case. However, he was released on bail on 25 May 2005. On the same day Dr. Ajay Thakore and Petitioner approached the Police Commissioner, Shri A.N. Roy, to enquire about his arrest. During this period, both the Petitioner and Dr. Thakore, were on leave as her mother was undergoing angiography at J.J. Hospital. He later came to know that the teaching staff and other non-teaching staff approached the Dean, Dr. S.G. Damle, and placed their concern on record as it was very apparent that the Complaint was lodged against him with some ulterior motive. On 1 June 2004, he addressed a letter to the Dean, Dr. Damle, placing before him the malafide intention and conduct of the Petitioner and Dr. Ajay Thakore and the reason for filing a false case against him and bringing the police to arrest him in the College premises.

viii) On 7 June 2004, he received a letter from the Dean Dr. S.G. Damle intimating him that an enquiry was to be held on 8 June 2004 and he has to appear before the Local Women Grievance Cell, headed by Dr. Smt. Nagda, Professor and Head of the Prosthetic Department and one Ms. Renuka Mukadam, NGO, in respect of the Complaints made by the Petitioner. On the same day he received another letter that he had to appear before the Dean, T.N. Medical College, who was to head the enquiry. During the proceedings of the enquiry, he learnt that the Petitioner had made allegations that on 16 April 2004 he had spoken rudely to her and that on 18/19 May 2004, he had pushed her in the College premises. In the month of July and August, he officially requested the enquiry officials to furnish to him a copy of the Complaint made by the Petitioner, however, the same was not furnished to him. On 26 July 2004, his wife again requested the State Women Commission to intervene. On 5 September 2004, he was to leave for Australia to represent India with the prior permission of the Municipal Corporation to attend as a Country Speaker at the International Conference.

ix) On 8 September 2004, he came to know of the defamatory article in the Marathi Weekly, which was published against him. On 9 September 2004 a

Women Organization morcha was brought to the College against Dr. Damle and him. The teaching staff of the College and his colleagues approached the Municipal Commissioner to intervene in the matter. The Municipal Commissioner Shri Johny Joseph decided to hold one more enquiry at the request of the Women Organization. On 14 September 2004, he filed a defamatory Complaint in the Dadar Court against the newspaper Vrutta Manas and others. The learned Magistrate issued process. The Dean Dr. S.G. Damle asked him to give his explanation in respect of the newspaper article in Asian Age on 17 September 2004 to which he replied. On 4 October 2004, he received yet another memorandum from Dr. Alka Karande, DMC (Education) informing him to appear before an Enquiry Committee. Accordingly he appeared before the said Enquiry Committee and the Enquiry Committee exonerated him of all the allegations made against him by the Petitioner.

x) He was to take charge as Head of Department at the age of 39 years, and the Petitioner would not be in a position to achieve the said post for many years. If he were to be removed then Dr. Ajay Thakore though retired on 28 February 2005, had to be called back and would get extension for a period of three years, as there was no other person in the Department to take charge as Post graduate teacher. All the inquiries conducted against him by all the eminent persons have exonerated him. The enquiry held by Dr. Alka Karande, however, found him guilty of some minor, false and frivolous charges levelled against him. He had filed an Appeal against the same. There are several discrepancies and contradiction in the Complaint filed by the Petitioner on 6 May 2004 and 18/19 May 2004 and the said Complaints were made with mala-fide intention.

xi) As regards the specific allegations made by the Petitioner as referred to by her in para 5 and 6 of the Petition, the same has been concocted and false and have been made only with a view to deprive him of his promotion as a Head of the Department. The Petitioner filed Complaint dated 6 May 2004 alleging the incidence to have taken place at 11 a.m. in the Department. The Complaint discloses that he had threatened the Petitioner. If the incident had occurred in the presence of Dr. Ajay Thakore, Head of the Department, it is surprising why he did not take any action against him and/or complained against him. If such incident in fact had occurred none would have kept quiet for so long. One of his colleague, Dr. Gupta was also present on 16 April 2004 in their Department and also Dr. Thakore, the Head of the Department. However, no such incident has occurred as alleged by the Petitioner. If such an incident had taken place, Dr. Thakore, being the Head of the Department, would certainly have reprimanded him for his misdemeanour. These false allegations have been made deliberately with a view to prejudice his case and to deprive him of his legitimate post. The Petitioner has filed an FIR with Nagpada Police Station registered under CR No.194/PS/2000 and the case is pending before the learned Magistrate, Mazgaon. The said FIR refers only to an alleged incident dated 19 May 2004 which is alleged to have occurred at 11.15 a.m. in the College premises. The said FIR has been registered on 20 May 2004 and the allegations made therein, on

the face of it, are false, however, he does not wish to comment on the same, as the said case is sub-judice and he reserves his right to prove his innocence in the Court. The Petitioner and Dr. Ajay Thakore went to the Nagpada Police Station on 10 November 2004 and 10 September 2004 and recorded their further statements after the proceeding before the Inquiry Committee was over and he had cross-examined the Petitioner. In their statements dated 10 September 2004 and 10 November 2004 they have improved their earlier statement and added additional charges.

17. An Affidavit-in-Reply dated 13 September 2005 has been filed by Dr. S.G. Damle, the then Dean of Nair Hospital Dental College, Mumbai, wherein he has interalia stated as follows:

i) The Petition as filed was premature in as much the Enquiry Report was awaited. There were no adverse remarks in the confidential history sheets filed from 1990 to 2003 against the fourth Respondent in relation with the colleagues and staff. The Complaint appears to be a Complaint of the sort from junior as against her senior and that it is not fall under category of sexual harassment. No Complaint was received by the Dean either oral or written from the Petitioner or from the Head of the Department or any other staff members against the fourth Respondent. The Petitioner was supposed to be on the vacation during the period from 18 to 31 May 2005, however, it appears that she had attended the College on 18 and 19 May 2005 and the incident was not reported to the Dean or by the Head of the Department. Nair Hospital Dental College is premier institute having academic and educational repute at all India level. The Petitioner and the Head of the Department approached the Police Authorities without informing the Dean and Police was brought to the Institution, which has caused great set back and bad impression to the Institution. The Additional Municipal Commissioner (W.S.) In-charge had ordered to hold a preliminary enquiry in the matter in respect of this matter by appointing Dr. Smt. G.V. Koppikar, Dean of the B.Y.L. Nair Hospital as an Enquiry Officer.

ii) On receipt of a note along with the Complaint from the Deputy Municipal Commissioner and In-charge of Women's Grievances requesting to place the matter before the Committee of Sexual Harassment, a Committee under the Chairmanship of Dr. Smt. S.J. Nagda, Professor & Head of Prosthetic Department conducted the enquiry on 8 June 2004 and submitted a report on 9 June 2004 to the Dean. In the said enquiry report, no action was suggested against the Petitioner or fourth Respondent. The report from the Enquiry Committee was forwarded to Deputy Municipal Commissioner (Education) and Incharge of Women's Grievances Cell. A preliminary enquiry was conducted by Dr. Smt. G.V. Koppikar, Dean, Nair Hospital and the report of the enquiry was submitted to the Additional Municipal Commissioner (E.S.). The Departmental Enquiry in this case was ordered and was held by the Core Committee of which Dr. Smt. Alka Karande, Deputy Municipal Commissioner (Education) was the Chairperson and the outcome of this enquiry is still awaited.

iii) On superannuation of Dr. A.J. Thakore, Ex-Professor & Head of the Departmental dated 1 March 2005, it was necessary to appoint someone as in-charge of the Department to render efficient patient care and dental education and as such the fourth Respondent being senior most Associate Professor in the Department of Conservative Dentistry was asked to look after the duties of the Department as In-charge in addition to his own duties as Associate Professor without any remuneration or allowances. The fourth Respondent was the only recognised post graduate (P.G.) teacher in the subject and the guidance to P.G. students is necessary which the P.G. Teacher only can guide and the fourth Respondent was the only P.G. Teacher in the subject at the Institute. The Complaint dated 6 May 2004 lodged with Dean is just 10- 11 months prior to the superannuation of Dr. A.J Thakore, Professor and Head of the Department. Till the Complaint dated 6 May 2004 was received by the Dean, there was no Complaint received either oral or written by the Petitioner or Dr. A.J. Thakore in the past. Though the Petitioner was on vacation from 18 to 31 May 2004, she attended the College and during that period the incidents of 18 and 19 May 2004 allegedly took place. The Petitioner had lodged a Complaint on 20 May 2004 with Nagpada Police Station. The Petitioner neither informed the Dean nor sought permission for lodging the Complaint against the fourth Respondent.

iv) On retirement of Dr. A.J. Thakore with effect from 1 March 2005, only three staff members were working in the Department. On 20 May 2005 the Police Authorities approached the Dean for the custody of fourth Respondent in response to the Complaint lodged by the Petitioner and the Police Authorities were accompanied by the Petitioner and Dr. A.J. Thakore, Head of the Department. The presence of Dr. A.J. Thakore, who was not only the Head of the Department but was also holding the post of Associate Dean, was unwarranted along with the Petitioner. Dr. A.J. Thakore ought to have tried to settle the issue amicably and to avoid tarnishing image of the Institution.

v) The incident was reported on 21 May 2005 to the Additional Municipal Commissioner (Western Suburbs) and as per his orders, preliminary enquiry was ordered by appointing Dr. Smt. G.V. Koppikar, Dean B.Y.L. Nair Hospital as an Enquiry Officer. The Dean had also served memo to the fourth Respondent for his absence from 20 May 2004 and further explanation was sought about the police case registered by the Petitioner. The Petitioner also approached Dr. Smt. Alka Karande, the Deputy Municipal Commissioner (Education) and In-charge of Women's Grievance Cell of the Respondent-Corporation. The Dean then ordered to place the said matter before the Local Committee constituted for sexual harassment at work place at Nair Hospital Dental College. The Local Enquiry Committee was constituted as per the norms and guidelines of the Respondent-Corporation. The procedure of enquiry was held before the Enquiry Officer i.e. Dean, B.Y.L. Nair Hospital, who has conducted enquiry in accordance with the rules of the Respondent Corporation and submitted a report before the Additional Municipal Commissioner (Eastern Suburbs). As per the norms, the enquiry report was given to the fourth Respondent for his Reply. After the receipt of Reply from

the delinquent, the Additional Municipal Commissioner (Eastern Suburbs) shall pass requisite orders on the enquiry in accordance with law.

vi) The Petitioner instigated the Women's Organization, Akhil Bharatiya Janwadi Sansthan to demonstrate at the gate of Nair Hospital Dental College and the said act was unwarranted and has to be condemned. The enquiry was also conducted by the Core Committee under the Chairpersonship of Dr. Mrs. Alka Karande on the Complaint of the Petitioner. The Deputy Municipal Commissioner (Education) has already informed the Petitioner that report of the Core Committee was submitted to the Additional Municipal Commissioner (Eastern Suburban), whose decision is awaited. The fourth Respondent was asked to look after the work of the Head of the Department, as in-charge of the Department, however, the Petitioner is directly submitting her correspondence including her leave application to the Dean by-passing the In-charge of the Department who is her immediate boss. The Core Committee has conducted the enquiry in accordance with the guidelines laid down in the case of Vishakha by the Hon'ble Supreme Court.

18. An Affidavit-in-Rejoinder dated 14 October 2005 has been filed by the Petitioner reiterating her case and denying the contentions in the Affidavits-in-Reply of the fourth Respondent and the Respondent-Corporation.

19. In the Affidavit support of the Notice of Motion No.248 of 2009 filed by the Respondent-Corporation (seeking to vacate the interim order dated 13 February 2006 of this Court), it is inter-alia pointed out that by an order dated 16 October 2007, the fourth Respondent was exonerated even with regards to charges (c) and (d) in the Appeal and the punishment order dated 16 January 2006 was set aside. It is stated out that after the interim order dated 13 February 2006 of this Court, Dr. Smt. Neelima Malik was appointed till further orders as In-charge, Head of Department of Conservative Dentistry though she was not a Professor of Department of Conservative Dentistry. It is stated that Dr. Neelima Malik was required to look after her own academic discipline on her own Department. It is pointed out that as the post was vacant Respondent-Corporation submitted the proposal to fill up the post and that the fourth Respondent fulfilled the criteria of the said post. The promotion committee has also graded the fourth Respondent consistently with "A" grade for all previous years and he was accordingly recommended by the promotion committee on 2 January 2008 for promotion to the post of Professor and approval of the Corporation was obtained vide Corporation Resolution No.1249 dated 7 February 2008. It is pointed out that it was necessary to take into consideration the academic career of the students of Nair Hospital Dental College being a well known reputed College not only in Mumbai but in India and the University has continuously been pointing out the deficiencies of Professor in Department of Conservatives Dentistry and it was necessary to appoint Professor of the Department of Conservative Dentistry as per the Regulations of Dental Council of India and norms of the University.

20. In his further Affidavit-in-Reply dated 4 April 2016, the fourth Respondent

has interalia stated as under:

i) In the month of May, 2004 he apprehended that the Petitioner in league with Dr. A.J. Thakore were in the process of implicating him in false, frivolous and malicious cases against him and hence by way of precaution he brought it to the notice of the various authorities including the Municipal Commissioner so also the Law Enforcing Agencies as to how the Petitioner in connivance with Dr. Ajay Thakore, who retired on 28 February 2005, espoused to be in the post so that he would not have been appointed to the post of Head of the Department (HOD) for at least two years, which Dr. Ajay Thakore wanting to continue by virtue of getting him out of his way, which the Petitioner has conspired with Dr. Ajay Thakore. The Petitioner has much belatedly furnished and served upon him copy of the amended Petition only on 1 April 2016. The Petitioner in her cross-examination on oath has admitted to few facts, which demonstrate that from the beginning of the year 2004, the Petitioner had issues with him as Dr. A.J. Thakore was retiring on 28 February 2005, hence the Petitioner and Dr. A.J. Thakore became ambitious to get him out of the College by hook or crook, firstly by registering an FIR against him and the relentlessly pursuing the Inquiry against him for which they also used few students against him and got issued anonymous complaints against him with few names whom the said duo were sure to espouse their cause. All these letters were written only to Dr. A.J. Thakore and he made the best use of the same to espouse his cause.

ii) Amongst three lady students who were directly under Dr. Ajay Thakore i.e. Bhavika Vira, Amit Sharma and Zainab Vasaiwalla, as regards the FIR registered on 20 May 2004 with respect to the incident of 18 and 19 May 2004, the said Ms. Amit Sharma has given a statement to the police on 20 May 2004 itself. The very same Ms. Amit Sharma, who espoused the cause of the Petitioner as well as Dr. Ajay Thakore on 17 February 2015 deposed before the Core Committee against him when she was a student of Dr. A.J. Thakore. The said Ms. Amit Sharma was summoned 3 to 4 times to the Metropolitan Magistrate 25th Court, Mazgaon in Case No.184/PS/2004 and she chose not to come to the Court, probably since she wasn't espousing the cause of the Petitioner and Dr. A.J. Thakore after she left the College, however, as on 17 February 2005 when she deposed before the Core Committee in the departmental enquiry against him, she had her vested interest because of her boy-friend, Dr. Ashish Mandwe in whose solitary help the Petitioner gained entry to the college premises on 18 and 19 May 2004 to assist the said Dr. Ashish Mandwe for which the said Ms. Amit Sharma whole heartedly co-operated with the Petitioner.

iii) In Departmental Enquiry against the Petitioner penalty has been imposed on her vide order dated 5 August 2006 by the Additional Municipal Commissioner (ES). The conduct of the Petitioner and Dr. A.J. Thakore is evidently brought out by 19 responsible Doctors who are the teaching staff of the college out of which 10 are lady Doctors. The said confidential representation is addressed to the Dean of the College and is dated 24 May 2004. The said letter is annexed by the

Petitioner herself at page 102 of the Writ Petition and which letter may be read part of the Affidavit.

21. To the aforesaid Affidavit dated 4th April 2016 of the fourth Respondent is annexed copies of the orders dated 24 May 2010, 30 January 2006, 5 August 2006 and 25 November 2008 which according to the fourth Respondent shows that the Petitioner has been issued Memos/Orders time and again for minor misconducts and has been repeatedly warned and even a penalty of Rs. 500/- was imposed on her. According to the fourth Respondent, this information was obtained under the Right to Information Act.

22. We may also refer to an earlier Affidavit dated 6 February 2006 of the Respondent Corporation, wherein it is pointed out that as per the Regulations of Medical Council of India, the Department of Dentistry in the Medical College should consist of one Professor, one Reader/Associate Professor and one Lecturer. None other than the Petitioner is Associate Professor for Conservative Dentistry who is not yet recognised as post-graduate teacher by the University. It is pointed out that one post of Associate Professor in the Department Dentistry in G.S. Medical College (KEM) existed in the year 2000-2001 and the said post lapsed due to non-availability of candidate however the administration can revive or create the said post if transfer of the Petitioner is to be effective. In the Department of Dentistry in LTMG Hospital, Sion, there is no existing post of a Professor. However out of two posts of Lecturer, one post is transferred to Rajawadi Hospital and another post of Lecturer is in existence in the said Hospital. However, there is no post of an Associate Professor in the said Hospital.

23. We have heard the learned Counsel for the Petitioner, learned Counsel for the fourth Respondent and learned Senior Counsel for the Respondent-Corporation. We have also gone through the Written Submissions filed on behalf of the Petitioner and on behalf of the fourth Respondent. We have also perused the following judgments cited on behalf of the Petitioner: i) Vishakha & Ors. v. State of Rajasthan & Anr, 1997 LIC 2890; ii) Senior Superintendent of Post Office, Pathnamthiatta & Ors. v. A. Gopalan, (1997) 11 SCC 239; iii) Govind Das v. State of Bihar & Ors., (1997) 11 SCC 361; iv) Vasant Rama Bhagade v. Bombay Port Trust & Ors. 1994 (II) CLR 891; v) General Manager Swadeshi Cotton Mill, Pondicherry v. Presiding Officer, Labour Court, Pondicherry, (2005) I CLR 172; vi) Braithwait Burn & Jessop Construction Co. Ltd. v. 4th Industrial Tribunal, West Bengal, (2005) III CLR 389; vii) Haryana Roadways Engineering Corporation through its General Manager v. Industrial Tribunal cum Labour Court-I, Presiding Officer, Gurgaon & Anr. (2009) III CLR 849; viii) Deputy Inspector General of Police & Anr. v. S. Samuthiram, (2013) I CLR 16; ix) Ajit Kumar Nag v. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and others, (2005) III LLJ SC 1129.

24. At the outset it may be stated that though there were other inquiries directed against the fourth Respondent, the challenge in this Petition is only to the orders passed arising from the Inquiry Report of the Core Committee against sexual

harassment. Dr. (Smt.) Alka Karande was the Chairperson of the said Core Committee. The other members of the Core Committee were Dr. (Smt.) H.S. Dhavale, (Professor and Head of Department of Psychiatry, Topiwala National Medical College, Mumbai), Mr. Mihir Desai (Advocate and representative of NGO), Smt. S.J. Billimoria, [Ex-Law Officer and Consultant, Mumbai Municipal Corporation (Retd.)], Mr. V.S. Kamat (Deputy Municipal Commissioner). It is noted from the Inquiry Report of the Core Committee that there were five charges framed against the Petitioner as reproduced in para 8 herein-above. The charges (a) to (d) were the main charges and charge (e) was a consequential charge.

25. It is admitted position that the Petitioner and the fourth Respondent have studied together and have known each other from 1984 since their college days and have even worked together in the Department of Conservative Dentistry for about a decade. The Petitioner and the fourth Respondent seemed to be on friendly terms prior to the Complaint dated 6 May 2004 of the Petitioner. This was observed even by the Metropolitan Magistrate in his judgment and order dated 2 April 2013 in the criminal proceedings which I shall refer to later. It is seen from the record that both the Petitioner as well as the Respondent had some point of time separated and ultimately got divorced from their respective spouses. They were staying in the same building and later on in the same complex in the quarters allotted by the Respondent Corporation. It appears that sometime in March 2004, the fourth Respondent was on leave as he was to get remarried. The Complaint came to be filed by the Petitioner against the fourth Respondents on 6 May 2004. Prior thereto she has not filed any Complaint against the fourth Respondent. The Complaint of the Petitioner dated 6 May 2004 is reproduced in its entirety herein below :

"Respected Sir,

Re: Misbehavior of Dr. K.S. Banga, an Associate Professor, Department of Conservative Dentistry, Nair Hospital, Mumbai.

I, Dr. Vathsalya Krishna Shetty, an Associate Professor in the Department of Conservative Dentistry, Nair Hospital wish to bring to your notice the following:

1. I am working with the Nair Hospital, in my capacity as lecturer and Associate Professor, for last 9 years in the Department of Conservative Dentistry. One Dr. K.S. Banga has also been working as an Associate Professor for last 9-10 (approximately) years in the same department. Dr. Banga's behaviour and attitude for last many years has been most undesirable and intimidating. He has been very rude and overbearing with all subordinates and colleagues and particularly with female staff. On many occasions in the past, I have had to remind him of his behaviour, but to no avail Dr. Banga has been deliberately misbehaviour with me and other lady students and staff and has been threatening them with dire consequences if any protest is made. Dr. Banga has been taking advantage of his position as an Associate Professor and exploiting

the situation.

2. I have tried to reason with him on many occasions, but he has always taken difficult posture and threatened me more. I have tried to avoid making any formal complaint since I did not wish to make an issue and also since Dr. Banga has been my colleague of many years. However, he has become more aggressive and difficult to leave with assuming my silence as a sign of weakness.

3. I wish to put on record one specific incidence in this connection. On 16th April, 2004 at about 11 a.m. I visited my Head of Department (HOD) to bring to his notice certain irregularities concerning some answer papers, which were found lying around and were not attended to by anyone. At that time Dr. Banga was also present there. Without any provocation, Dr. Banga interrupted me and while referring to another completely irrelevant incident proceeded to accuse me and said that I was talking too much and I quote "to remember that all that you are doing, and this incident, will come back to you in a bad way."

4. On that occasion Dr. Banga was alluding to the fact that he would take appropriate action against me as soon as he gets chance. He went on to hint that no sooner he is promoted he would take steps against me. Dr. Banga's behaviour is very unbecoming and insulting. He has been found to be deliberately misbehaving with ladies. In particular in front of outsiders he has been taking this particular position and pull his rank, particularly with female staff.

5. Sir, I have this on paper since it is becoming increasingly difficult for me to function with Dr. Banga. He has been very insulting and intimidating with me for last few years despite my keeping distance from him. He takes any opportunity to get at me and seeks out reasons for the same.

6. I now fear that he will make my working life more difficult. Dr. Banga has been making open threats about putting some of us, and me in particular "in place" once he is promoted to a higher post. I earnestly request you all to take immediate steps and protect my dignity and help to carry on my work in congenial atmosphere. I understand that his behaviour with other ladies, including lady students have not been proper but they fear to take action considering Dr. Banga's position in the hospital.

7. There are several guidelines laid down by the Hon"ble Supreme Court of India, regarding the harassment of a female at the place of work and also provisions of Convention on the Elimination of all forms of Discrimination against women, which laid down in Articles, 11, 14, 15, 21 and 24 of the Constitution of India, since women have to be honoured and to be treated with dignity at place of their work, irrespective of vocation and the place of work and should be provided with all facilities to which they are entitled for protection and easy work at work place.

8. It is contractual obligation of the State or the Public Functionaries and Corporation to protect the interest of the females at their work place as also tried

to avoid the violation of the fundamental rights or enforcement of the public duties.

9. I would now appreciate if you could take appropriate action against Dr. Banga so as to avoid the situation going out of control. I would not like to approach outside agency, which would bring bad name to the institution and the Corporation. I hope I would not be left with such alternative.

Yours truly,

Sd/-

Dr. Vathsalya K. Shetty

Associate Professors

Department of Conservative Dentistry

Nair Hospital Dental College."

26. There is only one pointed incident which has been quoted in the aforesaid Complaint of the Petitioner. That is found in paragraph 3 of the Complaint which reads thus:

"3 I wish to put on record one specific incidence in this connection. On 16th April, 2004 at about 11 a.m. I visited my Head of Department (HOD) to bring to his notice certain irregularities concerning some answer papers, which were found lying around and were not attended to by anyone. At that time Dr. Banga was also present there. Without any provocation, Dr. Banga interrupted me and while referring to another completely irrelevant incident proceeded to accuse me and said that I was talking too much and I quote "to remember that all that you are doing, and this incident, will come back to you in a bad way."

(emphasis supplied)

27. Apart from the general allegations of misbehaviour of the fourth Respondent with her and other ladies, it has been stated by the Petitioner in the Complaint that the fourth Respondent is giving open threats about putting her in place once he is promoted to higher post and that the Petitioner apprehends adverse action by the fourth Respondent. It is an admitted position that after the retirement of Dr. Thakore in February 2005, the fourth Respondent who was the senior most was in line to be appointed as the Head of Department of Conservative Dentistry. From the tenor and contents of the Complaint of the Petitioner, we find that the grievance of the Petitioner against the fourth Respondent was more in the nature of a grievance from a junior against her senior employee and she had some apprehension as regards some adverse action which may be taken against her by the fourth Respondent, if the fourth Respondent were to be promoted and made the Head of Department of Conservative Dentistry. We find the timing of the Complaints of the Petitioner rather curious as the Petitioner and the fourth Respondent have admittedly known each other for years together and since

college days and have also worked thereafter in the same Department for almost a decade, but the Petitioner had made no grievance nor made any Complaint about any misbehaviour of the fourth Respondent prior to the filing of her Complaint on 6 May 2004. Even the FIR was filed by the Petitioner against the fourth Respondent for offence under section 354 of the Indian Penal Code on 20 May 2004 i.e. within two weeks of her Complaint of the alleged incident of pushing her on 18/19 May 2004. The three letters/Complaints by three female students/interns of the Nair Hospital Dental College Ms. Bhavika Vira, Ms. Amit Sharma and Ms. Zainab Vasaiwala in respect of the alleged misbehaviour by the fourth Respondent comes soon after on 22 July 2004.

28. Charges (a) and (b) in the Enquiry Report of the Core Committee are in relation to the Complaints of the Petitioner. Charges (c) and (d), are in relation to the letters/Complaint of the three female students/interns. As stated earlier the Core Committee was chaired by Dr. (Smt.) Alka Karande, Mumbai Municipal Corporation and the other members of the Core Committee were Dr. (Smt.) H.S. Dhavale, (Professor and Head of Department of Psychiatry, Topiwala National Medical College) Mr. Mihir Desai (Advocate and representative of NGO), Smt. S.J. Billimoria, Advocate [Ex-Law Officer and Consultant, Mumbai Municipal Corporation (Retd.)], Mr. V.S. Kamat (Deputy Municipal Commissioner). So far as charges (a) and (b) are concerned (which are in relation to the Complaints of the Petitioner) the Core Committee concluded on the basis of evidence on record that it was not possible to come to any positive finding against the fourth Respondent in respect of the said charges. So far as charges (c) and (d) are concerned, on the basis of evidence of Dr. Ms. Amit Sharma, the fourth Respondent was found guilty of charges (c) and (d) to the extent that it dealt with Dr. Ms. Amit Sharma. The fourth Respondent was recommended by the Core Committee for imposition of punishment of permanent stoppage of one increment with warning, both to be reflected in his service record. The Core Committee Report was placed before the Competent Authority, the Additional Municipal Commissioner (Eastern Suburbs). The Competent Authority passed the order of punishment dated 16 January 2006. In paras 5, 6, 7 and 8 of the order the Competent Authority observed as follows:

"5. The 3rd and 4th charges are regarding Dr. Banga's general behaviour with staff and students. There are many letters from both the sides but the Committee has not taken cognizance of the same at most of them did not appear before the Enquiry Committee except one from the side of Dr. (Mrs.) Shetty and few from the side of Dr. Banga.

I have observed that medical students are under stress to maintain the relation with their Professors which is unfortunate but true, as the students have to face these teachers for not only in written exams but for oral exams and practical exams. Under such circumstances the great responsibilities are lying with the Professors.

I have also observed that the Maharashtra University of Health Sciences had

removed Dr. Thakore and Dr. (Mrs.) Shetty from examining students of Nair Dental College recently i.e. June 2004 as they were convinced of the evidence that both had threatened the students.

6. Under the situation as described above at para 5, and my observation therein, it is difficult to accept the Committee's verdict in to against Dr. Banga in case of charges "c" and "d". These are general charges and as per the details recorded by committee these charges particularly as Sexual harassment at Workplace cannot be said as proved fully.

7. I accept the Committee's statement as Dr. Banga has failed to play a significant role, though a senior teacher to create congenial atmosphere in the department. Dr. Banga as a senior teacher was expected to imbibe the values to his students but failed.

The Committee has rightly passed the above strictures against Dr. Banga but I am surprised to note that most of the things are true for Dr. (Mrs.) Shetty as well as Dr. Thakore, rather Dr. Thakore, is more responsible for the failure as Head of the Department for which Committee has stated nothing.

8. My concluding observations are that these three professors have failed in their duties to bind the students and staff in congenial of atmosphere resulting disrepute to the institution which has maintained high standards of values for many years and during the whole episode, the real harassment was to the students and administration.

After going through my above observations I pass the following order:

Order

Dr. K.S. Banga is exonerated from the charges i.e. a, b of the subject enquiry however the charges at Sr.No. c, d, as proved partially, Dr. K.S. Banga is punished with stoppage of one increment for one year with temporary effect. As regard to Dr. A.J. Thakore and Dr. (Mrs.) Shetty, as prima facie it appears that both have failed to create congenial and healthy atmosphere and due to which the institute has been put to disrepute and hence separate summary enquiry to be done against these two to fix up their responsibility in this episode.

Sd/-

Place: Mumbai.

16.1.06

(Vijaysingh Patankar)

Addl. Municipal Commissioner

(Eastern Suburbs)

Dated : 16th day of January, 2016. Competent Authority"

29. Thus, the fourth Respondent was exonerated of the charges (a) and (b) which were in relation to the Complaints of the Petitioner. It is admitted position that against the exoneration of the fourth Respondent of charges (a) and (b) which is in relation to the Complaints of the Petitioner, the Petitioner has not filed any Departmental Appeal, despite the fact that the Petitioner was very much aware of the remedy of the Departmental Appeal inasmuch as at the time of the admission of the present Writ Petition, this Court by an order dated 13 February 2006 specifically recorded that the fourth Respondent had filed an internal Appeal (against the findings of the Competent Authority on charges (c) and (d) which were in relation to the Complaints of the three lady interns/students) and that the Appeal will be decided on its own merits. The Division Bench, however, did not find it fit to continue the fourth Respondent as the In-charge of the Head of Department (HOD) as he was found guilty of charges (c) and (d). Thus, the Petitioner, despite being aware of the remedy of the internal Departmental Appeal has chosen not to file an Appeal against the order exonerating the fourth Respondent from the charges (a) and (b) which were in relation to the Complaints made by her.

30. During the pendency of the present Petition, in pursuance of the order dated 13 February 2006 of this Court, the internal Departmental Appeal of the fourth Respondent came to be decided on its own merits which was jointly heard by the Additional Municipal Commissioner (City) and the Additional Municipal Commissioner (P) and the fourth Respondent was exonerated of all charges levelled against him. The Appellate Authority in its order dated 23 October 2007 held as follows:

"I find from the record that the Competent Authority, A.M.C. (E.S.) has held that the charges i.e. his behaviour and attitude towards his colleagues, subordinates and students, particularly female staff members was undesirable and intimidative. Female students, viz. Ms. Bhavika Vira, Amita Sharma and Smt. Zainab Vasaiwala, intern had complained and confirmed his misbehaviour and derogatory statements towards female students and staff members has partially proved, thereby punishing Dr. K.S. Banga with stoppage of 1 increment for 1 year temporarily.

On perusal of complete papers, it is observed that handwriting of the complainants submitted by Miss Bhavika Vira & Miss Zainab Vasaiwala, Students of Nair Hospital Dental College is same and these letters were addressed to Dr. Thakore under whom these students were doing their internship. Both Miss Vira & Miss Vasaiwala had not appeared before the Enquiry Committee for confirming their say. Further during the fresh enquiry also, in spite of accepting the intimation to remain present before the Enquiry Committee, they remained absent.

The Enquiry Committee had exonerated Dr. Banga from the first two charges which had arisen out of complaint from Dr. (Mrs.) Shetty. The charges which are held as proved, are based on students complaints. Further, the Maharashtra

University of Health Sciences had removed Dr. Thakore and Dr. (Mrs.) Shetty from examining students of Nair Dental College recently, i.e. in June 2004 as they were convinced of the evidence that both had threatened the students.

This chain of events creates a doubt regarding veracity of the complaints of the students.

Considering the above situation, I have come to the conclusion that it will not be proper to hold Dr. Banga responsible on the basis of the complaints which are not confirmed and proved and, therefore, I exonerate Dr. K.S. Banga, Associate Professor from all the charges levelled against him in this context."

(emphasis supplied)

31. Thus, even so far as the charges (c) and (d) were concerned, which were in relation to the Complaints by Ms. Bhavika Vira, Ms. Zainab Vasiwala and Ms. Amit Sharma, the fourth Respondent stands exonerated. The Appellate Authority found that the handwriting in at least two of the letters/Complaints were one and the same and the letters/Complaints were addressed to Dr. Thakore under whom these students were doing their internship and both Ms. Bhavika Vira and Ms. Jainam Vasaiwala had not appeared before the Core Committee. The Appellate Authority further observed that during the fresh enquiry also in spite of accepting the intimation to remain present before the Enquiry Committee they remained absent. The Appellate Authority also referred to the instance where the Maharashtra University of Health Sciences had removed Dr. Thakore and the Petitioner as Examiners from examining the students at Nair Hospital Dental College in June 2004 on the ground that both had threatened the students. The Appellate Authority held that the chain of events creates a doubt regarding the veracity of the Complaints of the students. The Appellate Authority therefore concluded that it would not be proper to hold the fourth Respondent responsible on the basis of the Complaints which was not confirmed and proved.

32. Hence, on the basis of the facts and evidence on record, the fourth Respondent now stands exonerated, not only of charges (a) and (b) which were in relation to Petitioner's Complaints, but also of charges (c) and (d) which were in relation to the Complaints made by the three lady students. We do not find any infirmity or perversity in the findings of the Appellate Authority. In exercise of power under Article 226 of the Constitution, this Court cannot arrogate itself the power of Appellate Authorities particularly in absence of any perversity or non-consideration of relevant material being pointed out. We are satisfied that the impugned decision of the Appellate Authority is neither arbitrary or irrational so as to shock the conscience of the Court to warrant any interference. As a matter of fact, so far as the charges (a) and (b) are concerned which are in relation to the Complaints of the Petitioner, as stated earlier, the Petitioner has chosen not to file any Departmental Appeal and has sought to challenge the findings of the Competent Authority on charges (a) and (b) in this Petition, without resorting to the remedy of Departmental Appeal. We find that the

Competent Authority had rightly exonerated the fourth Respondent of charges (a) and (b) in relation to the Complaints of the Petitioner on the basis of the Inquiry Report of the Core Committee, which found the fourth Respondent not guilty of charges (a) and (b) in relation to the Complaints of the Petitioner. The learned Counsel for the Petitioner has not been able to point out on what basis the order of the Competent Authority dated 16 January 2006 (which is challenged in this Petition by way of amendment) so far as it pertains to charges (a) and (b) which are in relation to the Petitioner's Complaint can be termed as bad.

33. We are conscious of the fact that the judgment and order dated 2 April 2013 of the Metropolitan Magistrate in Criminal Complaint acquitting the fourth Respondent of charges under section 354 (assault or use of criminal force to woman with intent to outrage her modesty) of the Indian Penal Code may not impact upon the decision in the Departmental proceedings. However, we find it apposite to extract the observations of the Metropolitan Magistrate in paras 43 to 47 of the judgment and order, which read thus:

"43. In the defence the accused has produced the photographs which are marked at Article ? A to Article ? E. If those photographs are perused it will be seen that the complainant and the accused had snatched the photographs in the premises of their college and they both are seen together having their hand holding by each other, they are very close with each other, it can be inferred that the relationship between the complainant and the accused were friendly before the incidence.

44. The accused had given complaint four days prior to the alleged incidence i.e. on 14.05.2004 and its copy was given to Dean and to the Commissioner of Police and this fact is admitted by P.W.No.3. In that letter the accused had apprehending that he will be falsely involved in false case of molestation. This is very material aspect to consider whether the nature of particular incidence is intentional or accidental. If Dr. Banga was apprehending that he will be involved in false case of molestation, then he will not dare to contact with Dr. Vatsalya Shetty, he will not dare to dash her in presence of all the examiners at the occasion of Post Graduate examination. He will not dare to touch her with intention in presence of patients, staff members and examiners. He knew that Dr. Thakor is going to be retired and he was the next senior most to be promoted. So, on the eve of promotion he will not behave in this way.

45. It is admitted fact that Dr. Banga and Dr. Shetty knows each other since 1986. They learned in same college and working in same hospital. They were resided in same building till 2004 and it is also admitted fact that the accused had visited to the house of Dr. Shetty and so also the complainant visited Dr. Banga's house. In 2004, she was shifted in Building no.6 but that building is also in the same premises. So, it was very easy for Dr. Banga to visit Dr. Shetty's house at any time. He would have taken benefit of the residence premises itself rather than touching her intentionally in presence of all the officers in the hospital premises. If the particular act is perused it appears to be accidental and

not intentional. The defence witness who were responsible officers were present at that time and their presence is admitted by the prosecution witness. They have stated that the particular incidence was not intentional and it was accidental.

46. It is also admitted fact that there were many ladies staff, doctors, girl students and nurses in the hospital who were of good looking. There were no complaints from any lady to the Women's Grievance Cell and Sexual Harassment Committee formed as per the Vishakha's Judgment.

47 Considering the defence raised by the accused and the evidence before the court, the court come to the conclusion that the prosecution case is not trustworthy and believable. The offence under section 354 of Indian Penal Code is not proved beyond all reasonable doubt. The defence raised by the accused also appears to be probable. Therefore, the findings on issue is answered in negative. The accused is liable to be acquitted. Following order is passed:

Order

1) The Accused Dr. Kulvindersingh Makkhansingh Banga is acquitted under Section 248(i) of Cr.P.C. of the offence charged under section 354 of Indian Penal Code.

2) His bail bond stand cancelled and surety discharged.

3) The accused is directed to execute the PR bond of Rs. 5,000/- (Five thousand) with one surety of like amount as per the provisions of section 437 (A) of Cr.P.C. to appear before the higher court as and when such court issues notice in respect of any appeal or petition filed against the judgment of this court and such bail bond shall be enforced for six months.

4) If the accused failed to appear, the bond stand forfeited and the procedure under section 446 Cr.P.C. Shall apply.

5) Eight days time granted for furnishing surety bond.

6) The order is dictated and declared in open court and explained to the accused and his advocate in vernacular.

Mumbai

sd/-

Date:- 02.04.2013

(Miss. S.C. Khalipe)

Metropolitan Magistrate

25th Court, Mazgaon, Mumbai."

34. The judgments relied upon by the learned Counsel for the Petitioner are

essentially on the point that mere acquittal in the criminal proceedings would not impact on the proceedings initiated by the Department. The said judgments are of little assistance in the facts of the present case. We may make it clear even de hors the order of acquittal of the fourth Respondent in the criminal proceedings, we find that the Petitioner has not been able to make out a case to interfere with the impugned orders and grant her any reliefs in these proceedings.

35. Only charges (a) and (b) were in relation to the Complaints filed by the Petitioner against the fourth Respondents in respect whereof, the fourth Respondent was exonerated by the Competent Authority on the basis of the recommendations of the inquiry by the Core Committee after considering the facts and evidence on record. As stated earlier, the Petitioner has not filed any Departmental Appeal against the order of the Competent Authority exonerating him of charges (a) and (b) in relation to her Complaints. The Petitioner was only concerned with charges (a) and (b), which were in relation to her Complaints and she was not concerned with charges (c) and (d) which were Complaints of the three lady students and which were the subject matter of Appeal of the fourth Respondent. In these circumstances, there was no necessity of noticing or hearing the Petitioner in the Appeal filed by the fourth Respondent. In the Written Submission dated 26 February 2016 on behalf of the Petitioner, though it is contended that the Additional Municipal Commissioner acted as punishing authority and then acted as the Appellate Authority in exonerating the fourth Respondent, we do not find any such plea having been taken in the Petition. Even otherwise, we do not find any substance in this contention as the Appellate Authority was the Additional Municipal Commissioner (City) and the Additional Municipal Commissioner (P), who jointly decided the Appeal.

36. The final order dated 16 October 2007 in Appeal is sought to be challenged in this Petition by way of amendment to the Writ Petition. However, in absence of any challenge to the order of the Competent Authority by the Petitioner by invoking the alternate remedy of filing an Appeal before the Appellate Authority, really speaking, the challenge to the order of the Appellate Authority in the present Petition would also not lie, particularly, at the instance of the Petitioner since the fourth Respondent was exonerated by the Competent Authority of the charges (a) and (b) which are in relation to the Petitioner's Complaints. As a matter of fact and as stated earlier, even in respect of charges (c) and (d) we do not find that the Appellate Authority committed any error in exonerating the fourth Respondent of charges (c) and (d) and in holding that at least two letters/ Complaints filed by the female students/interns were in one and the same handwriting and the Complaint of Ms. Amit Sharma can not be given credence to as she happened to be the student of Dr. Thakore. It is stated in the order of the Appellate Authority that both Dr. Thakore and the Petitioner were removed as examiners by the Maharashtra University of Health Sciences as they were convinced that both had threatened the students.

37. The Petitioner and the fourth Respondent are working in the same

Department of Conservative Dentistry even after the filing of this Petition in August 2005. There is nothing brought on record to show that there was any incident of any misbehaviour by the fourth Respondent during the pendency of the Petition for the last 11 years. The fourth Respondent, in view of the interim order, has not been granted the benefit of promotion for the last more than a decade. This Court while passing the interim order directed that the Departmental Appeal filed by the fourth Respondent shall be decided on its own merits, which Appeal has been allowed and the fourth Respondent has been exonerated of all charges. Pertinently, the Division Bench, while passing interim order did not grant the prayer of the Petitioner of not continuing the fourth Respondent in the same Conservative Dentistry Department and to remove him from the said Department by sending him on long leave. The Petitioner has not challenged the said interim order of the Division Bench which did not grant her the aforesaid relief and as a matter of fact allowed the fourth Respondent to continue in the same Department and the fourth Respondent was only restrained from acting as In-charge of HOD of the Department. As stated earlier, even so far as the charges (a) and (b) in relation to the Complaints of the Petitioner against the fourth Respondent are concerned, the Petitioner chose not file any Departmental Appeal against the order of the Competent Authority exonerating the fourth Respondent from the said charges (a) and (b). In these circumstances, we do not see how the fourth Respondent can now be kept away from the benefit of promotion. Consequently, the Notice of Motion No.248 of 2009 (see para 13) and Notice of Motion No.372 of 2015 (see para 15) will have to be allowed as directed in the operative part of this judgment. Though the Petitioner has prayed in the Petitioner that the enquiry against her be quashed, no arguments in that regard have been canvassed before us. In any event in the facts and circumstances of the case, we are not inclined to grant that prayer.

38. For the reasons stated above, we find that the Petitioner has not made out a case for interfere with the impugned orders and to grant her any relief. Hence, we pass the following order:

Order

- i) The Writ Petition is dismissed. Rule is discharged.
- ii) The fourth Respondent shall be entitled to be appointed to the post of Professor & Head of Department of Conservative Dentistry in the Department of Dentistry at Nair Hospital Dental College. The Respondent Corporation is accordingly directed to issue the appointment order (as was issued earlier by the Respondent-Corporation vide order dated 20 February 2008, which order was subsequently withdrawn) within a period of four weeks from today. The fourth Respondent shall be entitled to all the benefits of promotion and seniority from the date of the disposal of the Departmental Appeal. The Notices of Motion Nos.248 of 2008 and 372 of 2015 are allowed in the aforesaid terms.
- iii) If the Petitioner is not comfortable working under the fourth Respondent, it

would be open for her to make representation to the Respondent Corporation for her transfer to another Department/College of the Respondent Corporation, which representation shall be considered sympathetically and in accordance with law.

iv) There shall be no order as to costs.

39. The learned Counsel appearing for the Petitioner seeks continuation of interim order dated 13 February 2006 for a period of 8 weeks. Considering the facts and circumstances of the case and the fact that the fourth Respondent has been kept away from promotion and from being made the Head of the Department of Conservative Dentistry for more than a decade, we are not inclined to continue the interim order dated 13 October 2013. Hence, we reject the request.