

(2022) 01 KL CK 0054

In the High Court Of Kerala

Case No : Writ Petition (C) No. 14688 Of 2018

Managing Director

APPELLANT

Vs

Suresh Babu

RESPONDENT

Date of Decision : 10-01-2022

Acts Referred:

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 — Section 4(1), 4(2), 11, 11(1), 13, 13(1), 13(3)(i), 18
Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Rules, 2013 — Rule 7, 7(2), 11, 14(2)
Industrial Employment Standing Orders Act, 1946 — Section 2(a)

Citation : (2022) 01 KL CK 0054

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : K.J.Saji Isaac, Ajeesh Emmanuel, Dr.Elizabeth Varkey, Jithin Saji, C.X.Antony Benedict, T.G.Manoj, T.G.Mahesh, J.Om Prakash, T.G.Santhosh, T.G.Sunil Pranavam G.P, K.M.Faisal

Final Decision : Disposed Of

Judgement

Murali Purushothaman, J

1. The petitioners are the Managing Director and Managers of HDFC Standard Life Insurance Company Limited (hereinafter referred to as the

'Company', for short). The 1st respondent was an employee of the Company, viz., Assistant Sales Manager. The 2nd respondent, the Regional Joint

Labour Commissioner, is the appellate authority notified under Section 2(a) of the Industrial Employment (Standing Orders) Act (for brevity, 'Standing

Orders') read with Section 18 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter

referred to as the 'Act', for short) and Rule 11 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal)

Rules, 2013 ('the Rules', for short), whose order is impugned in this writ petition.

2. According to the petitioners, six employees of the Company submitted a complaint before the ManagerâHR by mail from their official mail i.d

regarding offences committed by the 1st respondent punishable under the Act. They also submitted a written complaint which was forwarded to the

Internal Complaints Committee (âICCâ, for short) constituted under the Act. The ICC had personal discussions with the complainants who gave

their written statements. The 1st respondent was also heard by the ICC and he submitted a written statement. An Inquiry Report was submitted by

the ICC finding that the 1st respondent had passed sexually coloured remarks, unwelcome verbal conduct of sexual nature and thereby committed an

act of Sexual Harassment under the provisions of the Act. The ICC recommended termination of the 1st respondent from the service of the

Company. The recommendation of the ICC was made over to the employer as required under the Act. Based on the recommendations of the ICC,

the Company terminated the service of the 1st respondent.

3.The 1st respondent filed Ext.P1 appeal before the 2nd respondent and the said authority, by Ext. P5 order, set aside the report of the ICC and

remanded the complaint to the ICC for detailed enquiry as per the provisions of the Act and the Standing Orders. Ext.P5 is impugned in this writ

petition. The relevant portion of Ext. P5 is extracted below:-

ÂComplaints Committees have be set up in all Department and Organizations under them in pursuance to the judgment of the Hon'ble Supreme Court in the

Vishakha case. As per Section 4(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (âThe Actâ), the Internal

Complaints Committee (referred to as âComplaints Committeeâ hereafter) is to be set up at every workplace. As per Section 4(2), this will be headed by a woman

and at least half of its members should be women. In case a Woman Officer of sufficiently senior level is not available in a particular office, an officer from another

office may be so appointed. To prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committees should involve a third

party, either an NGO or some other body which is familiar with the issue of sexual harassment. But Management of HDFC has failed to submit details of

constitution

of the committee before this authority.

Sexual Harassmentâ? includes any one or more of the following acts or behavior, (whether directly or by implication), namely: - (I) physical contact and advances; or

(ii) demand or request for sexual favours; or (iii) sexually colored remarks; or (iv) showing any pornography; or (v) any other unwelcome physical, verbal, non-verbal

conduct of a sexual nature.

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. It further states that where both the parties are employees, the parties shall, during the course of enquiry, 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. But in this

case, it is seen that Management has not provided copy of complaint, findings of the complaints committee to the appellant. Management had agreed to provide

copy of constitution of committee, copy of Standing Order before the Appellate Authority, but they refused to produce any of the said documents before the

Appellate Authority.

On receipt of a complaint, facts of the allegation are required to be verified. This is called Preliminary enquiry/fact finding enquiry or investigation. The Complaints

Committee conducts the investigation. They shall ascertain the truth of the allegations by collecting the documentary evidence as well as recording statements of

any possible witnesses including the complainant. For issuing a Charge Sheet, disciplinary authority relies on the investigation for drafting the imputations, as well

as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation. But in this case documentary evidences and

recording of the witnesses to prove the sexual harassment evicted by complaint committee has not been given to appellant and it was not produced by the respondent before this authority.

As the Complaints Committees also act as enquiring Authority in terms of Rule 14(2) mentioned above, care has to be taken that at the investigation stage that impartiality is maintained. Any failure on this account may invite allegations of bias when conducting the enquiry and may result in the enquiry getting vitiated.

When allegations of bias are received against an enquiring Authority, such enquiring Authority is required to stay the inquiry, till the Disciplinary Authority takes a

decision on the allegations of bias. Here in this case appellant had made the claim that he was not given charge memo, nor allowed to cross examine, but enquiry

process was continued without taking a decision by management in appellant's complaint.

As per section 13 of the Act (1) On the completion of an enquiry 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. But appellant was not given copy of findings of complaint committee.

Since the appellant has not admitted the charges clearly and unconditionally there is a need for a formal enquiry against him. But in this case disciplinary procedure

was not followed and without adhering to the principal of natural justice the appellant was directly terminated. This shows that there was unusual hurry on the part of

Management in terminating appellant. Failure to observe the procedure resulted in enquiry getting vitiated.

Appellant does not know as to when did the Sexual Harassment Committee summon and examined the witnesses. The applicant therefore neither knows the names of

witnesses examined and the statements made by them. The witnesses were not examined in the presence of applicant, applicant was not informed of the dates on which PWs would be examined before the Sexual Harassment Committee. The

copies of statement of such PWs were also not provided to the applicant, despite requests . No opportunity to cross examine the witnesses was afforded to the applicant. Thus the entire procedure of Sexual Harassment Committee is vitiated and is

illegal and of no effect. Principles of Natural Justice are an essential part of Fundamental Rights which have been violated at every step of enquiry. In the case of

State Bank of Patiala and Ors. Vs. S.K. Sharma, (1996) 3 SCC 364 the Hon'ble Supreme Court considered the effect of violation of procedure laid down for imposition of

major penalty. It was observed that substantial compliance with the provisions will have to be made although for minor violations it could be examined whether principles of natural justice have been followed.

The procedure of enquiry requires opportunity to be given to the Charged Officer to cross-examine all the witnesses that appear on behalf of the Prosecution. No opportunity was given to the appellant for verbal cross examination of the complainant, a perusal of the enquiry report shows that. Failure to do so may be construed

as a denial of reasonable opportunity to the charged Officer, resulting in vitiation of the inquiry. If the complainant appears as a witness, she would also be examined

and cross-examined. Failure to observe the procedure in this case has resulted in the inquiry getting vitiated. Hence procedure contemplated under the Act, Industrial

Employment (Standing Order) was not followed by the HDFC Management during the enquiry process and in his termination. Hence it is evident that enquiry

process conducted by the complaint committee is farce and it is set aside herewith in this juncture this case is remand back to the Complaint Committee for detailed

enquiry as per the procedures mentioned in the Concerned Act (Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and

Industrial Employment (Standing Order) Act).

(emphasis supplied)

4. In Ext.P5, the 2nd respondent found the enquiry conducted by the ICC as farce and vitiated, for the following reasons:

(i). The petitioners did not submit the details of the constitution of the ICC in the Company before the appellate authority.

(ii).The 1st respondent was not provided with the copy of the complaint.

(iii).The witnesses were not examined in the presence of the 1st respondent.

(iv). The Statements of the witnesses and documentary evidence in the enquiry were not given to 1st respondent.

(v). The 1st respondent was not provided with a copy of the findings of the ICC.

(vi) Since the 1st respondent has not admitted the charges clearly and unconditionally, a formal enquiry ought to have been conducted against him

under the provisions of the service rules applicable to him before recommending to terminate his service.

(vii). The enquiry by ICC is vitiated by violation of principles of natural justice.

(viii). The enquiry by ICC is vitiated by procedural irregularities.

5.In the writ petition, the petitioners have challenged the findings of the appellate authority as erroneous. Apart from contending that the 1st

respondent did not request for cross examining the witnesses or for copies of statements of witnesses, the petitioners contend that the Act does not

provide for cross examination of the witnesses or for perusal of records of the ICC. It is contended that there was no violation of principles of natural

justice; and the principles of natural justice as contemplated by the Act and Rules has to be within the confines of the Act and not beyond that.

6. A counter affidavit is filed by the 1stst respondent denying the averments in the writ petition and contending that the enquiry by the ICC is vitiated

by violation of the principles of natural justice and in total disregard to the provisions of Sections 11 and 13 of the Act.

7. Heard Sri. Jithin Saji Issac, the learned counsel for the petitioners and Sri. J. Omprakash, the learned counsel for the 1st respondent.

8. Sri. Jithin submits that, the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 is an Act intended to

provide protection against sexual harassment of women at workplace and the right to work with dignity. The dignity and equality of woman is the

prime concern of the Act and so the Act is conspicuously silent on the provision for cross examination of either the complainants or the witnesses by

the respondent employee. Referring to the proviso to Section 11 of the Act which provides that 'where both the parties are employees, the parties

shall, during the course of inquiry, be given an opportunity of being heard', Sri. Jithin argues that, the natural justice, as provided in the Act, has to be

within the confines of the Act and can only mean right to be heard and does not include the right for cross examination of the witnesses. Sri. Jithin

relied on the decision of the Hon'ble Supreme Court reported in Hira Nath Mishra and Others v. The Principal Rajendra Medical College, Ranchi and

another [AIR 1973 SC 1260:(1973) 1 SCC 805] to contend that, rules of natural justice cannot remain the same applying to all conditions. Relying on

the said decision, Sri. Jithin contends that, the statement of the complainants need not be recorded in the presence of the 1st respondent. To contend

that verbal cross-examination is not the sole criteria to controvert the deposition of the witnesses in inquiries into complaints under the Act, Sri. Jithin

relied on the decision of this Court in Sibu L.S v. Air India Ltd. New Delhi and others [2016 (2) KHC 569:2016 (2) KLT 374: ILR 2016 (2) Ker.591].

Sri. Jithin also relied on the decision of the Hon'ble Supreme Court in Apparal Export Promotion Council v. A.K. Chopra [AIR 1999 SC 625] to

contend that if the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the

Administrative Authority.

9. Per contra, Sri. Omprakash contends that the entire enquiry by the ICC is vitiated by non-compliance with the provisions of the Act and Rules and

violation of principles of natural justice. Sri. Omprakash took me through Rule 7 (2) of the Rules which provides that the Complaints Committee shall

send one copy of the complaint received from the aggrieved woman to the respondent within a period of seven working days. He invited my attention

to the contention of the 1st respondent in Ext.P1 appeal before the 2nd respondent that he was never served with a copy of the complaint. The

counsel then took me through Ext.P2 counter affidavit of the writ petitioners before the appellate authority, wherein they have stated as follows:

â??6.(iii). The third ground of non serving the complaints cannot be accepted since the appellant has cross examined the witnesses with the knowledge of complaint

allegations against him and further not duly informed the ICC for non serving the complaint copies in a written request / Memo.â??

Sri. Omprakash contends that the contentions of the petitioners are self contradictory. The learned counsel states that, it is mandatory under Rule 7 (2)

to serve the copy of the complaint to the respondent. Sri. Omprakash also submits that the 1st respondent was not given the report of the findings of the ICC as mandated under the 2nd proviso to Section 11 and Section 13 (1) of the Act. The learned counsel refers to paragraph 6 (viii) of Ext.P2 counter affidavit wherein the petitioners attempt to justify their action in not serving the copy of the recommendation of ICC to employer as it being a communication between the ICC and the employer. According to Sri. Omprakash, non-furnishing of the copy of the complaint, the report of findings of the ICC and the recommendation of ICC to the employer has vitiated the enquiry. Sri. Omprakash contends that the 2nd proviso to Section 11 of the Act and Rule 7(2) of the Rules mandate that the inquiry into complaint by ICC shall be in accordance with the principles of natural justice. The counsel submits that, the 1st respondent was not allowed to cross examine any of the complainants or witnesses. According to Sri. Omprakash, the appellate authority rightly interfered with the enquiry and remanded the matter to the ICC for detailed enquiry as per the provisions and procedures under the Act.

10. As the preamble indicates, the Act is enacted to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. Section 11 of the Act deals with inquiry into complaint of sexual harassment and sub section (1) of Section 11 reads as follows:

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.â??

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Section 13 of the Act deals with inquiry report of the ICC and provides as follows:

Â â??13. Inquiry report.â?"(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 beâ?

(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.â??

(emphasis supplied)

11. Section 11(1) of the Act provides that, where the respondent in the complaint is an employee, the inquiry into the complaint shall be made in

accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in the manner prescribed in Rule 9 of

the Rules. Section 13 (3) (i) provides that, where the allegation against the respondent has been proved, the ICC shall recommend to the employer to

take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent. Therefore, the

inquiry contemplated under the Act is the same as an inquiry into the charges of misconduct in terms of the service rules applicable to the respondent.

Once the enquiry is over and where the allegation against the respondent has been proved, the ICC shall recommend to the employer to take action

for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent. In *Sibu L.S v. Air India Ltd*

(supra), this Court considered the nature of the inquiry contemplated under the Act and held:

“10. Section 13 read with Section 11 clearly indicates the enquiry to be concluded under Section 13 is not a preliminary enquiry contended by the respondents but

it should be a full fledged enquiry as to the finding of fact. This is so clear from Section 13(3)(i). The enquiry that has to be conducted by ICC in same manner to prove misconduct in disciplinary proceedings as referable in Service Rules, if no Service Rules exist in such manner, domestic enquiry is conducted.

11. The status of the Committee, therefore, deemed to be an Inquiry Committee for disciplinary action under the service rules (See order of the Hon'ble Supreme Court

in *Medha Kotwal Lele v. Union of India* [2013(1) SCC 311]. Thus when the enquiry is concluded, what is left to the discretion of the employer to take action in

accordance with service rules for the proven misconduct. If the Central Civil Services (Classification, Control and Appeal) Rules would apply, the starting point of

action referred in Section 13(3) of the Act 14/2013 is from the proceedings under Rule 15 of Part IV of the above rules. Thus, the choice left to the employer is to

impose penalty in accordance with the service rules on a proven misconduct. If the service rule provides any punishment for such misconduct, the punishment can

be imposed based on such findings.”

12. In view of the provisions under Sections 11 and 13 of the Act and the procedure for inquiry explained by this Court in *Sibu L.S v. Air India Ltd*

(supra), it has to be held that the inquiry conducted by the ICC was not in accordance with the provisions of the Act and I agree with the finding of

the appellate authority in this regard in Ext. P5.

13. With regard to serving of the copy of the complaint and report of the findings of ICC in the inquiry to the respondent, it will be apposite to refer to

the relevant portions of Rule 7 of the Rules which read as under:

7. Manner of inquiry into complaint. - (1) Subject to the provisions of section 11, at the time of filing the complaint, the complainant shall submit to the Complaints

Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.

(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule

(1) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten

working days from the date of receipt of the documents specified under sub-rule (1).

(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.

Rule 7(2) provides that the ICC shall send one copy of the complaint to the respondent within a period of seven working days. Rule 7(4) provides that

the ICC shall make the enquiry into the complaint in accordance with the principles of natural justice. Therefore, if the copy of the complaint is not

furnished to the respondent as required under the Rules, that will vitiate the inquiry. The inquiry will also be vitiated on the ground of violation of

principles of natural justice. In *Dr. T.V. Ramakrishnan v. Kannur University and others* (judgment dated 03.07.2018 in W.P. (C) No. 17484 of 2018),

this Court, while setting aside the order of the Kannur University pursuant to the report of the ICC on ground of non- furnishing of the copy of the

complaint to the respondent in the complaint therein, held:

It is to be noted that the enquiry to be conducted by the ICC is an enquiry

regarding finding on facts. Thereafter it has to be placed before the competent authority of the University to initiate such action in accordance with Service Rules applicable to the employees.â??

This Court, in the said judgment, directed the ICC of the University to proceedd enova after following all procedures referred to in the UGC

Regulations, 2015 and also in the light of procedure as set out in the Act and the procedures explained in *Sibu L.S v. Air India Ltd (supra)*.

14.The 2nd proviso to Section 11 of the Act provides that, a copy of the findings shall be made available to both the parties enabling them to make

representation against the findings before the Committee. Here, both parties are employees of the Company. The provision mandates that the copy of

the findings of ICC shall be made available to both the parties. Non- furnishing of the copy of the findings of ICCÂ vitiates the inquiry. The provisions

of the Act and Rules have been breached and natural justice has been violated. I agree with the findings of the appellate authority in Ext.P5 in this

regard.

15.The next question to be considered is whether failure to give opportunity to the 1st respondent for verbal cross examination of the complainants has

vitiated the inquiry under the Act. In *Sibu L.S v. Air India Ltd (supra)*, this Court has held that verbal cross-examination is not the sole criteria to

controvert the deposition of the witnesses in inquiries into complaints under the Act. Paragraphs 17 and 18 of the said decision are quoted as

hereunder:-

â??17. The fundamental principles relating to the principles of natural justice is that when a prejudicial statements are made, the same shall not be used against any

person without giving him an opportunity to correct and contradict. In sexual harassment complaint, sometimes the complainant may not have courage to depose all

that has happened to her at the work place. There may be an atmosphere restraining free expression of victim's grievance before the Committee. The privacy and

secrecy of such victims' also required to be protected. It is to be noted that verbal cross examination is not the sole criteria to controvert or contradict any statement

given by the aggrieved before any authority. Primarily, in a sexual harassment

complaint, the committee has to verify and analyse the capability of the aggrieved to

depose before them fearlessly without any intimidation. If the Committee is of the view that the aggrieved is a feeble and cannot withstand any cross examination, the

Committee can adopt such other measures to ensure that the witnesses statement is contradicted or corrected by the delinquent in other manner. The fair opportunity, therefore, has to be understood in the context of atmosphere of free expression of grievance. If the Committee is of the view that the witness or

complainant can freely depose without any fear, certainly, the delinquent can be permitted to have verbal cross examination of such witnesses. In cases, where the

Committee is of the view that the complainant is not in a position to express freely, the Committee can adopt such other method permitting the delinquent to

contradict and correct either by providing statement to the delinquent and soliciting his objections to such statement.

18. What is reminded here by this Court to the Committee is that a fair opportunity should be given to the delinquent in such manner the Committee think fit to

consider. There is no easy and precise rule defining fair opportunity.â??

It is trite that the principles of natural justice are flexible and may differ in different circumstances. What is required is fairness by the authority. The

accused or the delinquent officer should know the evidence that has been given and the statements affecting him. He shall be given a fair opportunity

to correct and contradict them. In *Avinash Nagra v. Novodya Vidyalaya Samiti and others* [(1997) 2 SCC 534], the Hon'ble Supreme Court has held

that dispensing with enquiry and denial of crossâ?" examination will not under all circumstances vitiate the enquiry on ground of violation of principles

of natural justice. The Court held:

â??12.....In our considered view, the Director has correctly taken the decision not to conduct any enquiry exposing the students and modesty of the girl and to

terminate the services of the appellant by giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation. In the

circumstances, it is very hazardous to expose the young girls for tardy process of cross examination. Their statements were supplied to the appellant and he was

given an opportunity to controvert the correctness thereof.â??

As held by this Court in *Sibu L.S v. Air India Ltd* (supra), verbal cross-examination is not the sole criteria to controvert the deposition of the witnesses

given by the aggrieved before any authority, particularly in sexual harassment cases, where the Committee depending on the

circumstances can adopt such other methods permitting the delinquent to contradict and correct either by providing statement to the delinquent and

soliciting his objections to such statement. Therefore, I am unable to agree with the finding of the 2nd respondent that the inquiry is vitiated since

witnesses were not examined in the presence of the 1st respondent.

However, the ICC ought to have given the copy of the statements of the complainants and the witnesses to the 1st respondent and he should have

been given an opportunity to controvert the correctness thereof.

16. Having found the inquiry by the ICC as farce and vitiated, the appellate authority set aside the report of the ICC and remanded the complaint to

ICC for detailed inquiry as per the procedures mentioned in the Act and the provisions of the service rules applicable to the respondent. No doubt, the

enquiry was conducted in disregard to the provisions of the Act and in violation of the principles of natural justice. However, I am of the view that

there is no need for a denova inquiry at this distance of time. The incident alleged has happened in the year 2015 and the inquiry is of the year 2016.

At this distance of time, if the proceedings are to commence denova, that would be a further ordeal and harassment to the complainants and the

witnesses and agonizing to the 1st respondent. However, taking note of the objectives of the Act, there has to be a further inquiry after rectifying the

mistakes. Accordingly, to meet the ends of justice, the directions in Ext. P5 order are modified as follows:

(i) The report of the ICC will stand set aside.

(ii) The case is remitted for further inquiry and not denova inquiry.

(ii) The composition of the ICC shall be in terms of the provisions of the Act.

(ii) The 1st respondent shall be given a copy of the complaints, the statements/depositions of all the complainants and witnesses already taken in the

inquiry.

(iii) The 1st respondent shall submit his objections to the statements of the

complainants and witnesses within the time frame stipulated by the ICC.

There shall be no verbal cross-examination of any of the complainants or witnesses, unless consented by any of them.

(iv) The 1st respondent shall be given fair opportunity of hearing and the inquiry shall be in accordance with the principles of natural justice.

(v) The findings of the ICC/inquiry report shall be made available to all the parties enabling them to make representation against the findings before the ICC.

(vi) If the ICC arrives at a conclusion that the allegations are proved against the 1st respondent and recommends to the employer to take action against him for sexual harassment as a misconduct, the same shall be in accordance with Section 13 (3) (i) of the Act.

(vii) The inquiry shall be completed by the ICC within a period of 3 months from the date of receipt of the copy of this judgment.

(viii) The employer shall act upon the recommendation of ICC within 60 days of its receipt.

(ix) The 1st respondent shall be deemed to have been placed under suspension till orders are passed by the employer under clause (viii) above.

The writ petition is disposed of with the above directions and observations.