

(2022) 04 GUJ CK 0062

In the Gujarat High Court

Case No : R/Special Civil Application No. 16219 Of 2020

Vimalkant Bhanuprasad Shrimali

APPELLANT

Vs

IDMC Limited

RESPONDENT

Date of Decision : 19-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Conduct, Discipline And Appeal Rules, 2019 — Rule 5, 5.2, 7, 22.5.9, 29, 29(3), 29.9, 29.9.3

Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013 — Section 2, 3, 4, 4(1), 9, 10, 11, 13

Indian Penal Code, 1860 — Section 4(2), 10(2), 11, 15, 509

Citation : (2022) 04 GUJ CK 0062

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Sharvil Majmudar, Gm Joshi, Anshul N Shah, Aditya C Yagnik, Manan Bhatt

Final Decision : ?Dismissed

Judgement

Biren Vaishnav, J

1. Rule, returnable forthwith. Mr. Aditya C. Yagnik, learned advocate waives service of notice of Rule for the respondent No.1 – IMDC Limited while Mr. Manan Bhatt, learned advocate waives service of notice of Rule for respondent No.5.

2. With the consent of the learned advocates appearing for the respective parties, the petition was taken up for its final disposal.

3. In this petition, under Article 226 of the Constitution of India, the petitioner challenges the order dated 21.5.2020 and the order dated 31.8.2020. By the order of 21.5.2020 the services of the petitioner No.1 came to be terminated. On filing an appeal, by the order of 31.8.2020, the termination order was confirmed and the appeal was dismissed.

4. Facts in brief would indicate that the petitioner was working as Assistant Vice President, HR and Administration with the respondent No.1 – IDMC Limited. He had served the Company for about two years. The respondent No.5, one Ms. Ankita Mistri made a complaint to the respondent No.1 on 25.11.2019 under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal), Act, 2013 (hereinafter referred to as 'the Act').

5. Pursuant to the complaint so made, a notice was issued to the petitioner on 29.11.2019 inter alia stating that based on the complaint, being an employee of the Company, the petitioner was asked to explain in writing the charges levelled against him. On response to the notice, the petitioner filed a reply on 9.12.2019 denying the allegations. On 3.1.2020 a detailed reply was filed by the petitioner to the Presiding Officer of the Internal Complaints Committee constituted by the respondent – employer. Based on the inquiry conducted by the Internal Complaints Committee (hereinafter referred to as 'the ICC') constituted under the Sexual Harassment Act, an inquiry was conducted and completed on 22.2.2020. Copy of the inquiry report was supplied to the petitioner on 3.3.2020. Based on the report, which concluded that the petitioner was guilty of the charges of sexual harassment levelled by the respondent No.5, the services of the petitioner were terminated which was confirmed in appeal.

6. Mr. Sharvil Majmudar, learned counsel assisted by Mr. Anshul N. Shah, learned advocate for the petitioner challenging the order of termination and that of the order in appeal made the following submissions:

6.1. The charge-sheet was extremely vague and no details were as to what was the misconduct that the petitioner committed.

6.2. The entire proceedings in the nature of inquiry by the ICC was conducted in violation of principles of natural justice.

6.3. None of the statements made by the witnesses on behalf of the complainant were supplied to the petitioner nor was he allowed to cross examine the witnesses. The entire inquiry report was based on surmises and conjectures.

6.4. If the proceedings of the ICC are read, the burden of proof was shifted on the petitioner to prove his innocence rather than the Committee on the basis of evidence holding the petitioner guilty. The inquiry proceeded on the footing that the petitioner has not produced any evidence in support of his innocence. When in fact it is his guilt that has to be established by the ICC constituted under the Act.

6.5. Reiterating his submission that the inquiry was vitiated by violation of principles of natural justice, Mr. Majmudar would submit that the petitioner was not only allowed not to cross examine the witnesses who were examined on the basis of a complaint of the complainant, but he was not given any opportunity to present witnesses in his favour. He would submit that the audio recordings done at the meeting were not provided to the petitioner and whole inquiry was in

violation of the principles of natural justice. The petitioner rather than being given an opportunity to cross examine the witnesses was told by the committee by giving a questionnaire that he may list out the questions for cross examination which he wanted to confront the witnesses which will be given by the committee to witnesses. Mr. Majmudar would submit violated the provisions of Conduct, Discipline and Appeal Rules of the IDMC, 2019.

6.6. Relying on the provisions of the Conduct, Discipline and Appeal Rules of IDMC, particularly Rule 29 which provides for procedure for imposing major penalty, Mr. Majmudar would submit that Rule 29(3) provided that where there is a complaint for sexual harassment within the meaning of Rule 5, the ICC will inquire into the complaint and it shall be deemed to be the inquiring authority appointed by the Competent Disciplinary Authority for the purposes of these Rules. The Rule provided that the inquiry as far as practicable shall be in accordance with the procedure laid down under the Discipline and Appeal Rules. Therefore, in Mr. Majmudar's submission, the Rules, particularly Rule 29.12 provided for an opportunity for examine and cross examine witnesses on his behalf which was not permitted to be done in the case on hand and, therefore the entire procedural inquiry was vitiated. He would therefore submit that this was a fit case where a fresh inquiry should be ordered as the petitioner be given an opportunity to cross examine the witnesses on his behalf and a fresh exercise be done.

6.7. Relying on Rules 29.9, 29.9.3, and 29.20 of the IDFC Rules, 2019 Mr. Majmudar would submit that the employee has to be supplied with a statement of witnesses, contents of the inquiry report and assessment of evidence and the findings on each Article of charge and reasons. Taking the Court to the Inquiry Officer's report of the ICC, Mr. Majmudar would assail the procedural aspect and submit that what is evident from the proceedings was that all the witnesses were called at different times and different dates and were questioned separately. Their statements were recorded in voice and also documented. No copies were provided to the petitioner. The observation of the inquiry officer that the petitioner refused to cross examine is contrary to the record.

6.7. In support of his submissions, Mr. Majmudar would rely on a decision by the Coordinate Bench of this Court dated 30.4.2019 in the case of Mohini Pessuram Tilwani v. Union of India passed in Special Civil Application No.10252 of 2018, paragraph No.4.2 thereof and submit that it is the responsibility of the employer to act in fair, just and non arbitrary manner in all its functional spheres and in all decisions including the treatment to be meted out to its employees, servants and officers.

(ii) Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of Nand Kishore Prasad v. State of Bihar and others reported in 1978(3) SCC 366 paragraph Nos.19 and 25 thereof. He would submit that proceedings of domestic inquiries are the character of quasi judicial nature. Minimum requirements of the Rules of natural justice have to be followed. There has to be

evidential material of some degree of definiteness to point to the guilt of the delinquent. The order of the disciplinary authority also has to be a speaking order. All these aspects in the present proceedings are missing.

(iii) Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of Kuldeep Singh v. Commissioner of Police and others reported in 1999(2) SCC 10. Paragraph Nos.8, 32 and 42 thereof were pressed into service to indicate that it was important for the respondents to provide a reasonable opportunity of hearing in accordance with the principles of natural justice under which one of the basic requirements was that all witnesses in the departmental proceedings should be examined in the presence of the delinquent who shall be given an opportunity to cross examine them. A copy of the statement should be supplied to the petitioner. Reasonable opportunity therefore would indicate that procedural aspects of natural justice have to be followed.

(iv) Mr. Majmudar relied on the decision in the case of Dr. Pushkar Saxena v. Government of NCT of Delhi and others reported in 2012 SCC OnLine Del, 2844. Paragraph No.10 thereof was pressed into service to submit that though no special procedure has been prescribed for holding inquiry into the allegation of sexual harassment, despite that a delinquent has a right to cross examine the witnesses which was not so done in the present case. He also relied on paragraph No.15 of the decision.

(v) Reliance was also placed by Mr. Majmudar on the decision of the Delhi High Court in the case of B.N. Ray v. Ramjas College and others reported in 2012 (130) DRJ 277.

He would therefore submit that the petition was required to be allowed by quashing and setting aside the order of termination and the orders of the appellate authority.

7. Mr. G. M. Joshi, learned Senior Advocate assisted by Mr. Aditya Yagnik and Ms. Jayani B. Shah, learned advocates for the respondent No.1 – IDMC Limited would submit as under:

7.1. Mr. Joshi would deny the contentions raised by the petitioner that the complaint was a counter blast to the petitioner denying leave for eight days to the respondent No.5. He would submit that the petitioner was appointed on a contract basis. A written complaint was received of sexual and mental harassment from respondent No.5 on 25.11.2019. Pursuant to the complaint so received, an ICC was constituted by the respondent No.1 under Section 4(1) of the Act. The ICC was presided over by Ms. Kinnari Shah, Doctor Mrs. Pallavi Trivedi (External Member), Shri Sudhanshu Srivastav, Shri Arun Godawat, Ms. Kavita Jain and Mrs. Vrunda Talati. The proceedings were held in accordance with the principles of natural justice.

7.2. The report of the incidents that were alleged were taken on record and the copies were provided to the petitioner. The petitioner submitted a reply on

9.12.2019 and also rely to the charge-sheet / notice dated 29.11.2019.

7.3. Mr. Joshi would submit that adequate opportunity to submit the replies, documents etc was provided both to the petitioner as well as the respondent No.5. Opportunity to cross examine in the manner deemed fit and proper by the ICC was given wherein the petitioner was called upon to submit written questions for the purposes of cross examinations of the witnesses as well as respondent No.5 but the petitioner refused to submit any written questions for the purposes of cross examinations. The purpose of cross examination of witnesses through written questions instead of verbal cross-examination was on account of the fact that looking to the position of the petitioner as compared to the position of the witnesses in the hierarchical system of the department, it was possible that verbal cross examination by the petitioner put the witnesses and the complainant to stress and embarrass the complainant as well as the witnesses. The witnesses would not be able to depose freely without fear or favour. He submitted that if such cross examination was permitted, it might result in the petitioner misusing his position to harass, victimize and stigmatize the complainant.

7.4. Mr. Joshi would submit that the petitioner as the Assistant Vice President was holding a fiduciary position and the witnesses were working under him and, therefore, in accordance with the provisions of the sexual harassment Act, particularly, Section 11 thereof, opportunity was provided and, therefore there was no violation of principles of natural justice.

7.5. Mr. Joshi would further submit that the inquiry report dated 22.2.2020 categorically came to a finding that based on the evidence of the witnesses and the circumstantial evidence, it was found that the petitioner was involved in the harassment of the complainant and had sexually tried to exploit her during her employment as an Executive in his own department. Recommendations were made on the report being forwarded by the respondent No.3 in his capacity as the Disciplinary Authority and having opined that it was misconduct as defined under Rule 22.5.9, an order of termination was passed.

7.6. Mr. Joshi would further submit that there was no violation of principles of natural justice. The petitioner was provided with an opportunity to submit written questions for the purposes of examinations and cross examinations which the petitioner refused to submit. He would submit that it is an accepted position of law that the proceedings under the Sexual Harassment Act have to be carried out in accordance with the provisions therein and in tandem with the Disciplinary and Appeal Rules. He would rely on Rule 5.2 of the Disciplinary and Appeal Rules of the IDMC to indicate that where an act of sexual harassment has been committed by an employee and an ICC is established, when there is an interpretation on a procedural aspect with respect to the Rules and the Act, the provisions of the Act would prevail. He would, therefore, submit that once the committee had arrived at a decision of finding the petitioner guilty, no violation can be attributed in conducting the inquiry.

7.7. Mr. Joshi justifying the reasons for termination of the petitioner, indicated that the conduct like one of the petitioner cannot be accepted and under the inherent powers it was incumbent upon the employer to terminate the services of the petitioner. It had come to the knowledge of the employer that when the petitioner was working at Jubilant Pharmaceuticals in the year 2017, the department of the Company had received feedbacks about past instances of allegations of sexual harassment and it had come to the knowledge of the employer that due to such reasons and submitting false credentials, petitioner had to submit resignation from the previous employer. Mr. Joshi would submit that the audio recordings and the signed minutes of the meeting would not be supplied to the petitioner as it was strongly believed that the same would be misused by the petitioner.

7.8 Mr. G. M. Joshi, learned Senior Advocate would in support of his submissions rely on the decision in the case of B.N. Ray v. Ramjas College reported in 2012(130) DRJ 277 and in the case of L.S. Sibb v. Air India Limited reported in 2016 SCC Online Ker 511.

8. Considering the submissions made by the learned advocates for the respective parties, this Court has perused the complaints filed by the respondent No.5 against the petitioner. Reading the complaints so annexed to the petition, which were not read out by the learned counsel for the petitioner indicates that several actions or instances have been pointed by the respondent No.5 in her complaint indicating that the behavior of the petitioner fell within the definition of the term "Sexual Harassment." It will be in the fitness of things to consider the provisions of the Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Section 2 of the Act defines term "aggrieved woman" in sub Clause (a) of the Act which reads as under:

"(a) Aggrieved woman means:

(i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

(ii) in relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house;"

"Sexual Harassment" is defined in Sub Clause (n) which indicates that the same would include one or more of the following unwelcome acts or behaviors (whether directly or by implication) namely: -

(i) Physical contact and advances; or

(ii) a demand or request for sexual favours; or

(iii) making sexually coloured remarks;

or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

Section 3 shall provide that no woman shall be subjected to sexual harassment at any workplace which reads as under:

Section 3 – Prevention of Sexual harassment:

(1) No woman shall be subjected to sexual harassment at any workplace.

(2) The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment: -

(i) implied or explicit promise of preferential treatment in her employment; or

(ii) implied or explicit threat of detrimental treatment in her employment; or

(iii) implied or explicit threat about her present or future employment status; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) humiliating treatment likely to affect her health or safety.

9. The provisions of the Act envisages constitution of an ICC under Section 4 of the Act which reads as under:

Section 4: Constitution of Internal Complaints Committee:

(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

Provided that 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.

(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely:—

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;

(b) not less than two Members from amongst employees preferably committed to

the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one -half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organizations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee,—

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.”

A complaint of sexual harassment in accordance with the provisions of Section 9 of the Act can be filed by the aggrieved woman. Section 9 of the Act reads as under:

9. Complaint of sexual harassment :

(1) 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:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section."

10. Based on the complaint, the Committee has to conduct an inquiry and the inquiry report has to be submitted in accordance with the provisions of Section 13 thereof.

11. Provisions of Sections 11 and 13 of the Act reads as under :

Section 11: Inquiry into complaint:

(1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him

on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days."

Section 13 - Inquiry report:

(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provide that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or as, the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him."

12. Reading of provisions of Section 11 of the Act would indicate that the ICC constituted by the employer shall proceed to inquire into the complaint in

accordance with the provisions of the service Rules applicable to the respondent. The Section also provides that both the parties are employees. The party shall during the course of the inquiry be given an opportunity of being heard and a copy of the findings shall be made available to both the parties to make a representation against the findings of the inquiry committee. At this stage, what is also indicated is the manner of inquiry into the complaint that has been provided for under the Rules known as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 inasmuch as, Rule 7 provides for the mechanism according to which the inquiry has to be conducted.

13. What is seen from the Discipline and Appeal Rules of the Corporation which applied in case of proceedings under the Sexual Harassment Act. Rule 5.2 of the IDMC Limited, Conduct, Discipline and Appeal Rules, 2019 reads as under:

5.2: Any violation of this rule will be considered as misconduct:

Where there is an act of sexual harassment by any employee as defined in Rule 5 of the company's CDA rules, the Internal Complaints Committee (ICC) established under the provisions of Section 4(2) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), Act, 2013, in the offices / units of Company for inquiring into such complaints, shall be deemed to be the inquiry authority appointed by disciplinary authority for the purpose of these Rules.

In the event of any issues concerning contradiction(s) relating to procedural or interpretation with respect to this Section in the company CDA rules and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), Act, 2013 and the rules made thereunder, the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the rules made thereunder shall prevail."

14. Reading Rule 5.2 of the Discipline and Appeal Rules would indicate that where there is any act of Sexual Harassment by any employee as defined in Rule 5 of the Company's CDA Rules the ICC established under the provisions of Section 4(2) of the Sexual Harassment Act shall be deemed to be the Inquiry Authority appointed by the Disciplinary Authority. Accordingly, though the inquiry committee or the ICC is deemed to be a disciplinary authority under the provisions of the Act, when it comes to interpretation of the procedural aspects, the proviso categorically states that the provisions of the Act and the Rules made thereunder would prevail with respect to the applicability of the CDA Rules. Looking to this aspect of the matter, it is apparent that the submission of the learned counsel for the petitioner that the procedural rules of the departmental inquiry proceedings as envisaged under Rule 29 of the IDMC Disciplinary Rules were not followed is a submission which is misconceived. Reading the provisions of the Sexual Harassment Act with Rule 5.2 of the Discipline and Appeal Rules, the water tank compartment that may be considered to be followed under the Discipline and Appeal Rules can be dispensed with when an inquiry is undertaken

by the ICC for an allegation of Sexual Harassment.

15. It is in these circumstances that the decisions relied upon by learned counsel Mr. Majmudar in the case of Nand Kishore Prasad (Supra) and in the case of Kuldeep Singh (Supra) will not be applicable. Perusal of the inquiry proceedings of the ICC annexed to the petition would indicate that the witnesses were presented, their audio recordings were undertaken, the petitioner was given a questionnaire to fill in by the Committee for setting up questions which he would want the petitioner to respond in cross examination. However, a categorical observation is made in the inquiry report that the petitioner refused to submit any written questions. Looking to the provisions of the Sexual Harassment Act, the necessity to submit written questions for the purposes of cross examination of witnesses instead of verbal cross examination is a valid exercise in context when the aggrieved woman and the delinquent are under the same employment. If the witnesses in favour of the complainant and the complainant herself are confronted in person with the delinquent, it is possible that it would put the witnesses and the complainant under stress and awkward position looking to the vast difference at the position of the witnesses and the complainant as against the delinquent. The witnesses would not be able to depose freely without fear. Even otherwise, what is evident is that the petitioner did not cooperate and respond by filling in the questionnaire that the Inquiry Committee asked the petitioner to do so.

16. At this point therefore, it would be in the fitness of things to refer to the observations made in the decision in the case of B.N. Ray (Supra). While dealing with the contention of violation of principles of natural justice inasmuch as giving of questionnaire for examination, the Delhi High Court on the issue in respect of examination of witnesses referred to the decision in the case of Bidyug Chakraborty (Supra) and held that though this Court has held that it was obligatory to follow at least the fundamental principles of conducting inquiries on a challenge to the decision made before the Supreme Court, the Supreme Court had directed that not only the witnesses' identity be not revealed but the only way that the cross examination can be done is by submitting a questionnaire. Paragraph Nos.11 to 14 of B.N. Ray (Supra) which relied on the decision of the Hon'ble Supreme Court in the case of Apparel Exports Promotion Counsel v. A.K. Chopra reported in 1999 (1) SCC 759 are reproduced hereunder:

"11. We now come to the other submissions made by the learned Senior Counsel for the petitioner. It is an admitted position that the witnesses were not examined in the presence of the petitioner and he was not given an opportunity to cross - examine the witnesses. It is also not in dispute that the petitioner was not allowed to examine witnesses in his defence. The procedure adopted by the Committee with respect to the witnesses of the petitioner was that he was asked to give the names of the witnesses he wanted the Sub-Committee to examine and thereafter, those witnesses were examined by the Sub-Committee, not by the petitioner. The procedure adopted by the Sub -Committee was based upon

the following provisions of the Ordinance:

The sub-committee must inform the accused in writing about the charges made against him/her and she/he should be given a period of five days from the date of receipt of the notification to respond to the charges. During the inquiry procedure, the complainant and the accused will be called separately so as to ensure freedom of expression and an atmosphere free of intimidation. The complainant will be allowed to be accompanied by one representative during the enquiry.

12. The issue with respect to the examination of witnesses, their cross examination and examination of defence witnesses in an inquiry held under Ordinance XV-D came up for consideration before this Court in *Bidyug Chakraborty (Prof.) v. Delhi University & Ors.*: 2009 VI AD (Delhi) 1. In that case, on complaints of sexual harassment being made against the petitioner before this Court, who was working in University of Delhi, an Inquiry Committee was set up to investigate the complaints. The Committee submitted its report holding the petitioner guilty of sexual harassment. Pursuant to the report of the Committee, the Executive Council of the University warned the petitioner and also debarred him from holding any administrative post in the University for a period of 03 years. The petitioner filed the aforesaid writ petition seeking quashing of the Memorandum, whereby warning was given to him and he was debarred from holding any administrative post in the University for a period of 03 years as well as the report of the Inquiry Committee. The Committee did not give an opportunity to the petitioner for verbal cross-examination of the witnesses examined by it and copies of their statements were not supplied to him. After completion of examination of the witnesses, no opportunity was given to the petitioner to produce defence witnesses, though at the time of supplying the charge-sheet to him he was given an opportunity to give names of the witnesses whom he wanted the Committee to examine. Allowing the writ petition a Division Bench of this Court, inter alia, held as under:

"As noted earlier, no opportunity was given to the petitioner for verbal cross examination of the complainant. A perusal of the inquiry report shows that the committee informed the petitioner that he could cross examine the complainant by giving written questions to the committee. In our opinion, mere permission to give written questions to the committee for cross examination of the complainant does not fulfil the legal requirement on the part of the Inquiring Authority, to give opportunity to the delinquent to cross examine her. Cross examination by giving written questions to the inquiring authority can never be as effective as verbal cross examination and cannot be its proper substitute. While putting questions to a witness the examiner does not know what answer the witness would give to the questions put to him/her. It is, therefore, not possible for him to formulate the next question without taking into consideration the answer given by the witness. The answer given by the witness to one question may lead to further questions from the examiner on the same line, in order to elicit truth

from the witness and to impeach his/her trustworthiness. Moreover, asking the petitioner to give written questions for cross examination was confined in respect of the complainant alone. No opportunity was given to the petitioner even to give written questions for cross examination of other witnesses examined by the committee. It was imperative on the part of the Inquiring Authority to give opportunity to the petitioner for her cross examination not only of the complainant but also of the other witnesses examined by it. Denial of opportunity to cross examine the complainant and other witnesses examined by the committee constitutes gross violation of principles of natural justice.

x x x x In the present case, though at the time of serving charge sheet upon the petitioner, the committee asked him to give list of witnesses whom he wanted to be examined by the committee, no such opportunity was given to him after the committee had examined the complainant and other witnesses in support of the complaint. The committee was required not only to give an opportunity to the petitioner to produce his witnesses but those witnesses were to be cross examined by the petitioner and not by the committee, though, it would have been open to the committee to examine them after they had been examined by the petitioner and had also been subjected to cross examination."

This Court held that it was obligatory to follow at least the fundamental norms for conducting inquiries and unless such a requirement was held to be implicit in the Ordinance, it may not be possible to sustain the validity of the inquiry procedure prescribed therein. The Court was of the view that the inquiry conducted without giving an opportunity to the delinquent to cross examine the witness and without giving him an opportunity to produce the witnesses in his defence would not conform to the basic principles of natural justice and a procedure which does not contain even these minimum safeguards for the delinquent cannot be said to be a fair and reasonable procedure for conducting an inquiry.

The decision of this Court was challenged by University of Delhi before the Supreme Court, vide SLP No. 23060/2009. The Supreme Court was of the view that the respondent before it was entitled to a hearing and to cross examine the witnesses produced by the University. However, considering that it was a case of sexual harassment, the Supreme Court directed that the identity of witnesses need not be revealed to the respondent or to his Counsel and for this purpose the respondents would be entitled to submit a questionnaire which will be put to the witnesses for their answers in writing. The learned Counsel for the University undertook to supply the statements of witnesses, without disclosing their names to the respondents and a Local Commissioner was appointed by the Supreme Court for the purpose of getting answers to the questions to be supplied by the respondents. The Local Commissioner was directed to ensure the anonymity of the witnesses. It was also stated by the learned Counsel for the University that the respondents would be entitled to produce their entire defence evidence in addition to the questionnaire and all annexures to the respondent without

revealing the identity of the witnesses.

In view of the decision of this Court in Bidyug Chakraborty (Prof.) (supra) as modified by the Supreme Court, it was not obligatory for the Sub-Committee to examine the complainants and other witnesses who were to depose against the petitioner, in his presence. Though the identity of the witnesses was disclosed by the Committee/Sub-Committee to the petitioner, that, in our opinion, does not by itself mean that these witnesses were required to be examined in his presence. In a recent decision *Dr. Pushkar Saxena v. Govt. of NCT of Delhi & Ors.* WP(C) No. 7592/2001 decided on 16.5.2012, the petitioner before this Court was working as PGT (English) in Government Girls Senior Secondary School, Gandhi Nagar. He was charge-sheeted on 2.12.1996 on the allegation of misbehaviour with the female students studying in the school. The Inquiry Officer reported that the indecent behaviour on the part of the petitioner had been proved. The Disciplinary Authority imposed penalty of dismissal from service upon the petitioner which was also to be a disqualification for future employment under the Government. The Appellate Authority, however, reduced the penalty from dismissal of service to compulsory retirement of the petitioner from the service. It was also directed that he would not be entitled to any benefit for the period from the date of the order of the Disciplinary Authority till the date of his compulsory retirement. The orders passed by the Disciplinary Authority and the Appellate Authority were challenged by the petitioner by way of an OA which was dismissed by the Tribunal. The petitioner assailed the decision of the Disciplinary Authority and the Appellate Authority as well as the view taken by the Tribunal on the ground that the Inquiry was conducted in utter disregard of the mandatory provisions of CCS (CCA) Rules, which were applicable to the inquiry held against him as also in contravention of the fundamental and mandatory principles of natural justice. The names of the complainants had been disclosed in the charge-sheet, which was served upon the petitioner before this Court. It was held by this Court that in the case of an inquiry into allegations of sexual harassment, cross examination need not necessarily be in the presence of the delinquent since sometimes his very presence may result in putting pressure upon the witnesses and may discourage them from coming out with the truth. With respect to the application of principles of natural justice, this Court, in *Dr. Pushkar Saxena* (supra), inter alia, observed as under:

"It was observed by Supreme Court in *Apparel Export Promotion Counsel v. A.K. Chopra* (1999) 1 SCC 759, in the context of sexual harassment at the place of work, that such incidents result in violation of the fundamental right to gender equality and the right to life and liberty, the two most precious fundamental rights guaranteed by the Constitution of India. It was further observed that the contents of fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the Courts are under a constitutional obligation to protect and preserve those rights. The observations made by the Supreme Court in the context of sexual harassment at the work place apply with

a greater vigour in respect of sexual harassment of students, who, on account of their tender age and impressionable mind are at a greater disadvantage in resisting such advances.

In *Avinash Nagra v. Navodaya Vidyalaya Samiti and Ors* .(1997) II LLJ 640 SC , the Hon'ble Supreme Court, referring to our ancient text and teachings, observed that a duty is cast on the teachers to take such care of the pupils as a careful parent would take of his children. It was further observed that since middle class people are now sending girls to co-educational institutions, a greater responsibility is thrust on the management of the school and colleges imparting co-education to protect the young children and, in particular growing up girls in a disciplined and dedicated pursuit of excellence. The Court observed that the teacher, who is kept in charge of such added responsibility, should conduct himself more like a Rishi and as *loco parentis*.

In our opinion, all the rules and principles of natural justice, which apply to service jurisprudence in respect of disciplinary proceedings between master and servant, need not necessarily be applied to the disciplinary proceedings taken against a teacher on the basis of complaints made by students, if the allegations made against him constitute misconduct, founded on sexual harassment. It must, however, at the same time be ensured that the teacher concerned is afforded a fair opportunity to controvert the allegations and defend himself and the explanation given by him along with the evidence which he may choose to tender in his defence are duly considered before a decision is taken in respect of the allegations made against him.

In *Hira Nath Mishra and Ors. Vs. The Principal, Rajendra Medical College, Ranchi and Anr.* reported in (1973) II LLJ 111 SC, the Supreme Court held that principles of natural justice are not inflexible and may differ in different circumstances. The Court was of the view that the principles of natural justice did not require that the statements of girl students should be recorded in the presence of male students against whom the enquiry was held in that case. The principles of natural justice will, therefore, depend upon the facts and circumstances of each case. "

13. As regards cross examination of the witnesses, the learned Counsel for the respondents, stated that in view of the order passed by the Supreme Court in the case of *Bigyug Chakraborty (Prof.)* (supra), they have no objection to the witnesses answering the questions of the petitioner through a Local Commissioner, and for this purpose, the petitioner may submit a questionnaire as was directed to be done in the case of *Bidyug Chakraborty (Prof.)* (supra). They also stated that as was done in the case of *Bidyug Chakraborty (Prof.)* (supra), the Sub- Committee would allow the petitioner to produce defence witnesses and examine them himself, instead of their examination by the Committee subject, of course, to those witnesses being cross-examined by the Presenting Officer/ Department representative.

We take note of the fact that in Bidyug Chakraborty (Prof.) (Supra), the Supreme Court upheld the right of the delinquent to cross examine the witnesses produced by the University and the delinquent was asked to submit a questionnaire to be put to the witnesses, so that the identity of the witnesses was not revealed to him or to his Counsel. It was precisely for this reason that the learned Counsel for the University undertook to supply the statement of witnesses to Professor Bidyug Chakraborty without disclosing their names. The Local Commissioner was also directed to ensure the anonymity of the witnesses. However, in the case before us, the Committee/Sub- Committee has already disclosed the names of the witnesses to the petitioner and has thereby revealed their identity to him. No useful purpose will, therefore, be served by asking the petitioner to submit a questionnaire, to be answered by the witnesses in writing. Had the University not disclosed the identity of the witnesses to the petitioner as was done in the case of Bidyug Chakraborty (Prof.) (Supra), the University would have been perfectly justified in asking for adopting the same procedure, which it was directed to adopt in the case of Bidyug Chakraborty (Prof.) (Supra). But, no useful purpose from adopting such a course of action would be served in a case where the identity of the witnesses has already been disclosed. However, even while in requiring the petitioner to submit a questionnaire containing questions to be answered by the witnesses, we have to ensure that there is no possibility of the witnesses getting influenced on account of the presence of the petitioner at the time of their cross-examination. In the case of Dr. Pushkar Saxena (Supra), we had directed that the witnesses may be cross- examined through a female defence assistant, and that the petitioner would submit a questionnaire, giving the questions he wanted the witnesses to answer and the answers to the questions will be obtained by the Inquiry Committee. We also directed that the petitioner would not be present at that time, if such a course of action is adopted. In the case before us, we were informed, during the course of the arguments, that all the witnesses, who have yet to depose against the petitioner, are male witnesses. Hence, instead of a female defence assistant, they should be cross examined by a male defence assistant but the petitioner should not be present at the time of their cross-examination.

14. As regards supply of the previous complaints and statements of witnesses, the learned Counsel for the respondents fairly stated that in view of the order of this Court in Bidyug Chakraborty (Prof.) (supra), as modified by the Supreme Court, they would supply copies of all such complaints/statements, in case, the same have already not been supplied and this would be done, before the petitioner is called upon to cross examine the witnesses."

17. In light of the aforesaid decision and a categorical expressive position of the law enunciated by the aforesaid decision which was also considered in the cases relied upon by the learned counsel for the petitioner, it cannot be said that the procedure adopted by the employer IDMC Limited was in any manner violative of the principles of natural justice.

18. Mr. Manan Bhatt, learned counsel appearing for respondent No.5 – the complainant has rightly drawn the attention of the Court to the contents of the affidavit-in-reply pointing out that even in the past, the petitioner while was working at M/s. Jubilant Pharmaceuticals in the year 2017 with Human Resources Department was found that the employer then had received feedbacks about instances of allegations of sexual harassment.

19. It is in this background that the reasons for termination of the petitioner need to be verified. The provisions of the Sexual Harassment Act indicate that it is the duty of the management to ensure peace, harmony and congenial working atmosphere in the organization. Perusal of the complaint and the contents thereof indicate that the petitioner had undertaken a behaviour, which would come within the purview of "Sexual Harassment" under the Act. It was, therefore, incumbent on the respondent-employer not to retain an employee, who had indulged in the behavior of sexual harassment and found that in the past also with the previous employer, he was compelled to resign because of such conduct.

20. For all the aforesaid reasons, the petition is dismissed. Rule is discharged. No order as to costs.