

(2016) 08 KL CK 0002
In the High Court Of Kerala
Case No : W.P. (C) No. 9695 of 2008

Union of India

APPELLANT

Vs

V.S. Jaitha

RESPONDENT

Date of Decision : 01-08-2016

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14(2)
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(iii), 3C
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act,

Citation : (2016) 3 KerLJ 684 : (2016) 4 KLT 35

Hon'ble Judges : Mr. P.R. Ramachandra Menon and Anil K. Narendran, JJ.

Bench : Division Bench

Advocate : Sri. Rajiv Shakdhar (Sr.) Advocate and Sri. V.V. Ashokan, SC, for the Appellant; Sri. M.K. Damodaran (Sr.), Sri. P.K. Vijayamohanan, Sri. Alan Papali and Sri. N.N. Arun Bechu, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

P.R. Ramachandra Menon, J.—Whether a complaint preferred by the victim with the allegation of "sexual harassment" in the workplace, has to be scrutinised by the "Complaints Committee" itself, to form an opinion as to involvement of any such instance of sexual harassment before proceeding with further steps or whether it could be examined by the "Disciplinary Authority" at the first instance to see whether it involves any such misconduct to be proceeded with, by the enquiring authority [who is the Complaints Committee in terms of the verdict of the Apex court in Vishaka and others v. State of Rajasthan and others (AIR 1997 SC 3011)], is the basic point to be considered in this writ petition.

2. The petitioners were the respondents before the Tribunal. The office of the 5th petitioner was being held by the 4th petitioner in his capacity as the Accountant General (A&E) Kerala. During the relevant time, the Accountant General's office was entrusted with the task of implementation of one rank one pension scheme

for the State Government employees in the year 2006. Considering the need of the hour and the requisite output to be achieved in a time bound manner, the 4th petitioner (who was the 4th respondent) decided to outsource a part of the work to an outside agency, which was to the chagrin of some of the employees who agitated against it. A "dharna" was convened by the agitating employees and their association in the portico of the AG's office during the period from 19.12.2006 to 22.12.2006. According to the 4th/5th petitioner, the agitators were virtually blocking the way to the office by sitting in front of the office and the 4th/5th petitioner had no other way to enter and exit the office. The agitation was mainly in connection with the suspension of another employee by name Santhosh Kumar, a member of their Association pursuant to the alleged misconduct committed by him in causing disturbance to a "Training programme" arranged by the 4th/5th petitioner. The frequent interruption made by him questioning the outsourcing of the work and also in obeying the orders issued by the 4th/5th petitioner. The agitation was going out of proportion and several persons from outside also joined the team.

3. On 19/20.12.2006, particularly during lunch break and such other time, the 4th/5th petitioner had to cross through the agitators making use of the little space available in between to have entry and exit to his office. This, according to the 4th petitioner was done by him without causing any embarrassment to anybody and still, in order to precipitate the issue and take it to wrong dimensions, the respondents 1 to 9 filed Annexures A-10 complaint dated 12.01.2007 before the Chairperson of the Committee for redressal of sexual harassment on working women. As the Chairperson (a lady officer) was a subordinate officer of the 4th/5th petitioner, in terms of clauses (f) and (g) of Annexure-R1 Circular dated 24.01.2000, the complaint was forwarded to the headquarters at New Delhi, as per Annexure A11 dated 05.02.2007. The competent authority called for a report and after considering the same and also after going through the contents of Annexure A10 complaint observed that no instance of any sexual harassment was involved in Annexure-A10 and the position was ordered to be informed to the parties concerned. This in turn was communicated to the employees as per Annexure-A13 dated 22.03.2007, that the complaint did not come within the purview of any instance of sexual harassment to be enquired into.

4. The 4th petitioner was of the view that the respondents had joined hands to send a frivolous complaint of serious magnitude involving sexual harassment to the higher authorities and that it amounted to a "misconduct", in terms of Rule 3(1)(iii) of the CCS (Conduct) Rules, which hence was sought to be proceeded against. Accordingly, Annexures-A1 to A9 show-cause notices dated 16.08.2007 were issued to the respondents, asking to show cause why disciplinary proceedings shall not be initiated against them. This made the respondents to rush to the Central Administrative Tribunal, Ernakulam Bench challenging Annexures-A1 to A9 show-cause notices and Annexure-A13 communication dropping further proceedings in respect of Annexure-A10 complaint, by filing

O.A.No. 727 of 2007.

5. The prayers raised in the above O.A. were resisted from the part of the respondents in the O.A (petitioners herein) by filing detailed reply statement. Making a reference to Rule 3C of the Conduct Rules (as amended in 1998) and Rule 14(2) of CCS (CCA) Rules (as amended), it was specifically contended that the contents of Annexure-A10 did not involve any instance of sexual harassment, coming within the purview of the law declared by the Supreme Court in Vishaka's case (cited supra) and that the competent authority had every right and authority to consider at the first instance whether the matter requires to be enquired by the Complaints Committee and only if such an opinion was formed, would it be liable to be placed before the Complaints Committee to be enquired into.

6. After hearing both the sides, the Tribunal, as per Ext.P1 order dated 05.03.2008 held that the course pursued by the concerned authority in New Delhi was not correct or proper and that the complaint had necessarily to be placed before the Complaints Committee headed by a Lady officer with such other members in conformity with the law declared by the Supreme Court. It was accordingly, that Annexure-A13 order was set aside, simultaneously setting aside Annexures-A1 to A9 show cause notices initiating disciplinary action against the applicants/employees. The Tribunal also directed the concerned respondent to constitute a Committee, alerting that the concerned officers as mentioned therein shall not be permitted to act as members of the Committee to deal with the complaint. This, according to the petitioners, is per se wrong and illegal in all respects and hence the challenge.

7. Mr. V.V. Asokan, the learned Sr. Counsel appearing on behalf of the petitioners submits that Annexure-A10 complaint itself is an abuse of the process and on going through the contents of Annexure A10, no reasonable and prudent man can ever infer that it involves any instance of sexual harassment. It is pointed out that, admittedly Annexure A10 complaint was preferred by nine lady employees jointly and the only insinuation made therein is that the 4th petitioner, on 19.12.2006, had crossed over the legs of some of them, who were sitting on the floor participating in the agitation and that the shoes of the 4th petitioner had touched/stamped their clothes. In the said complaint, there is no allegation that the 4th petitioner had ever touched their body in any manner; and that apart the agitation was at a common place in the portico/veranda of the office of the 4th petitioner and that too, in presence of more than 100 persons, which could never be branded as an instance of sexual harassment. The second point asserted by the learned Sr. Counsel is that, as per Rule 14(2) of the CCS (CCA) Rules, when any misconduct is committed by an employee and when information is obtained in this regard, the Disciplinary Authority has to get satisfied, forming an opinion as to whether the instance involves any misconduct and if so, whether to be proceeded against either by himself or by appointing an enquiry authority. By virtue of the said rule position, satisfaction is to be

recorded in this regard that the matter requires to be enquired into. When the complaint involves an instance of "sexual harassment", how it is to be enquired into is stipulated in the proviso to Rule 14(2), i.e., by placing it before the particular Committee constituted in this regard and report of the said Committee shall be taken as the enquiry report to be proceeded with further steps. As such, the proviso being subservient to the main provision, it cannot have any independent existence and is part of Rule 14(2), however drawing an exception to the requisite extent as to the course of the enquiry. It was in the said circumstance, that a prima facie consideration was made by the competent authority at New Delhi and on going through the contents of Annexure A10, it was found that it did not involve any misconduct of sexual harassment as envisaged under Rule 3C of the CCS (Conduct) Rules. Hence an opinion was formed that the matter did not require to be enquired into, in turn, leading to Annexure-A13 communication, which is not assailable.

8. Mr. M.K. Damodaran, the learned Sr. Counsel appearing for the respondents submits that the need to curb the menace of sexual harassment at workplace was highlighted by the Apex Court in Vishaka's case (cited supra) and a solution was also provided as to how to deal with it, giving appropriate directions to be implemented by all concerned, till a proper legislation was made by the Government in this regard. The Apex Court has defined the term "sexual harassment", which is an inclusive definition and once a complaint is filed, it has necessarily to be placed before the Complaints Committee to be constituted, as directed by the Apex Court and nobody else is having jurisdiction to have it dealt with unilaterally. It is pointed out that Annexure-A10 complaint was addressed to the Chairperson of the Committee at Thiruvananthapuram, who, however, sent it to the headquarters at New Delhi as per Annexure-A11 as she could not initiate any action, presumably being a subordinate of the 4th petitioner. The learned Sr.Counsel points out that Rule 14(2) of the CCS(CCA)Rules is a general provision, which was in existence right from the beginning; whereas the "proviso" thereunder to deal with instances of "sexual harassment" separately, was introduced only with effect from "01.07.2004". Thus, the proviso to Rule 14(2) is having an independent existence in so far as instance of "sexual harassment" is involved and as such, neither the second petitioner nor the third petitioner (second respondent/third respondent in the O.A.) could have considered the maintainability of Annexure-A10 complaint in their individual capacity, and the same ought to have been placed for consideration before the Committee concerned; who alone was having any say with regard to the maintainability as well. Annexures-A1 to 9 show-cause notices were issued as a measure of harassment or victimisation, which did not have any independent legs to stand, as it was with reference to Annexure-A10 complaint. Reliance is sought to be placed on the observations and directions made/given by the Apex Court in Vishaka's case (cited supra). he learned counsel further submits that the only direction issued by the CAT, as per Ext.P1 order, is to cause the matter to be re-considered by the Complaints Committee, in conformity with the

relevant rules and hence it does not require any interference at the hands of this Court.

9. As mentioned already, the basic point to be considered is whether the Disciplinary Authority is having any power to form an opinion at the first instance, as to the maintainability of the complaint based on the contents of Rule 14(2) of the CCS(CCA) Rules, as to whether the instance involves any act of "sexual harassment" to be let enquired into by the Committee concerned, in terms of the "proviso" thereunder. To have an easy understanding, reference to the observations made by the Supreme Court in the celebrated decision in Vishaka's case (cited supra), as contained in paragraph "16" is necessary, which hence is reproduced below:

"16. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.

The guidelines and norms prescribed herein are as under:

Having regard to the definition of "human rights" in Section 2 (d) of the Protection of Human Rights Act, 1993, Having regard to the definition of "human rights" in Section 2 (d) of the Protection of Human Rights Act, 1993, Taking note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time.

It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the Employer or other responsible persons in work places and other institutions: It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition :

a) physical contact and advances;

b) a demand or request for sexual favours c) sexually coloured remarks;

d) showing pornography;

e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive Steps :

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

(a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

(b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal Proceedings :

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary Action

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the

employer in accordance with those rules.

6. Complaint Mechanism

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organisation for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaints Committee

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.

The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Workers' Initiative

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness :

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. Third Party Harassment :

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection

of Human Rights Act, 1993.

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of, accordingly.

10. Incidentally, it is brought to the notice of this Court, as averred in the writ petition, that the respondents herein had approached the Kerala Women's Commission for immediate interference with reference to their grievance as projected in Annexure-A10. The Kerala Women's Commission took the view that they were not having any jurisdiction and accordingly, the complaint was returned for presentation before the proper Forum, observing that the Kerala Women's Commission Act, 1990 will not apply to the Central Government or Public Sector undertakings of the Central Government or any other institutions owned or controlled by the Central Government. Meanwhile, the respondents had also approached this Court by filing W.P.(C) No.26054 of 2007 challenging the disciplinary action initiated against them, which was dismissed as per the judgment dated 21.11.2007, observing that the Central Administrative Tribunal was the appropriate Forum having jurisdiction. Because of the threat to the law and order situation, the 5th petitioner herein had also approached this Court by filing W.P.(C)No.33272 of 2007, wherein an interim order granting police protection was ordered on 13.11.2007 and later the Writ Petition was disposed of as per the judgment dated 11.11.2008. It is further revealed that the Kerala Women's Commission re-opened the matter [reportedly based on forwarding the complaint by the National Women's Commission (who felt that it was not having any jurisdiction to give any directions to the Kerala Women's Commission)]. Pursuant to this, explanation was called for from the 4th petitioner and though explanation was given by the 4th petitioner, the Kerala Women's Commission decided to proceed with the matter and insisted the presence of the 4th petitioner in person or through authorised agent, to cross examine the concerned respondents/women employees.

11. The 4th petitioner sought to drop all further proceedings since the Kerala Women's Commission had already found that they had no jurisdiction to entertain the complaint. But since the said request was not acceded to, the 4th petitioner approached this Court by filing W.P.(C)No.22829 of 2008 challenging the proceedings of the Kerala Women's Commission. After hearing both the sides, a learned Judge of this Court was pleased to find that the Kerala Women's Commission had no power, jurisdiction or competency to have issued the proceedings under challenge and accordingly, they were set aside, allowing the writ petition.

12. Now, the point to be considered is mainly with regard to the course of action pursued by the authorities concerned, leading to issuance of Annexure-A13, observing that the alleged instance covered by Annexure A10 did not involve any

instance of sexual harassment, i.e, without referring the matter to be dealt with by the "Complaints Committee" constituted in terms of the judgment of the Supreme Court in Vishaka's case (cited supra). The incidental point is whether the verdict of the Tribunal causing the matter to be reconsidered should be let to remain, if in fact, Annexure A10 complaint does not disclose any act of "sexual harassment" as defined by the Apex Court in the said judgment.

13. The term "sexual harassment" has been defined by the Apex Court in sub-para "2" of paragraph "16" of the above judgment in Vishaka's case. Though the opening sentence shows that it is an inclusive definition, in the operative portion, it is stated "Where any of these acts is committed" The Apex Court has set forth the preventive steps to be taken; the criminal proceedings to be pursued and the disciplinary action to be initiated against the delinquent employees. A "Complaint Mechanism" is ordered to be evolved and a "Complaint Committee" has to be constituted, headed by a woman, with not less than half of its members being women. The aforesaid guidelines have been given the effect of "directions", which have been ordered to be binding and enforceable in law until suitable legislation is enacted to occupy the field, as mentioned in the concluding paragraph of the judgment. It took nearly "16" years for the Parliament to come up with a proper legislation in terms of the verdict in Vishaka's case by bringing in "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, i.e., Act 14 of 2013, w.e.f. 09.12.2013.

14. Based on the definition of the term "sexual harassment" as given by the Apex Court, the CCS (Conduct) Rules were amended in the year 1998. Rule 3C of the Rules reads as follows:

"(i) No Government servant shall indulge in any act of sexual harassment of any woman at her work place.

(ii) Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

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

(a) physical contact and advances;

(b) a demand or request for sexual favours;

(c) sexually coloured remarks;

(d) showing any pornography; or

(e) any other unwelcome physical, verbal or nonverbal conduct of a sexual nature."

The amendment of "Conduct Rules" was with an intent to take disciplinary action against the delinquent employee, as ordered by the Supreme Court. So as to

facilitate such exercise, the CCS (CCA) Rules were also amended; adding a "proviso" to Rule 14 (2). Rule 14 of the CCS (CCA) Rules deals with the enquiry to impose major punishment. Rule 14(2), with the "proviso" as amended/ incorporated with effect from 10.07.2004, is as follows:

"14. Procedure for imposing major penalties

(1) No order imposing.....xxxxxxxxx

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries)Act, 1850,as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of Rule 3-C of the Central Civil Services (Conduct)Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

Explanation 1: Where the Disciplinary Authority itself holds the inquiry, any reference in sub-rule(7) to sub-rule(20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the Disciplinary Authority.

Explanation 2: Where the Disciplinary Authority appoints a retired Government servant as inquiring authority, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) shall include such authority"

15. It is settled law, in labour/service jurisprudence, that no authority can impose the punishment of dismissal unless such authority is having power to appoint. However, the Disciplinary Authority need not be the Appointing Authority in all circumstances. Going by Rule 14(2) of the CCS (CCA) Rules, when a misconduct is noted and if the Disciplinary Authority finds that it is a matter which requires to be enquired into, he can conduct the enquiry either by himself or through another enquiring authority. By virtue of the "proviso" to Rule 14(2) of the CCS (CCA) Rules introduced in the year 2004, if it pertains to "sexual harassment", it is to be enquired by the Committee constituted specifically in this regard.

16. According to the learned Sr. Counsel for the petitioners, this is only the "second stage" of the proceedings, i.e., if only the Disciplinary Authority finds as per Rule 14(2) of the CCS(CCA) Rules that it is a matter which requires to be enquired into. Here, there is a field of discretion to form an opinion, as to whether there is any substance to be enquired into and it is in exercise of this

discretion that Annexure-A13 came to be issued, dropping the proceedings, which is stated as quite in order. We find it difficult to agree with the said proposition for the reasons noted below.

17. The principles evolved by the Apex Court and the directions given in Vishaka's case were reiterated and further directions were issued in the subsequent rulings rendered by the Apex Court including the verdicts in Medha Kotwal Lele v. Union of India [(2013)1 SCC 297]; Seema Lepcha v. State of Sikkim [(2013)11 SCC 641] and Additional District and Sessions Judge "X" v. Registrar General, High Court of M.P. [(2015)4 SCC 91]. It can no more be a matter of dispute that, if at all any imputation of misconduct is made involving "sexual harassment" as defined in Vishaka's case and incorporated in Rule 3C of the CCS (Conduct) Rules, it can be enquired into only by the "Complaints Committee" as stipulated in the "proviso" to Rule 14(2) of CCS(CCA) Rules, in so far as a Government servant is concerned. As per Rule 14(2) of the said Rules, normally, if the Disciplinary Authority is of the opinion that there are grounds for enquiring into the truth of imputation/misbehaviour, it may either enquire it himself or appoint an inquiring authority under the said rule or appoint an authority under the provisions of Public Servants (Inquiries) Act, 1850 in this regard. The formation of an "opinion" as to the existence of a ground to enquire under such circumstance is with reference to the generality of the term "misconduct/misbehaviour". By virtue of the "proviso" introduced with effect from 10.07.2004 to Rule 14(2) of the CCS (CCA) Rules, an exception is drawn with regard to a misconduct/misbehaviour/complaint involving "sexual harassment", coming within the purview of Rule 3C of the CCS (Conduct) Rules. If such an instance is involved, the "proviso" to Rule 14(2) of the CCS (CCA) Rules insists that, it shall be enquired into only by the "Complaints Committee" constituted in this regard. It is to be based on such report, that further action to be taken by the Disciplinary Authority and the punishment to be imposed, if the misconduct involving "sexual harassment" is proved. In other words, the right to enquire into a misconduct/misbehaviour involving "sexual harassment" has been taken away from the powers conferred upon the Disciplinary Authority. The formation of "opinion" as to whether any ground existed, to enquire into the truth has relevance only in respect of matters, which the Disciplinary Authority himself could enquire into. When the power to enquire into is taken away from the Disciplinary Authority, conferring the same upon the "Complaints Committee" (in respect of sexual harassment) as per the "proviso" introduced to Rule 14(2) of the CCS (CCA) Rules with effect from 10.07.2004 pursuant to Vishaka's case and amendment of the CCS (Conduct) Rules, introducing Rule 3C (in 1998), the power to form an "opinion" is also to be deemed as lost or stands transferred to the "Complaints Committee". To put it more clear, when an authority does not have the power to enquire into the correctness or otherwise of the complaint involving "sexual harassment", such authority cannot form an "opinion" and is virtually prevented from considering the contents of the Complaint as to whether any ground to enquire into such complaint does exist or not. If the version of the

petitioners (that if only the Disciplinary Authority prima facie finds that the complaint involves an instance of "sexual harassment", will it become essential to have it placed before the Complaints Committee) is accepted, it may be possible to subvert the purpose of the Rule/enactment. If under a given circumstance, the post of Disciplinary Authority comes to be held by an unscrupulous person or if such Disciplinary Authority happens to be a person interested in the cause either by virtue of acquaintance with the delinquent employee or by virtue of hostility to the victim, it may be possible for the Disciplinary Authority to say that the Complaint does not contain any act of "sexual harassment", thus consciously preventing further course of action at the hands of the "Complaints Committee". This is not the intention of the Apex Court/Law makers. An "opinion" can be formed only by the competent authority, who is having the power to enquire, i.e., nobody else than the "Complaints Committee". This being the position, the view taken by the Tribunal that the matter ought to have been placed for consideration before the Complaints Committee does not suffer from any error and is liable to be sustained. This question is answered against the petitioners.

18. The next point to be considered is, whether the matter requires to be considered by the "Complaints Committee" to be constituted/reconstituted in the manner as specified by the Tribunal, if none of the ingredients of Rule 3C of the CCS (Conduct) Rules is found as made out from the complaint either by the Tribunal or by this Court. In other words, whether Annexure-A10 complaint should be caused to be considered by the "Complaints Committee" or is it a bar for this Court to examine whether further steps are necessary, if Annexure-A10 does not contain any ingredient; or should it be made a mere academic exercise, despite non-satisfaction of any ingredients under Rules 3C of the CCS (Conduct) Rules.

19. We asked a specific question to the learned Sr. Counsel appearing for the respondent as to whether any such instance is discernible from Annexure A10 and to point out, how it becomes connected or linked with any of the circumstances mentioned under Rule 3C of the Conduct Rules or the meaning of the term "sexual harassment" as defined by the Apex Court in Vishaka's case. The learned Sr.Counsel submitted that, it is to be examined by the "Complaints Committee", however adding that the 4th petitioner having crossed over the legs of women staging Dharna in the office premises is enough to constitute the misconduct/offence of "sexual harassment".

20. This Court finds it fit and proper to extract the contents of Annexure-A10 complaint for easy reference and appreciation. Annexure-A10 complaint reads as follows:

"To

The Chairperson,

Committee for Redressal of Sexual Harassment on Working Women,

O/o. The Accountant General (A&E).,

Kerala, Thiruvananthapuram.

Madame,

We hope that Smt. Elizabeth G Cherian Member of the Committee for redressal of sexual harassment on working women, might have informed you regarding the grievance of the women employees of this office. We had explained to her our concern in the matter on 26.12.2006. We did not get any response from the committee till date. We therefore place this complaint before you.

The Audit & Accounts Association organised a dharna in the office portico from 19th to 22nd December, 2006 in connection with the agitation consequent on the suspension of one of our colleagues. The dharna was going on in a peaceful manner, without causing hindrance to the inward/outward movement of people in the Main building. On 19th December, 2006, on his return to office after lunch, Shri V. Ravindran, Accountant General (A&E) happened to pass by. Though there was enough space left on the southern side of the portico for the passage of people, he chose to walk by stamping on the clothes of some of the ladies and crossing over the legs of some others who were attending the dharna, thus causing an unexpected embarrassing situation.

This act of Shri Ravindran was repeated on the next day also. It appeared that he was so determined to pass through between the woman employees as he proclaimed loudly that he wanted to pass by the same route he had done the previous day. Though the caretaker and Shri Venu Gr.D of AG's secretariat and other members of staff repeatedly requested him to use the passage available, he did not mind those requests. This turned out to be outrageous to any onlooker. Besides at this point of time, Shri V.Ravindran took out his mobile phone and started capturing photographs of the woman employees sitting there from many angles. We are afraid, there is every possibility to misuse the photographs so captured. The next day, a memo calling for explanations was issued to one of the staff members who requested Shri V. Ravindran to use the passage available instead of passing between the woman employees sitting.

We are very sad to state that a Head of the department, who is expected to and responsible for safeguarding the dignity of the woman employees of the office, has himself indulged in challenging our dignity. We bow our heads, but in shame to bring such an unprecedented and unfortunate incident to your notice.

We request you to be kind enough to initiate appropriate action in this matter with due seriousness. Otherwise we will be compelled to approach higher forums for getting our grievances redressed."

21. The only insinuation made against the 4th petitioner is that he made entry/exit to/from his office by crossing over the legs of respondents 1 to 9, who were staging "Dharna" in the premises, despite availability of alternate access. The availability of alternate access is denied by the 4th petitioner as per Ext.P3 reply

dated 09.02.2007 and further that the agitators, admittedly more than 100, were virtually blocking entry to anybody and it was with much strain that the 4th petitioner could find access to and from his office. It is also relevant to note that, nowhere in Annexure A10 complaint, has it been mentioned that:

- (a) there was any physical contact and advances between the petitioner and any of the respondents 1 to 9;
- (b) a demand or request for sexual favours;
- (c) any sexually coloured remarks;
- (d) any instance of showing pornography; or
- (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

What is stated is only that, in the course of finding access to and from the office, the shoes of the petitioner happened to touch the clothes of some of the lady agitators and that's all. Nowhere in Annexure A10 complaint, had they made any allegation that there was any attempt/advance of "sexual harassment" from the part of the 4th petitioner, coming within the purview of meaning of the term, as defined by the Apex Court in Vishaka's case or under Rule 3C of the CCS(Conduct) Rules . Merely for the reason that the entry and exit of the 4th petitioner from his office during the course of "Dharna"/agitation had caused some embarrassment to the lady agitators (if it be so), it cannot constitute any misconduct of "sexual harassment" as defined by the Apex Court or Rule 3C of the Conduct Rules. The allegation that the 4th petitioner had taken photographs of the agitating lady workers in his mobile phone has been specifically denied by the 4th petitioner in Ext.P3. That apart, even if such mobile pictures were taken, it would not intrude the privacy of the respondents, who were openly agitating together along with others, including both men and women (as many as 100 even according to the complainants) and this cannot be cited as an offensive step. It is also pointed out that press photographers had come to the scene and had taken photographs of the agitators including the complainants/respondents herein and that the same had been published in some of the dailies. In what way did it offend the complainants to constitute a "sexual harassment" as defined by the Apex Court in Vishaka's case or under Rule 3C of the CCS (Conduct) Rules, remains as a matter of mystery.

22. The unpleasant events leading to Annexure-A10 complaint and the subsequent O.A. are also to be looked into. As pointed out already, the 4th petitioner and the Prl. Accountant General (Audit) were constrained to approach this Court by filing W.P.(C)No.33272 of 2007, seeking for police protection because of the alleged intimidation and direct action being pursued by the agitators causing obstruction to the functioning of the office, by taking law into their hands. In fact, police protection was granted by this Court as per an interim order dated 13.11.2007 passed in the said case.

23. In the above facts and circumstances, this Court is of the view that, no

instance of misconduct coming within the purview of Rule 3C of the CCS(Conduct) Rules, constituting an instance of "sexual harassment" or as defined by the Apex Court in Vishaka's case is made out in Annexure-A10 complaint; and as such, causing the matter to be considered by the Complaints Committee, as now ordered by the Tribunal, can only be a mere academic exercise and nothing more. Accordingly, the direction given by the Tribunal in paragraphs 19 and 20 of Ext.P1 order in this regard is set aside.

24. Sustainability of the show-cause notices issued to respondents 1 to 9, which came to be set aside by the Tribunal as per Ext.P1 order passed in the O.A. also requires consideration. Similar statement of imputation of misconduct/misbehaviour has been issued to each of the respondents seeking for their explanations, which involves two charges. A specimen charge as it appears from Annexure-A7 reads as follows:

"ANNEXURE -I

Statement of articles of charges framed against Smt. L. Geetha Kumari, Section Officer, Office of the Accountant General (A&E), Kerala, Thiruvananthapuram.

Article-I

That the said Smt. L. Geetha Kumari, Section Officer had submitted a joint representation on 12.1.2007 signed by her and nine other women employees of the office of the Accountant General (A&E) Kerala, in the nature of a complaint to the Chairperson of the Committee for Redressal of Sexual Harassment of Working Women of the Office of the Accountant General (A&E) Kerala.

That, thus by giving a joint representation along with other women employees of the office, Smt. L. Geetha Kumari, Section Officer, has acted in a manner unbecoming of a Government servant thereby violating the provisions as contained in Govt. of India's Decision (21) under Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964.

Article -II

That Smt. L. Geetha Kumari, Section Officer, Office of the Accountant General (A&E)Kerala, Thiruvananthapuram had lodged a false complaint dated 12.01.2007 before the Chairperson, Committee for Redressal of Sexual Harassment of Working Women, Office of the AG(A&E) Kerala, Thiruvananthapuram and Kerala Women's Commission, Thiruvananthapuram alleging that on 19th December,2006 Shri V. Ravindran, Accountant General (A&E) Kerala stamped on the clothes of some of the women employees of the office and crossed over their legs who were sitting in a "Dharna" and that he had also captured photographs of some women employees sitting in Dharna. By lodging the false complaint, Smt. L. Geetha Kumari, Section Officer had acted with the malicious intention of harming the reputation of Shri V.Ravindran, Accountant General (A&E) Kerala, i.e. Head of the Department, with a view to defame him. Her act of joining the group of employees who had lodged a false

complaint against Shri V. Ravindran is violative of Rule 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964, which states that a Government servant shall at all times do nothing which is unbecoming of a Government Servant.

By her wilful and unlawful act of lodging a false complaint against Shri V. Ravindran, Accountant General (A&E) Kerala, the Head of Department in concert with other female colleagues and thereby trying to malign and defame him, Smt.L.Geetha Kumari, Section Officer, had violated Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964."

25. It is revealed that the alleged misconduct is for having filed a joint representation (Annexure-A10) before the Chair person of the Committee for Redressal of sexual harassment on working women, Office of the Accountant General (A&E), Kerala, which according to the petitioners is a false complaint, acting with a malicious intention of defaming the reputation of the 4th petitioner. On going by the contents of Annexure A10, as discussed hereinbefore (which does not disclose any act of sexual harassment), it does not refer to any derogatory or defamatory statement because of the alleged acts/deeds done by the 4th petitioner. It only refers to the embarrassment or anxiety of the complainants/women employees; according to whom, it was to be considered by the competent authority. The Chairperson of the Committee to whom it was addressed, forwarded the same to the competent authority in New Delhi, in terms of Clause 2(f) and (g) of Annexure R1 Circular dated 24.01.2000. In view of the agitation or "Dharna" in the office premises on the relevant dates and the undisputed extent of the facts and events as discernible from the pleadings and proceedings, Annexure-A10 grievance cannot be termed as a "false complaint with intent to malign the name of the 4th petitioner". Mere projection of their grievance or the embarrassment caused to them (gravity of which may differ from person to person) cannot be cited as an instance of misconduct to be proceeded against. There is no insinuation against respondents 1 to 9 in Annexure A1 to A9 show-cause notices for having participated in the "Dharna" in the office premises, if it was not permissible in law, or if it was being done during the office hours or for such other reasons. As it stands so, this Court is of the firm view, that the Tribunal cannot be blamed for having intercepted the show-cause notices as well (though there is no discussion in this regard). This is more so, when the show cause notices were issued with mere reference to Annexure-A10 complaint and in the light of the discussion made by this Court as to the scope of the relevant provisions of law and the course of action to be pursued.

26. The sum and substance of the above discussion is to the effect that :

(i) whenever a complaint is preferred with imputation of misconduct/misbehaviour involving sexual harassment coming within the purview of Rule 3C of the CCS(Conduct) Rules, it has necessarily to be placed before the committee as envisaged under the proviso to Rule 14(2) of the CCS (CCA) Rules to be enquired into.

(ii) Under such circumstances it is not for the disciplinary authority to formulate any opinion as to whether any ground exists to enquire into the complaint or not and it shall be for the Complaints Committee to do such exercise.

(iii) After commencement of Act 14 of 2013 w.e.f. 09.12.2013 if any complaint is received involving a misconduct of "sexual harassment" as defined under Section 2(n) of the said Act, it shall be caused to be dealt with in terms of the provisos of the Act/Rules.

(iv) It is open for this Court/Tribunal to intercept the proceedings on exceptional circumstances, if the complaint does not disclose any instance of misconduct of "sexual harassment" coming within the purview of Rule 3C of the CCS (Conduct) Rules/Sec.2(n) of Act 14 of 2013.

(v) Ext.P1 order passed by the Tribunal is intercepted only in respect of the directions as contained in paragraphs "19" and "20".

(vi) The direction in paragraph 21 of Ext.P1order passed by the Tribunal setting aside Annexures-A1 to A9 show-cause notices will stand intact and no further proceedings need to be pursued against respondents 1 to 9 in respect of the cause of action mentioned in Annexures A1 to A9.

27. Writ Petition stands disposed of as above.