

(2021) 10 DEL CK 0184

In the Delhi High Court

Case No : Civil Writ Petition No. 1103 Of 2020, 2546 Of 2021, Civil Miscellaneous Application No. 3668-69, 7648-50, 9969-70, 18690, 23465 Of 2020, 6416, 7500, 13630, 17420 Of 2021

Sneha Choudhary

APPELLANT

Vs

Sahitya Akademi And Ors

RESPONDENT

Date of Decision : 25-10-2021

Acts Referred:

Sexual Harassment Of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013 — Section 2(g), 2(o), 4, 4(1), 6(1), 9, 9(1), 12(1), 15, 16, 18, 19

Citation : (2021) 10 DEL CK 0184

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Ritin Rai, Shreya Munoth, Kritika Bhardwaj, Ashwin Pantula, Aditi Rao, Suhavi Arya, Geeta Luthra, Abhishek Aggarwal, Damini Thaker, Kamkashi Gupta

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J

1. In view of Section 16 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the Act), the name of the Petitioner in W.P. (C) 1103 of 2020 shall be kept confidential and she would be referred to as the "aggrieved woman" and similarly the name of the officer against whom complaint has been made shall be kept confidential and he would be referred to as the "Secretary".

2. Further, in order to conceal the identity of the aggrieved woman and the Secretary, the names of the aggrieved woman and the organisation shall be redacted from the copy of the judgment that is uploaded on the website or made available to third parties. The registry is also directed to redact the name of the aggrieved woman and the organisation from the cause title.

3. The aggrieved woman who is the petitioner in W.P.(C) 1103 of 2020 had originally filed this petition inter alia seeking a direction to the Sahitya Akademi (for the purposes of confidentiality hereinafter referred to as the "Akademi") to comply with the directions dated 16.12.2019 and 16.01.2020 issued by Local Complaints Committee and to grant her three months paid leave with immediate effect, in addition to the leave she would be otherwise entitled to. She has further sought a direction to the Akademi to comply with Section 19 of the Act and to pay compensation of Rs. 5 lakhs for mental trauma, pain, suffering and emotional distress caused to her.

4. During the Pendency of the petition, because of certain subsequent events, the aggrieved woman sought amendment of the petition, which was allowed and consequently she has, in addition to her earlier prayers sought quashing of the office memorandum dated 14.02.2020 issued by the Akademi terminating her services. She also seeks information about the review committee and the appraisal done with regard to her performance. She also seeks reinstatement to her former position, with continuity of service, full back wages, and other consequential service benefits.

5. The Akademi, by way of its Writ Petition No. W.P. (C) 2546 of 2021 seeks quashing of proceedings initiated by the aggrieved woman before the Local Complaints Committee and also the order dated 16.01.2020 passed by it.

6. The questions that arise for determination in the subject writ petitions are:

(i) Whether the Secretary is an employer in terms of section 2(g) of the Act?; and

(ii) Whether the complaint of sexual harassment against the Secretary could have been made only to the Local Committee and not to the Internal Complaints Committee in terms of Section 6(1) of the Act?; and

(iii) Whether the Internal Complaints Committee was validly constituted in terms of Section 4 of the Act?; and

(iv) Whether the aggrieved woman made any complaint to the Internal Complaints Committee in terms of Section 9 of the Act?' and

(v) If the answer to question (iv) is in the negative, then whether the report of the Internal Complaints Committee dismissing the complaint is sustainable?

(vi) Whether the non confirmation/extension of probation of the aggrieved woman during pendency of the proceedings is sustainable?

(vii) Whether the Petition by the aggrieved woman is not maintainable as she has not exhausted the alternative remedy of an appeal against the finding of the Internal Complaints Committee?

7. The aggrieved woman is from one of the north eastern states and claims to have worked with several prestigious publishing houses.

8. On 26.12.2017, the aggrieved woman was appointed to the post of Editor

(English) on probation for a period of two years. As per the letter of appointment during the period of probation her services could be terminated without notice or assigning any reason for the same. The employment is governed by the Akademi (Services) Bye-Laws/Central Civil Services Rules ('Bye-laws').

9. On 09.02.2018 the aggrieved woman was issued a Provisional Appointment Order confirming her appointment to the post of Editor (English).

10. As per the aggrieved woman from March 2014 onwards she faced severe sexual harassment of many forms at the hands of the Secretary, which allegedly included inappropriate sexual advances, unwelcome physical and sexual contact, and sexually-coloured remarks. It is alleged that he regularly made racist and sexist comments on women hailing from the North-East, particularly from the home state of the aggrieved woman.

11. The details of the instances of sexual harassment have been spelt out by the aggrieved woman in her complaint to the local complaints committee and also in her writ petition but the same are not being reproduced herein because for the purposes of disposal of the present writ petitions the same are not germane and this court is refraining from commenting upon the merits of the same, lest it prejudices the case of either the aggrieved woman or the Secretary.

12. It is alleged by the aggrieved woman that as a counterblast to her objections to his inappropriate sexual advances he verbally abused and screamed at her in the presence of other officers for no fault of hers and kept on accusing her of poor performance or not working properly. It is alleged that he was being vindictive, owing to his displeasure with her for not reciprocating his advances.

13. It is alleged that owing to Secretary's persistent sexual misconduct and being pushed to a corner, the aggrieved woman confronted him and told him that she found the manner in which he behaved unacceptable. It is alleged that in response thereto he tried to hold her hand, saying that she should have understood his 'hints' and she should provide him 'bodily satisfaction' if she did not want her probation period to get extended beyond February 2020.

14. It is alleged that besides sexual harassment, the aggrieved woman was repeatedly subjected to baseless and frivolous office memoranda which were sent to tarnish her employment record.

15. On 07.11.2019, the aggrieved woman submitted a complaint to the Tilak Marg police station, detailing out the acts of sexual harassment and assault perpetrated by the Secretary. Based on the complaint, FIR No. 0109/2019 dated 07.11.2019 was registered.

16. The aggrieved woman on the same day sent an email to the Executive Board of the Akademi requesting the Executive Board to set up an independent committee to enquire into her complaint of sexual harassment and assault perpetrated by the Secretary. In the said email, she stated that the Internal Complaints Committee lacked jurisdiction to enquire into her complaint as her

complaint was against the Secretary who was the 'employer' within the meaning of Section 2(g) of the Act.

17. It is alleged that on 09.11.2019, the President of the Executive Board, in contravention of the Act, referred her complaint to the Internal Complaints Committee and nominated two allegedly external members to the said committee.

18. It is contended that the letter itself states that "the complaint is against the Secretary, he [the President] has recommended two well-know women personalities, who are from outside the Akademi to be part of the Committee."

19. It is submitted that the President thus himself admitted that the complaint being against the Secretary of the Akademi, the Internal Complaints Committee was not competent to enquire into the allegations of sexual harassment against him.

20. It is further alleged that the aggrieved woman on 09.11.2019 reiterated to the Executive Board her request for the constitution of a completely independent external committee to enquire into her complaint

21. It is alleged that the board failed to take any action against the Secretary and the very presence of the Secretary in the office premises constituted a hostile work environment.

22. On 29.11.2019, the aggrieved woman filed a complaint with the Local Committee. The aggrieved woman also prayed for grant of urgent interim reliefs, including grant of paid leave for three months.

23. It is alleged that on 29.11.2019, the aggrieved woman also received a notice dated 27.11.2019 from the Internal Committee asking her to appear before it on 02.12.2019.

24. On 01.12.2019, the aggrieved woman protested and informed the Internal Complaints Committee that it did not have the jurisdiction to look into her complaint against the Secretary and only the Local Committee was vested with the jurisdiction to initiate proceedings based on her complaint, as the Secretary was the employer in terms of Section 2(g) of the Act. The aggrieved woman also expressed her apprehension regarding the independence and impartiality of the members of the Internal Complaints Committee. She further informed the Internal Complaints Committee that she had approached the Local Committee and would not participate in the proceedings before the Internal Complaints Committee as they were without jurisdiction.

25. On 03.12.2019, it is alleged that in complete disregard to her response to the First Notice to Appear, the aggrieved woman received the Second Notice to Appear from the Chairperson of the Internal Complaints Committee asking her to appear before the Internal Complaints Committee on 05.12.2019.

26. On 04.12.2019, the aggrieved woman reiterated that the Internal Complaints

Committee did not have jurisdiction to initiate any enquiry on the basis of her complaint against the Secretary and again expressed her apprehensions regarding the independence and impartiality of the Internal Complaints Committee and contended that the two alleged external members were very close to the Secretary.

27. It is alleged that ignoring her protests, again on 06.12.2019 the aggrieved woman received a Third Notice to Appear before the Internal Complaints Committee.

28. It is alleged that on 05.12.2019, the aggrieved woman received an e-mail from the Chairperson of the Internal Complaints Committee notifying her that a third external member had been nominated to the Committee on 25.11.2019.

29. On 09.09.2019, the aggrieved woman once again protested against the continuation of proceedings by the Internal Complaints Committee despite her repeated protests and asked the Internal Complaints Committee to discontinue the proceedings in relation to her complaint with immediate effect. It is alleged that the President during his visit to Delhi on 05.12.2019 exerted pressure on her to withdraw her complaint against the Secretary.

30. On 09.09.2019, Petitioner also wrote to the Local Committee reiterating her request for urgent and immediate interim relief, alleging hostile work environment in the Akademi pursuant to her complaint against the Secretary.

31. On 09.09.2019, Petitioner received another notice to appear from the Internal Complaints Committee directing her to appear before it on 26.12.2019 failing which it was stated that the Committee shall have no option but to terminate the proceedings.

32. On 16.12.2019 the Local Committee took cognizance of the complaint of the aggrieved woman dated 29.11.2019 against the Secretary and directed him to submit his reply. The Local Committee also granted the aggrieved woman relief of three months' paid leave in terms of Section 12(1) of the Act.

33. On the issue of jurisdiction, the Local Committee, after considering the constitution of the Akademi; duties of the Secretary as mentioned in the Constitution as well as the service byelaws of the Akademi, prima facie held that it appeared that the post of Secretary fell under the definition of 'employer' accordingly, it had jurisdiction to enquire into the complaint of the aggrieved woman.

34. On 23.12.2019, the aggrieved woman once again objected to the notice received from Internal Complaints Committee asking her to appear before it on 26.12.2019 and informed the Internal Complaints Committee that the Local Committee had taken cognizance of her complaint and granted her interim relief and she requested the Internal Complaints Committee to discontinue the proceedings before it.

35. The direction of the Local Committee granting the aggrieved woman 3 months paid leave was not complied with and accordingly she, through emails dated 23.12.2019, 26.12,2019 and 30.12.2019, requested the President and the Executive Board to comply with the directions of the Local Committee.

36. On 26.12.2019, the aggrieved woman received another notice to appear before the Internal Complaints Committee on 30.12.2019 to clarify her point of view. The aggrieved woman in response once again protested to the jurisdiction of the Internal Complaints Committee and informed them about the proceedings before the Local Committee. The response is alleged to have been handed over personally to the Internal Complaints Committee on 30.12.2019.

37. It is alleged that at the said meeting, members of the Internal Complaints Committee, particularly the purported external members, sought to pressurize the aggrieved woman into withdrawing her complaint before the police and the Local Committee and urged her to reconcile with the Secretary.

38. It is alleged that on her refusal to accede to their demand, they expressed their displeasure and stated that it would be best for her career if she quit her job at the Akademi and found alternative employment. It is alleged that the Internal Complaints Committee thereafter incorrectly recorded that she was withdrawing her complaint pending before the Internal Complaints Committee as the Local Committee had already taken cognizance.

39. On 07.01.2020, the aggrieved woman submitted her rejoinder before the Local Committee to the reply of the Secretary.

40. On 14.01.2020, the Internal Complaints Committee submitted its inquiry report to the Akademi stating that "the committee is of the opinion that reasons given by the complainant for withdrawing the complaint are not satisfactory. Thus, the committee has no other option but to dispose off the complaint, which stands terminated as per her demand."

41. It is alleged that the aggrieved woman sent repeated reminders to the Akademi requesting them to comply with the directions of the Local Committee but they failed to do so, accordingly the aggrieved woman approached this court and filed Writ Petition (Civil) No. 1103/2020 inter alia seeking a direction to the Akademi to comply with the directions of the Local Committee to grant her three months paid leave. She further sought a restraint on the Akademi from taking any adverse decision with regard to her employment status pending the decision by the Local Committee on her complaint.

42. It is contended by the aggrieved woman that since the beginning of her employment with the Akademi, she was constantly intimidated by the Secretary that if she did not reciprocate his sexual advances, her probation period would be extended or that she might even lose her employment,

43. It is alleged that the Secretary had complete control over the aggrieved woman working conditions and he totally misused this control in order to deter

her from complaining about his unwanted sexual advances and when she refused to yield, he used his position as her supervisor and the Secretary of the Akademi to send her Office Memorandums on frivolous and baseless grounds in order to tarnish her employment record.

44. By Office Memorandum dated 14.02.2020, it was held by the Akademi that the performance of the aggrieved woman was not found satisfactory so her services could not be confirmed and she should be discharged of her duties and it accordingly directed that she shall cease to be an employee of the Akademi with effect from 14.02.2020.

45. Thereafter the Writ Petition was amended by the aggrieved woman seeking to impugn the Office Memorandum dated 14.02.2020, whereby her services were terminated.

46. It is alleged that the harassment and victimization culminated in the impugned memorandum dated 14.02.2020. It is submitted that in her tenure of two years she had worked with diligence, impeccable integrity, and improved the output of not just her department, but also of other departments.

47. It is alleged that under the Petitioner's aegis, the publications brought out by the departments have increased manifold as compared to the period prior to her employment with the Akademi. Besides publications, she has organized several programmes. Owing to her experience and expertise, she was entrusted with the work of several departments. It is alleged that she was managing all of the assigned tasks proficiently and her work was appreciated not just by various departments within the Akademi, but also by writers and authors associated with the organization.

48. It is alleged that the aggrieved woman was not informed of any proceeding before the alleged Review Committee which allegedly reviewed her performance.

49. It is submitted that the impugned memorandum records that the aggrieved woman was given ample opportunities for improvement but she did not show any interest in implementing the decision or comply with minimum essential directions of organizing programmes and printing books/publications. It is alleged that none of the memoranda issued by Akademi to the aggrieved woman were substantive in nature, or indicated that her work was of poor quality.

50. It is submitted that the all the memoranda were issued in 2019 and not in 2018. It is submitted that since the aggrieved woman had gained courage to start resisting the Secretary's advances that made him angry and vindictive and the memoranda were issued. It is further alleged that there is nothing on record to show that she was given any opportunity to improve her work or that she did not comply with the minimum essential directions of organizing programmes or printing of books/publications. On the contrary, it is alleged that, the performance of the departments under her aegis had improved.

51. It is alleged that the termination is punitive and a retaliation to the complaint

filed by her against the Secretary.

52. It is submitted that constitution of the Internal Complaints Committee was not displayed as per the provisions of Section 19 the Act and further the committee was reconstituted after a complaint was made to the President.

53. It is submitted that the Chairman of the Internal Complaints Committee was holding the post of Programme Officer and all other members were junior to her and the Controlling Authority of all the members of the Internal Complaints Committee, as allegedly originally constituted, was the Secretary and as such also the Internal Complaints Committee was disqualified from entertaining any complaint against the Secretary.

54. It is further submitted that the fact that two members of the board were initially added to the Internal Complaints Committee and thereafter the Internal Complaints Committee added an advocate, fortifies the fact that the Internal Complaints Committee was not competent to entertain any complaint against the Secretary

55. It is submitted that the Secretary is the Principal Executive Officer of the Akademi and was incharge of the Delhi office. The President is not even stationed in Delhi and comes to Delhi only for some meetings. The overall control of the Delhi Office, where the aggrieved woman was employed was with the Secretary.

56. On the other hand, the Akademi has approached this court and filed Writ Petition (Civil) No. 2546 of 2021 seeking quashing of the proceedings initiated by the Local Committee and the order dated 16.01.2020 passed it holding that the Local Committee had the jurisdiction to conduct an enquiry as prima facie the post of Secretary falls under the definition of "employer" under section 2(g) of the Act, and also impugns the direction to the President of the Akademi to grant the aggrieved woman 3 months paid leave.

57. It is submitted by learned senior counsel for the Respondent that the Internal Complaints Committees have been constituted in the Akademi regularly since 2015. It is submitted that the Committees have not been constituted by the Secretary or by his approval but the same have been constituted by the President as per the recommendation of the Secretary. All the circulars about the constitution of the Committees have been prominently displayed on the notice board in terms of Section 19 of the Act.

58. It is further contended by learned senior counsel for the Akademi that the aggrieved woman was on probation and after a review of her performance and keeping in view the various memoranda issued to her about her performance and lapses and advising her to improve her performance and her failure to do so, a decision has been taken not to regularise her and to discontinue her services.

59. It is submitted that her offer of appointment itself states that during probation her services may be terminated without any notice and assigning any reason.

60. It is submitted that the Secretary is not an employer in terms of section 2(g) of the Act as he is neither the appointing authority nor the disciplinary authority of the aggrieved woman. It is submitted that the aggrieved woman was holding the post equivalent to Deputy Secretary and the President is the appointing authority and the controlling authority and the controlling authority acts subject to the general superintendence of the Executive Board.

61. It is submitted that the Writ Petition filed by the aggrieved woman is not maintainable as she has an alternative remedy of an appeal against the decision of the Internal Complaints Committee. It is submitted that the aggrieved woman also has a remedy of appeal against the impugned Office Memorandum terminating her services to the Executive Board and as she has not filed an appeal, the prayer seeking quashing of the said decision cannot be granted.

62. Learned Senior Counsel for the Akademi submits that the Akademi has acted in all fairness. It is submitted that on receiving the complaint against the Secretary, the President noticing that the Internal Complaints Committee comprised of members junior to the Secretary applied the doctrine of necessity and inducted two members of the board as part of the Internal Complaints Committee. Reliance is placed by learned senior counsel on the decision of the Supreme Court in *Amar Nath Chowdhury Versus Braithwaite and Company Ltd.* (2002) 2 SCC 290.

63. It is contended that the Internal Complaints Committee in order to conduct a fair enquiry, inducted an independent member who was an advocate. It is submitted that the Internal Complaints Committee sent several communications to the aggrieved woman to present her case but she failed to even appear and present any material in support of her complaint.

64. It is submitted that even if it is assumed that the decision to terminate was taken by the President of the Executive Board, her appeal would also lie to the Executive Board by applying the doctrine of necessity. Reliance is placed on the decision of the Supreme Court in *State of Uttar Pradesh Versus Sheo Shankar Lal Srivastava* (2006) 3 SCC 276.

65. Per Contra, learned senior counsel for the aggrieved woman submits that the Counter Affidavit itself records that the decision to terminate her services has been taken by the board as such she has no remedy of appeal before the Executive Board. Further, it is contended that the action to terminate her services without following the procedure prescribed by the rules and particularly in view of the complaint filed by her against the Secretary is clearly tainted with malafides. It is submitted that the malafides are writ large as the Akademi instead of taking action against the Secretary is defending his actions tooth and nail.

66. To answer the questions arising for consideration in these petitions it would be expedient to refer to some of the relevant provisions of the Act.

67. Section 2(g) of the Act defines the expression 'employer' as under:

2. (g) "employer" means-

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

Explanation. -For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of policies for such organisation;

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

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

68. The terms "employer" has been defined by Section 2(g) of the Act by using the expression "means" which implies that the definition is a hard and fast definition and no other meaning can be assigned to the expression than is put down in the definition. [P. Kasilingam v. P.S.G. College of Technology, 1995 Supp (2) SCC 348]

69. The term "employer" has been defined to mean, in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf and in any workplace not covered hereinabove, any person responsible for the management, supervision and control of the workplace.

70. "Workplace" has been defined by Section 2(o) of the Act to include any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society; and any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial,

professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service; and hospitals or nursing homes; and any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto; and any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey; and a dwelling place or a house.

71. The expression used in the definition of "workplace" is "includes" . The expression "includes" when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. [P. Kasilingam v. P.S.G. College of Technology, 1995 Supp (2) SCC 348]

72. When the definition of "employer" is read in conjunction with the definition of "workplace", it is clear that any person who heads any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority or any person responsible for the management, supervision and control of the workplace is to be regarded as an "employer" for the purposes of the Act.

73. The expression "employer" has not been defined to mean only the appointing authority or the disciplinary authority as has been contended on behalf of the Akademi.

74. Further, the Constitution of the Akademi lays down the powers and duties of the Secretary as:

i. The Secretary shall be the principal executive officer of the Akademi and he shall be appointed by the Executive Board for such period and on such terms and conditions as the Executive Board may determine.

ii. The Secretary shall be ex-officio Secretary of the General Council, the Executive Board, the Finance Committee and all other standing committees which may be set up by the General Council or the Executive Board but shall not be deemed to be member of any of the authorities.

iii. It shall be the duty of the Secretary:

(a) to be the custodian of the records and, subject to the general supervision and control of the Executive Board, to manage the property and funds of the Akademi for the purpose for which they are granted or allotted;

(b) to conduct the official correspondence on behalf of the authorities of the Akademi;

(c) to issue all notices convening meetings of the authorities of the Akademi and all committees appointed by any of these authorities;

(d) to keep the minutes of all meetings of the authorities of the Akademi and of all committees appointed by any of these authorities;

(e) to maintain the accounts of the Akademi under the supervision of the Financial Adviser; and

(f) to execute all contracts on behalf of the Akademi.

75. As per the constitution of the Akademi, the Secretary is the Principal Executive Officer of the Akademi. Even though it is contended on behalf of the Akademi that the President is the incharge of all its offices, it is an admitted position that the President is not based in Delhi and the day to day affairs of the Office where the aggrieved woman is employed are managed and controlled by the Secretary.

76. Nothing has been placed on record by the Akademi to show that the day to day affairs of the Akademi were managed by someone other than the Secretary.

77. When the definition of "employer" is so wide, so as to include any person who heads any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority or any person responsible for the management, supervision and control of the workplace, it cannot be but held that the Secretary, who is the Principal Executive Officer of the Akademi; incharge of the day to day affairs of the Akademi; custodian of all records and manages the properties and funds of the Akademi, would also be included in the definition of an "employer".

78. In view of the above, the Secretary is held to be an "employer" in terms of Section 2(g) of the Act.

79. Section 4 of the Act stipulates that every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee" and where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

80. Section 6 (1) of the Act stipulates that "Every District Officer shall constitute in the district concerned, a committee to be known as the Local Committee to receive complaints of sexual harassment from establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself."

81. In terms of Section 6(1) of the Act, where the Internal Committee has not been constituted due to having less than 10 workers or if the complaint is against the employer himself, the complaint would lie to the Local Committee constituted under Section 6 of the Act.

82. Since the Secretary of the Akademi is the employer for the purposes of the Act, the complaint against the Secretary would not lie to the Internal Committee but shall lie only to the Local Committee.

83. The Internal Complaints Committee does not have any jurisdiction to entertain a complaint against the Secretary. Any order passed by the Internal Committee or finding returned would be non est being without jurisdiction.

84. The contention of learned Senior Counsel for the Akademi that the Internal Committee has disposed of the complaint as terminated as per her demand and if she is aggrieved she should avail of the remedy of an Appeal under Section 18 of the Act, does not hold any merit and is liable to be rejected.

85. The inquiry report dated 14.01.2020 of the Internal Committee also records that the aggrieved woman has repeatedly registered her protest about the lack of jurisdiction of the Internal Committee to entertain any complaint against the Secretary.

86. The aggrieved woman has repeatedly responded to the notices issued by the Internal Committee by stating that it has no jurisdiction and should cease all proceedings. The requests to cease all proceedings, because of lack of jurisdiction, have been interpreted by the Internal Committee as a request to withdraw the proceedings.

87. The Internal Committee on the one hand has held that the reasons given by the aggrieved woman for withdrawing the complaint are not satisfactory and on the hand has held that the Committee has no other option but to dispose off the complaint which stands terminated as per her demand.

88. Further, there is merit in the contention of the aggrieved woman that she has never filed any complaint before the Internal Committee and as such the Internal Committee could not have conducted any inquiry or submitted a report and on that ground also the report and the findings, opinion and recommendations are non est.

89. Section 9 of the Act provides for a Complaint of Sexual Harassment. In terms of Section 9(1) of the Act "any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident" .

90. In the present case on 07.11.2019, the aggrieved woman submitted a complaint to the Tilak Marg police station and on the same day sent an email to the Executive Board of the Akademi requesting the Executive Board to set up an independent committee to enquire into her complaint of sexual harassment and assault perpetrated by the Secretary. In the said email, she alleged that the Internal Complaints Committee lacked jurisdiction to enquire into her complaint as her complaint was against the Secretary who was the 'employer' within the meaning of Section 2(g) of the Act.

91. No complaint was made by the aggrieved woman to the Internal Committee. On 29.11.2019, the aggrieved woman filed a complaint with the Local Committee.

92. It was the President of the Executive Board who, on 09.11.2019, referred her complaint to Internal Committee. Thereafter every time the Internal Committee asked the aggrieved woman to appear, she protested that the Internal Committee had no jurisdiction.

93. At no point of time has the aggrieved woman submitted a complaint in terms of Section 9 of the Act to the Internal Committee or submitted to its jurisdiction.

94. Since no complaint was made by the aggrieved woman to the Internal Committee in terms of Section 9 of the Act, the Internal Committee could not have conducted any inquiry or submitted a report. Further as the complaint of the aggrieved woman was against the Secretary, who is an employer in terms of Section 2(g) of the Act, the proceedings conducted by the Internal Committee were clearly without jurisdiction and consequently the Inquiry report dated 14.01.2020 of the Internal Committee is non est.

95. Since the proceedings conducted by the Internal Committee were without jurisdiction and the Inquiry report is non est there is no merit in the contention of learned senior counsel for the Akademi that the aggrieved woman should avail of her remedy of an appeal under Section 18 of the Act.

96. Further, it is alleged on behalf of the Akademi that the aggrieved woman was on probation and her services have been terminated on the basis of the report submitted by the Review Committee and on the satisfaction of the President.

97. It is alleged that the Review Committee considered on record the office memoranda and calling explanations etc. and she had been given ample opportunities for improvement, betterment but she has not shown any interest in implementing the decision.

98. The argument of learned senior counsel for the Akademi on the first blush seems appealing but on deeper scrutiny it loses it sheen.

99. Further reliance on the judgment of the Supreme Court of India in Amar Nath Chowdhury (*supra*) to contend that though the decision of termination is with the approval of the Board, the appeal would still lie to the Board is also misplaced.

100. First of all, no rule or provision has been pointed out on behalf of the Akademi to justify the procedure of constituting a Review Committee to review her performance; secondly, the office memoranda and calling explanations relied upon were issued either by the Secretary or by officers junior to the Secretary, who also report to him; thirdly, if there is any merit in the allegations of the aggrieved woman then the office memoranda and calling explanations were all issued because she rebuffed his advances; fourthly, the timing of the termination order is such that it *prima facie* smacks of malafides. Specially, when a complaint of sexual harassment is pending against the Chief Executive Officer of the Akademi, the Executive Board should have waited for the decision on the complaint of the aggrieved woman.

101. In view of the above, the Office Memorandum dated 14.02.2020 terminating the service of the aggrieved woman is not sustainable.

102. Further, it may be noticed that Section 19 of the Act stipulates the duties of the employer to inter alia provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace; display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4; provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force; cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place; and treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct.

103. In the present case instead of providing assistance to the aggrieved woman in prosecuting her complaint of sexual harassment, the Akademi has been opposing her tooth and nail and has even terminated her services pending the inquiry before the Local Committee.

104. The judgment in Sheo Shankar Lal Srivastava (*supra*), relied upon by learned senior counsel for the Akademi for applying the doctrine of necessity, is not applicable to the facts of the present case as in the said case the issue was as to whether the Lok Ayukta was the disciplinary authority and the power to impose punishment vested only in him and the allegation was that the officer had misbehaved before him. The Lok Ayukta appointed someone else as an Inquiry Officer but an objection was taken by the Officer himself that no person from outside should be appointed and accordingly the Lok Ayukta had no option but to take upon himself the burden of holding the departmental proceedings. The Supreme Court of India held that the Officer could not be permitted to take the objection that the disciplinary proceedings should have been conducted by some other officer, especially when it was not contended that there was any other officer in the office of the Lok Ayukta available for conducting such an enquiry. It was in those circumstances that the Supreme Court applied the doctrine of necessity and held that the Lok Ayukta had no option but to proceed with the inquiry despite the fact that he himself was a witness and the disciplinary authority.

105. Clearly, such a situation has not arisen in the facts and circumstances of the present case and the doctrine of necessity is not applicable.

106. The plea of applicability of the doctrine of necessity is misplaced. Since it has been held that the Secretary is the 'employer' and the Internal Complaints Committee was not competent to entertain a complaint against the Secretary, so there was no question of applying the doctrine of necessity and inducting

members of the board of external members. Only the Local Committee is competent to entertain the complaint against the 'employer'.

107. The questions arising for consideration in these petitions are answered accordingly.

108. In view of the above the Petitions are disposed of in the following terms:

(i) The Secretary is held to be an employer in terms of section 2(g) of the Act.

(ii) The complaint of sexual harassment against the Secretary would lie only to the Local Committee and the Internal Complaints Committee would not have any jurisdiction to entertain any complaint against the Secretary.

(iii) The Inquiry report dated 14.01.2020 of the internal Complaints Committee and its opinion and recommendations are held to be without jurisdiction and non est.

(iv) The Office Memorandum dated 14.02.2020 terminating the services of the aggrieved woman is quashed.

(v) The aggrieved woman would be deemed to continue in service but as a probationer in terms of her appointment letter till the conclusion of the inquiry by the Local Committee. She is reinstated to her former position, with continuity of service, full back wages, and other consequential service benefits.

(vi) The Akademi shall forthwith pay her salary for the current month and clear the arrears of her salary within four weeks.

(vii) The aggrieved woman shall be deemed to be on paid leave till the Local Committee passes appropriate interim orders with regard to provision of a safe working environment to her.

(viii) The competent authority of the Akademi would be at liberty to review her performance and take a decision on her employment status after submission and implementation of the report by the Local Committee.

(ix) Since it has been held that the Secretary is the employer in terms of section 2(g) of the Act and that a complaint against him would not lie to the Internal Committee, the question as to whether the Internal Committee was validly constituted and details thereof displayed in terms of section 19 of the Act, is left open.

(x) The claim of the aggrieved woman for compensation for alleged mental trauma, pain, suffering and emotional distress caused to her is left open for determination by the Local Committee in terms of Section 15 of the Act.

109. Consequently, W.P.(C) 1103/2020 filed by the aggrieved woman is allowed in the above terms and W.P. (C) 2546/2021 filed by the Akademi is dismissed.

110. It is clarified that nothing stated herein shall amount to an expression of

opinion on the merits of the allegations made by the aggrieved woman or the defence of the Secretary thereto.

111. Copy of this Order be uploaded on the High Court website forthwith and be forwarded to learned counsel for the parties by the Court Master.