

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

FMA 873 of 2024
With
CAN 1 of 2024

vs.

Appearance:

For The Appellant	:	Mr. Lakhi Kumar Gupta, Adv. Mr. Shiv Shankar Banerjee, Adv. Mr. Biswaroop Bhattacharya, Adv. Ms. Arijita Ghosh, Adv. Ms. Ananya Ghosh, Adv.
For The Respondent No.1:		Mr. Kollol Basu, Adv. Mr. Rohit Das, Adv. Mr. Suman Banerjee, Adv. Ms. Kishwar Rahman, Adv. Ms. Divya J. Tekriwal, Adv. Mr. Preetam Majumdar, Adv. Ms. Sristi Roy, Adv.
For The WBNUJS	:	Mr. Pratik Dhar, Adv Mr. Pappu Adhikari, Adv
Judgment on	:	23.12.2024

Harish Tandon , J.

The prelude to the promulgation of the Sexual Harassment on Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 would give a fair and broad aspect in relation to a subject involving the sexual harassment of a woman at a workplace. The fundamental ethos underlying the constitutional edifice is founded upon the elimination of a gender base discrimination as one of its fundamental principles and to ensure the gender equality in all respect including the right to dignity to all the women at the workplace. Several discourse across the globe on the women's right and sexual harassment at the workplace gained momentum duly recognized under Article 11 of the Convention of Elimination of All Forms of Discrimination against Women (CEDAW). It was felt to introduce a legislation to eliminate any form of discrimination against the women at the workplace and India being the signatory to such convention as a ratifying State was obligated to legislate in such field. The unprecedented and barbaric act of gang rape suffered by women at the workplace led the Supreme Court to frame a mechanism for preventing and addressing the need of woman on sexual harassment at workplace. In ***Vishaka and Ors. vs. State of Rajasthan and Ors., reported in AIR 1997 SC 3011*** with the changing mindset of the society and promotion of an education to a girl with avowed object of creating an inclusive economic development of the country as a workforce, the employment of a woman in several sectors gained momentum in employment of women. Keeping in mind the concept of equality under Article 14 and 15 of the Constitution of India prohibiting the

discrimination on the ground of religion, caste, race, sex or place of birth or any of them and Article 19(1)(g) to practice any profession or to carry on any occupation, trade or business in conjunction with CEDAW as the India's commitment to the United Nations Charter in protection of women at a workplace being subject to sexual harassment, the protection and promotion of the women's constitutional right to ensure the equality in employment, the right to access justice was ensured upon promulgation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (in short POSH Act). The said Act was published in the Official Gazette on 23rd April, 2013 and came into force on and from 9th December, 2013. The POSH Act aimed to provide not only protection against the sexual harassment of a woman at workplace but for prevention and redressal of the complaints of the sexual harassment or any matter connected therewith or incidental thereto.

Keeping in mind the broad object and purpose underlying the incorporation of the POSH Act, let us examine the case in hand on the nuances of the various provisions contained therein including the period of limitation provided for making a complaint before the Internal Complaint Committee or a Local Complaint Committee. Sexual harassment is defined in Section 2(n) in the following:

“Section 2(n). “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (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;”*

The definition of “Sexual Harassment” does not contain the word “mean” but the word “include” which gives the expanded definition and the eventualities included therein cannot be interpreted as exhaustive. The reason behind the same can be deciphered from Section 3 of the POSH Act where various circumstances were also included within the folds of a sexual harassment in the following:

”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.”*

The cumulative effect of Section 2(n) and Section 3 not only restrict the act of sexual harassment at workplace to an eventualities envisaged in Section 2(n) but any circumstances contemplated under Section 3(2) of the Act having nexus with the primary definition of a sexual harassment are also included therein. It is manifest from the conjoint reading of the aforesaid provisions that the unwelcomed act or behaviour, whether directly or by implication, in the form of a physical contact and/or advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography or any other unwelcomed physical, verbal or non-verbal conduct of sexual nature as defined in Section 2(n) is not restricted but any other circumstances connected with the act or behaviour of sexual harassment like implied or explicit promise of preferential treatment in her employment, implied or explicit threat of detrimental treatment in her employment, implied or explicit threat about her present in future employment status, interference with her work of creating and intimidating or offensive or hostile work environment for her or humiliating treatment likely to affect her health or safety are also some of the incidents of the sexual harassment. The expression “in relation to or connected with the act or behaviour of a sexual harassment” assumed significance in relation to other or following circumstances incorporated in Section 3 and, therefore, such circumstances must be linked with act of sexual harassment included in the definition Section i.e. 2(n). The word “include” in a definition does not give a restrictive meaning but expanded the same provided other circumstances are correlated and/or coherent with the following incidents of a sexual harassment so defined in the statute. Any woman subjected to

sexual harassment at the workplace is conferred a right to make a complaint in writing either to the internal committee, if so constituted, or local committee, in case it is not so constituted, within three months from the date of the incidents and in case of series of incidents, within three months from the date of the last incident under Section 9 of the POSH Act. The aforementioned Section is quoted as under:

“Section 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.”

The second proviso under Section 9 of the POSH Act empowered, either of the Committee as aforesaid to extend the time not exceeding three months on being satisfied that the circumstances were such which prevented the women from filing a complaint within the initial time. The said proviso makes it obligatory to record reasons in writing in this regard which appears to be mandatory.

Section 3 of the POSH Act assumes significance in the instant case as the complaint filed by the respondent before the Local Complaint Committee was rejected on the ground of limitation. The respondent challenged the decision of the Local Complaint Committee by filing a writ petition (WPA 10583 of 2024) for the following reliefs:

“a) Issue a writ of and/or in the nature of Certiorari quashing and/or setting aside the impugned order dated March 5, 2024 passed by the respondent no. 3 annexed hereto and marked with the letter “P/41”.

b) Issue a Writ of/in the nature of Prohibition prohibiting the respondents and/or their men, agents, servants, employees, subordinates and/or authorities and/or authorities and/or each and/or any of them from giving effect and/or further effect or take any steps or actions on the basis of the impugned order dated March 5, 2024 passed by the respondent no. 3 annexed hereto and marked with the letter “P/41”.

c) Issue a Writ of and/or in the nature of mandamus commanding the respondent no. 3 and its members, to enquire into the complaint of the petitioner dated December 26, 2023 on its merits in accordance with law and conclude the same within a stipulated time.

d) Issue a Writ of and/or in the nature of Certiorari quashing and/or setting aside the alleged decision of the Executive Council of the respondent no. 4 dated December 21, 2023, the notice dated January 12, 2024 issued by the Registrar of the respondent no. 4 annexed hereto and marked with the letter “P/30” and the purported enquiry being conducted pursuant thereto by the one-man enquiry committee comprising of Mr. Salim Ansari, WBLs.

e) Issue a Writ of/in the nature Prohibition prohibiting the respondent and/or their men, agents, servants, employees, subordinates and/or authorities and/or each and/or any of them from giving effect and/or further effect to the alleged decision of the Executive Council of the respondent no. 4 dated December 21, 2023 and the notice dated January 12, 2024 issued by the Registrar of the respondent no. 4 annexed hereto and marked with the letter “P/30” and/or taking any steps and/or further steps in the purported enquiry being conducted pursuant thereto by the one-man enquiry committee comprising of Mr. Salim Ansari, WBLs.

f) Issue a Writ of/in the nature of Prohibition prohibiting respondent no. 7 from taking any steps and/or further steps and/or further decisions or being part of the Executive Council or any other council or committee and/or committees taking any decision and/or decisions and/or further step and/or further steps affecting the employment of the petitioner with the respondent no. 4 or any terms, conditions, benefits, emolument and/or prospects thereof during the pendency of the proceedings before the Respondent no. 3 in respect of the complaint of sexual harassment filed by the petitioner;

g) Appropriate Direction(s)/Order(s);

h) Issue Rule Nisi in terms of prayer a), b), c), d), e), f) and g) above.

i) Interim order of stay of the enquiry being conducted by the one-man enquiry committee comprising of Mr. Salim Ansari, WBLs pursuant to the decision of

the Executive Council of the respondent no. 4 dated December 21, 2023 and the notice dated January 12, 2024 issued by the Registrar of the respondent no. 4 till pendency of the writ petition;

j) Interim order of stay restraining the respondent no. 7 from taking any steps and/or further steps and/or further decisions or being part of the Executive Council or any other council or committee and/or committees taking any decision and/or decisions and/or further step and/or further steps affecting the employment of the petitioner with the respondent no.4 or any terms, conditions, benefits and/or prospects thereof during the pendency of the instant writ petition;

k) Ad-interim orders in terms of the prayer i) and j) above;

l) Cost;

m) Pass such other and/or further order(s)/direction(s) as may seem fit and proper.”

The Single Bench held that the plea of limitation is a mixed question of law and fact and, therefore, should not be decided at the threshold without evidence. It was further observed that while deciding the issue of limitation, the Local Complaint Committee should restrict its scrutiny to the allegations made in the complaint on its face value and should not have ventured to decide on the basis of the defense put forth by the appellant. The writ petition was allowed upon quashing and setting aside the order dated 01.05.2024 passed by the Local Complaint Committee with further direction to conclude the proceeding on merit in accordance with the provisions contained in POSH Act.

Thus the only issue involved in the instant appeal is whether the Local Complaint Committee was justified in rejecting the complaint on the ground of limitation without taking into account the composite meaning of sexual harassment defined in Section 2(n) and the other following circumstances contemplated under Section 3 of the POSH Act.

In order to determine the aforesaid point, the salient facts emanating from the record of the instant case are required to be adumbrated. Admittedly, the respondent was appointed as a teaching assistant in National University of Juridical Sciences in the year 2003 and since then was associated with the affairs and the functioning of the said educational institute. The appellant was appointed as a Vice-Chancellor on 3rd July, 2019. It is alleged that in September, 2019 the respondent was called in the office of the appellant and was communicated that the respondent being a hard working teacher, should do well in her career and he would personally take steps to ensure the advancement in career and advise the respondent to make an application under the Career Advancement Scheme (CAS). On such advice having extended, the respondent made an application under the CAS and was called for an interview to be held on September 27, 2019 before the Selection Committee. It is further alleged that the respondent was called by the appellant to his office and inform that her applications have been screened by the competent authority and an instruction is given by him to the Registrar to issue a letter for interview before the Selection Committee. It is further alleged that immediately after divulging the aforesaid facts, she was offered to go for a dinner which she was declined as

she considered herself to be judged on the basis of her merit. She further alleged that after the interview she was again called to percolate a message that she has done well in the interview and further insisted to go out for dinner with sly insinuation to develop a personal friendship which would greatly benefit in future. She alleged that on such date the appellant touched her hand which she feels extremely uncomfortable which led her to leave office of the appellant. In the middle of the month of October, 2019, she was again called in the office of the appellant and asked her opinion about developing such personal relationship and on refusal the appellant got angry and agitated and threatened the respondent that he would sabotage her career. It is alleged that since thereafter she realized the vindictive and aggressive attitude of the appellant which was corroborated by a factum of lodging an E-Mail complaint on October 25, 2019 by one of the then Associate Professor alleging the submission of the certificate of participation in GIAN Course along with her application under the Career Advancement Scheme which appears to be fraudulent. On the basis of the said complaint, a resolution was passed in 70th Executive Council Meeting held on December 21, 2019 to put on hold the promotion of the respondent as recommended by the Selection Committee and a one man enquiry committee was formed. She participated in the one man enquiry committee so constituted but alleged that the report of the said committee was never disclosed to her. Subsequently a show cause notice dated July 2, 2021 was issued to the respondent on the above issue which she duly replied to on July 16, 2021. It is alleged that because of her refusal to the offer of the appellant, she was constantly pressurized. She wrote a letter to the

Executive Council through E-mail on February 25, 2022. Subsequently, by a resolution taken in 81st Meeting held on April 2, 2022, the recommendation of the Selection Committee in extending the promotion under the Career Advancement Scheme was accepted and the promotion was given to her with retrospective effect on May 1, 2018. She further alleged that in the month of April, 2023 she was called in the office of the appellant and offered to go on a trip which she flatly refused but she received a threat from the appellant that her career would be seriously affected resulting into a deterioration in the professional relationship. She further disclosed in the writ petition that a project titled "Corporate Governance, Merger and Acquisition" was undertaken in the year 2012 under the supervision of the respondent and the fund was duly approved by the National Foundation for Corporate Governance. An initial payment of Rs. 1 Lakh was made over by the NFCG to NUJS but the same remained unutilized for a long time and an E-Mail was issued by the said NFCG to the Registrar of NUJS for submission of the final report within two weeks failing which to refund the said amount. It is alleged that in a resolution taken in 91st Executive Council Meeting held on September 7, 2023 two separate and independent issues were clubbed together in a single agenda with an intent to misled the Executive Council and a resolution was passed to appoint the one man enquiry commission for preliminary enquiry in misutilisation of the grant and the refund of the sum of Rs. 1 Lakh. The respondent made several allegations pertaining to not uploading the resolution of the Executive Council but received several letters for furnishing the documents. She thereafter lodged a complaint to the Local Complaint Committee on

December 26, 2023 and was called on for hearing and ultimately, the Local Complaint Committee rejected the said complaint on the ground of limitation.

On the other hand, the appellant disclosed that all such correspondences prior to 26th December, 2023 filed before the Local Complaint Committee, there was no reference of any sexual harassment. It is further stated that even a complaint dated 06.11.2023 to the Chancellor of the said university does not contain any allegation pertaining to a sexual harassment and there appeared to be a complete silence on the part of the respondent till 26th December, 2023.

The reply filed by the appellant before the Local Complaint Committee is required to be succinctly adumbrated on the factual matrix of the case. It is averred in the said reply that two faculty members made a complaint against the respondent that a certificate of participation in GIAN Courses filed along with an application under Career Advancement Scheme appears to be fraudulent and in the 70th Meeting held on 21.12.2019, it was resolved to constitute a one-man committee to conduct the preliminary enquiry on such allegation and for such reason the recommendation of the Selection Committee on promotion was kept at hold. The Preliminary Enquiry Report was placed before the Executive Council in the 71st Meeting held on 22nd August, 2020 and it was resolved that after consideration of the report further enquiry was required and a direction was passed to select the Enquiry Officer who shall submit the report in the next meeting. The opinion was sought by the Executive Council and on receiving such opinion it was

resolved that incriminating materials are apparent but before such opinion is conclusively formed, an opportunity should be given to the respondent to explain and accordingly a show cause notice was issued to the appellant. The reply filed by the respondent to the said show cause notice was again placed in the 79th Meeting held on 18.12.2021 and ultimately in the 81st Meeting held on 02.04.2022 it was resolved that on the basis of the report and the recommendation of the Selection Committee for promotion, the recommendation was accepted. It is further alleged that a research project on “Corporate Governance, Merger and Acquisition” was approved by the NFCG and MoU was executed duly signed by the respondent as a lead for the said project for and on behalf of the institute. A sum of Rs. 1 Lakh was released and paid through a cheque as 25 per cent advance but no final project report was submitted within the time stipulated therein. Subsequently, such issue was raised by the NFCG in its Board meeting and approach was made that if the said project is not completed within two weeks, the advance so made should be refunded. Since the project was not completed and no utilization certificate was issued which was perceived as discredit to the said reputed institute in the 91st Meeting of the Executive Council held on 17th September, 2023. It was resolved that the said sum of Rs. 1 Lakh paid as advance be immediately refunded to NFCG and the Registrar of the institute was directed to obtain the entire set of papers relating to the said project from the respondent. Such decision was duly communicated to the respondent but she did not furnish any document relating to the said project as well as the utilization certificate rather made some bald allegation of sexual harassment against the appellant by causing

a letter dated 29.02.2023 to the Registrar. Thereafter several steps have been taken in the meeting of the Executive Council regarding the aforesaid issue and ultimately, the complaint before the Local Complaint Committee is lodged on December 26, 2023.

Such being the salient facts discerned from the record, let us consider the submissions advanced before us on the core issue of the limitation enshrined under Section 9 of the POSH Act. Mr. Dhar, the learned Advocate appearing for the appellant submits that the complaint lodged before the Local Complaint Committee on 26.12.2023 on the face of it relates to sexual harassment largely inflicted in the month of March, 2023 and, therefore, the LCC has rightly rejected the said application being barred by limitation. Mr. Dhar strenuously submits that prior to 26th December, 2023 all the correspondences made by the respondent does not remotely contain any allegation of sexual harassment and, therefore, it should be presumed that only to thwart the proceedings initiated against the respondent for her misconduct, such allegations are made having no semblance of truth in it. Mr. Dhar is very critical on the expressions used in the writ petition that the Executive Committee was manipulated when the Executive Committee as per the Act of the NUJS comprised of high ranking officers including the Jurists. He further submits that the show cause notices were issued in between 09.06.2019 to 24.10.2019 even by an acting Vice-Chancellor who was the then holding the post and, therefore, it cannot be related to an alleged incident of sexual harassment. He further submits that the Local Complaint Committee while arriving at the decision that the complaint is

barred under Section 9 of the POSH Act took into account the entire complaint and the submissions so advanced by the respondent and, therefore, cannot be said to be a decision tainted with non-application of mind. Mr. Dhar strenuously submits that the moment the statute put an outer cap in extending the period of limitation, it cannot exercise its discretionary power to extend beyond the said outer limit and placed reliance upon a judgment of the Supreme Court in ***Popat Bahiru Govardhane and Ors. Vs. Special Land Acquisition Officer and Anr. reported in (2013) 10 SCC 765***. He further submits that even there appears to be a genuine ground because of unforeseen circumstances yet, the authority cannot transgress its limit in extending the time beyond the stipulated time and relied upon a judgment of the Supreme Court in case of ***National Spot Exchange Limited Vs. Anil Kohli, Resolution Professional for Dunar Foods Limited reported in (2022) 11 SCC 761***. He thus submits that the Single Bench was, in fact, swayed by the emotions and was of the view that the Local Complaint Committee should restrict its scrutiny to the complaint filed by the respondent and ought not to have taken into account the defence while adjudicating the plea of limitation. He thus submits that there is no impediment on the part of the LCC to reject the application on the ground of limitation by forming an opinion in this regard.

Mr. Basu submits that there is a series of incident of the sexual harassment disclosed by his client and as per Section 9 of the POSH Act, the limitation would reckon from the last date of such incident. He further

submits that there cannot be a dismissal on the plea of limitation at the threshold as the plea of limitation is a mixed question of fact and law. He further submits that the legislature never gave restrictive meaning to the sexual harassment under Section 2(n) but expanded to other circumstances under Section 3(2) of the POSH Act and, therefore, the moment the linkage to the other act which may not come in a *stricto sensu* under Section 2(n) but relatable thereto or sprung from the act of sexual harassment would also come within the definition of the sexual harassment. He submits that the word “include” used in the statute should not be restricted to the eventuality so incorporated but comprehend other incidents having nexus to the sexual harassment and relies upon the judgments of the Apex Court in case of ***P. Kasilingam and Ors. Vs. P.S.G College of Technology and Ors. reported in (1995) Supp 2 SCC 348, NDP Namboodripad (Dead) by LRS. vs. Union of India & Ors. reported in (2007) 4SCC 502*** and ***Bharat Coop. Bank (Mumbai) Ltd. Vs. Coop. Bank Employees Union reported in (2007) 4 SCC 685***. Mr. Basu submits that the POSH Act being a predominantly a social welfare legislation, the provisions contained therein must receive contextual meaning and to be interpreted broadly and liberal, in order to further the aim and object of the Act and, therefore, the sexual harassment should not receive a narrow and pedantic meaning but should be given a wider meaning and placed reliance upon a judgment of the Madhya Pradesh High Court in case of ***Global Health Private Limited vs. Local Complaints Committee, District Indore, reported in (2019) SCC OnLine MP 5453***. Mr. Basu audaciously submits that though in a *stricto sensu* the act lastly disclosed in the month of April, 2023 but the other

incidents is intricately related to the primary object of sexual harassment which comes within the definition thereof and therefore, the decision of the LCC in rejecting the complaint on the ground of limitation is infirm and erroneous. He further submits that the NUJS has framed a guideline expanding the definition of sexual harassment and the moment the complaint is filed before the LCC, it is obligatory on its part to make enquiry into the complaint. He thus submits that the LCC is vested with the power of the Civil Court and to recall the proceedings under the Code of Civil Procedure as a *quasi* judicial body and placed reliance upon a judgment of this Court in ***Atul Agarwal Vs. Bandhan Bank Limited & Ors., reported in (2023) SCC OnLine Cal 6086***, on the proposition that the limitation is a mixed question of fact and law and the LCC should only restrict its scrutiny to the content of the complaint. The reliance is also placed upon the judgments of the Apex Court in case of ***Urvashiben and Anr. vs. Krishnakant Manuprasad Trivedi reported in (2019) 13 SCC 372***, ***Shakti Bhog Food Industries Ltd. vs. Central Bank of India and Anr. reported in (2020) 17 SCC 260*** and ***P.V. Gururaj Reddy and Anr. vs. P. Neeradha Reddy and Ors., reported in (2015) 8 SCC 331***, a Co-ordinate Bench decision rendered in case of ***Sri Debjyoti Bhattacharjee Vs. Pegasus Assets Reconstruction Private Limited and Ors. (FMA 353 of 2023 decided on June 14, 2023)***. Mr. Basu vehemently submits that the moment the complaint contains allegation of sexual harassment, it should be treated with certain amount of seriousness and responsibility and the enquiry must be brought to its logical conclusion enuring to the benefit of both the complainant and the perpetrator by placing reliance upon a

judgment of the Delhi High Court in case of **CA Nitesh Parashar Vs. Institute of Chartered Accountants of India (ICAI) & Ors., reported in (2023) SCC Online Delhi 381**. Mr. Basu thus submits that there is no infirmity and/or illegality in the order of the Single Bench in allowing the writ petition with the direction upon the LCC to decide the matter on merit.

Mr. Gupta, learned advocate appearing for the respondent in support of the contention of the appellant submits that the incidents enumerated in Section 2(n) of the POSH Act stands individually and therefore, the complainant must satisfy any one of such incident. He vehemently submits that the allegation as to a sexual harassment was basically between the Month of September, 2019 to December, 2019 but the last incident alleged in the complaint was of April, 2023. According to him, the incident must be in a close proximity of time in order to come within the purview of “series of incidents” contemplated under Section 9 of the POSH Act. In other words, it is sought to be contended that the series of incident as contemplated under Section 9 of the POSH Act must be construed as an act of sexual harassment in a close proximity of time and not when there is a gap of 4 years. He thus submits that the last allegation as to sexual harassment is alleged to have taken place in the Month of April, 2023 and therefore, it should be treated as a standalone incident for the purpose of limitation enshrined in Section 9 of the POSH Act. In support of aforesaid contention, Mr. Gupta relies upon a judgment of this Court in case of **Smt. Sarat Kamini Dasi vs. Nagendra Nath Pal, reported in AIR 1926 Cal 65**. Mr. Gupta further submits that Section 11 of the POSH Act provides a

mechanism for recording a *prima facie* satisfaction on the veracity of the allegation of the sexual harassment in the complaint and the moment the LCC does not find such allegation to have been substantiated, the writ petition therefore does not lie. He further submits that Sub-Section 3 of Section 13 can only be activated when the allegation is found to be proved meaning thereby a final decision is to be taken thereupon and if the allegation is found to be vague and/or unsustainable, there is no fetter on the part of the LCC in dismissing the complaint. He thus, submits that the writ court has exceeded its jurisdiction in setting aside the decision of the LCC without considering the various provisions of the POSH Act and therefore, needs interference in the instant appeal.

The definition of “Sexual Harassment” as quoted above does not contain the word “mean” but by use of the word “include” expanded its definition and therefore the incidences as enumerated therein are not exhaustive. The expression “unwelcome acts or behavior” is further qualified whether such act or behavior is directly or by implication would tantamount to a sexual harassment with certain incidences cannot be brought within a strait-jacket formula that is to say that it must be relatable to such incidents incorporated therein. The word “include” enlarges and expands the meaning of a word or phrase so defined in the statute as the legislature cannot conceive of all the possible incidents and for such reason Section 3 of the POSH Act is to be read conjointly with the definition of a sexual harassment. The Apex Court in case of ***P. Kashilingam (supra)*** had

an action to interpret the definition assigned to a word or phrase appearing in the statute containing the word “include” in the following:

“The word ‘includes’ when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words “means and includes”, on the other hand, indicate “an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions”. (See: Dilworth v. Commissioner of Stamps (Lord Watson); Mahalakshmi Oil Mills v. State of A.P. The use of the words “means and includes” in Rule 2 (b) would, therefore, suggest that the definition of ‘college’ is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended.”

It is in case of **N.D.P. Namboodripad (supra)**, the Apex Court held that the word “include” has varied meaning to be read in a context in which it is used. Jurisprudentially the word “include” in the definition given in a statute expanded its horizon and cannot be said to be exhaustive in the following:

“18. The word “includes” has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word “include”. Webster’s Dictionary defines the word “include” as synonymous with “comprise” or “contain”. Illustrated Oxford Dictionary defines the word “include” as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word “includes” as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or

a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word “include” is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word “includes” is also used to connote a specific meaning, that is, as “means and includes” or “comprises” or “consists of”.

19. Justice G.P. Singh in his treatise Principles of Statutory Interpretation (10th Edn., 2006), has noticed that where a word defined is declared to “include” such and such, the definition is prima facie extensive, but the word “include” when used while defining a word or expression, may also be construed as equivalent to “mean and include” in which event, it will afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to the word or expression [vide pp. 173 and 175 referring to and relying on the decisions of this Court in Municipal Council, Raipur v. State of M.P., South Gujarat Roofing Tiles Manufacturers Assn. v. State of Gujarat, Hindustan Aluminium Corpn. V. State of U.P. and Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd.] It is, therefore, evident that the word “includes” can be used in interpretation clauses either generally in order to enlarge the meaning of any word or phrase occurring in the body of a statute, or in the normal standard sense, to mean “comprises” or “consists of” or “means and includes” depending on the context.”

The aforesaid concept of law is further reinstated in a subsequent decision of the Apex Court in case of **Bharat Cooperative Bank (Mumbai) Ltd. Vs. Cooperative Employees Union, reported in (2007) 4 SCC 685** in the following:

“23. Section 2 (bb) of the ID Act as initially introduced by Act 54 of 1949 used the words “means ... and includes” and was confined to a “banking company” as defined in Section 5 of the Banking Companies Act, 1949, having branches or other establishments in more than one province and includes Imperial Bank of India. Similarly, Section 2 (kk), which was also introduced by Act 54 of 1949, defines insurance company as “an insurance company as defined in Section 2 of the Insurance Act, 1938 (4 of 1938), having branches or other establishments in more than one province”. It is trite to say that when in the definition clause given in any statute the word “means” is used, what follows is intended to speak exhaustively. When the word “means” is used in the definition, to borrow the words of Lord Esher, M. R. in Gough v. Gough it is a “hard-and-fast” definition and no meaning other than that which is put in the definition can be assigned to the same. (Also see P. Kasilingam v. P.S.G. College of Technology.) On the other hand, when the word “includes” is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word “means” followed by the word “includes” in Section 2 (bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other.

We do not find any quarrel to the proposition that the moment the definition contained the expression “means” and “include” it does not give a restrictive meaning to it but is expansive and may engulf within itself other incidents related and/or connected to the incidents enumerated therein.

While defining the “sexual harassment” as an unwelcome act or behavior whether directly or by implication either by physical contact and

advances; or a demand or request for sexual favours; or making sexually coloured remarks; or showing pornography; or any other unwelcome physical, verbal or non-verbal conduct of sexual nature, it encompasses any act or behavior in the nature of implied or explicit promise of preferential treatment in her employment or implied or explicit threat of detrimental treatment in her employment or implied or explicit threat over her present or future employment status or interference with her work or creating an intimidating or offensive or hostile work environment for her or humiliating treatment likely to affect her health or safety. Both the Sections i.e. Section 2 and 3 of the POSH Act cannot be read in isolation but compliments the very notion of the sexual harassment as it is of varied form. In order to harmonize both the aforementioned Sections, the legislative intention is manifest that any act or the behavior which impedes or touches upon her employment or affecting the health or the safety in the employment must be in furtherance of the sexual harassment so defined. It would frustrate the legislative intent to treat the incidents referred to Section 2 and 3 in isolation when the composite allegation in this regard is projected in the complaint lodged by the employee. Any other interpretation would be opposed to the mandate given in the POSH Act and would also act contrary to the expression “in relation to or connected with any act or behavior of sexual harassment” appearing in Section 3 of the said Act. The composite allegation has to be read in conjunction with the acts or behavior of a sexual harassment and expanded its horizon to a further act in relation to or connected with it, in the event the circumstances enumerated in Section 3 is *prima facie* found to exist.

Reverting to the fact of the case, the Single Bench succinctly jotted down the allegation of sexual harassment narrated in *seriatim* in arriving at the conclusion that such allegation needs to be decided on merit and should not be dismissed on the anvil of the plea of limitation. The complaint vividly reflects the incidents ranging from the Month of September, 2019 till April, 2023 which *prima facie* comes within the purview of the definition of the sexual harassment given under Section 2 (n) of the said Act but certain administrative action having taken against the respondent was sought to be portrayed in relation or connected with the direct act of sexual harassment. The respondent has narrated that the appellant took advantage of his position as a Vice-Chancellor and let the Executive Committee to take a departmental action against the respondent as she blatantly refused to accept the offer meted out to her by the appellant. She has averred in the complaint that the allegation of appropriation of a fund given under a project titled as “corporate governance, merger and acquisition” was an outcome of her refusal to accept the unwelcome behavior of the appellant towards her and attempted to bring such incidents as contemplated under Section 3 of the POSH Act. Admittedly, the appellant joined as Vice-Chancellor in the Month of July, 2019 where a first show cause notice was issued on 19.06.2019 by the then acting Vice-Chancellor and thereafter continued till the resolution is taken in a subsequent meeting of the executive council. It would further appear from the record that she was given promotion as the selection committee found her more meritorious over the others but because of the administrative decision to be taken thereupon as certain allegation were made by some of the faculty member, it was kept

on hold. Subsequently, the executive council resolved to grant promotion even after the alleged incident of sexual harassment with retrospective effect and extended all the benefits attached to such promotional posts. It cannot be presumed that it impedes any progress in the employment rather she was extended all the benefits as a meritorious candidate. The allegation that the executive council was manipulated in taking administrative action against respondent does not appear to hold water for the simple reason that the composition of the executive council includes not only academicians but the jurists and it is improbable that there would be any manipulation or inducement or making the executive council to take a decision with unconscious mind. The minutes of the 93rd Executive Council Meeting held on 27th November, 2023 and 21st December, 2023 are placed before us wherein it was noticed that the respondent has forwarded E-mail directly to the Hon'ble Chancellor of the University making various allegations against the appellant. As indicated above, such letter does not contain any allegation which may constitute sexual harassment. The executive council further noticed that the Centre for Financial and Regulatory Governance Studies started a certificate course on real-estate and landlords, benami transaction and debt recovery with effulgent educators LLP in the year 2017, when at relevant point of time the respondent was the coordinator of the same and the member of academic council. The council further noticed that she was one of the partners of the said company but the same was not disclosed rather suppressed. The council further found that the show cause notices were issued on 19.06.2019 by then acting Vice-Chancellor alleging various misconducts in discharge of her duties as a teacher and violating

the UGC Code of professional ethics as adopted by the executive council of the said University and the resolution thereafter was taken to conduct a preliminary enquiry in this regard. After the said resolution is passed for the first time the complaint was lodged on 26th December, 2023 containing the allegation as to sexual harassment by the appellant in the Month of September, October, December, 2019 and April, 2023.

On the backdrop of the aforesaid fact, let us examine the contention of Mr. Gupta that the expression “series of incidents” appearing in Section 9 must be construed as an incident in a close proximity of time. The word “incident” has to be given a meaning in *juxtaposition* with the incidents enumerated under Section 2 (n) with Section 3 of the POSH Act. Though the limitation for filing the complaints is provided in Section 9 to reckon from the date of incident but the moment there are repetition of such incident it constitutes the series of incidents. It would be given a restrictive meaning in the event; series of incidents are squeezed into each incident. The unwelcome act or behavior if repeated at a short-interval or thereafter by a same person would come within the purview of the series of incidents. In other words, it is a recurrence of the unwelcome act or behavior manner to sexual harassment and it would be too burdensome on an employee to lodge a complaint against each of such incident within the stipulated time provided in the statute. The legislators were conscious of the human behavior in relation to a sexual harassment if perpetrated upon the employee and give sucker to such employee when she feels such unwelcome behavior or act to be intolerable may make a complaint narrating all such

isolated incident within the stipulated time. Any other restrictive meaning given to a series of incident would be opposed to a legislative intent and would go against the spirit, object and the purpose for which it is enacted.

As indicated above, the action taken by the executive council in the administrative field does not appear to be correlated with the act of sexual harassment and therefore, the LCC arrived at the conclusion that incidents narrated in several paragraphs relating to the administrative steps having taken against the respondent is not in relation to a sexual harassment defined under Section 2 (n) of the said Act.

It now led to a core issue relating to limitation provided under Section 9 of the POSH Act which was applied by the LCC in dismissing the complaint. Section 9 of the POSH Act provides a limitation period of 3 months from the date of the incident and in case of series of incidents, the complaint should also be filed within 3 months from the date of the last incident. The moment the limitation is provided in the Act the authorities conferred with the power cannot determine the cause, in the event, the complaint is filed beyond the said limitation period. The purpose of putting a limitation period for any action before the authority, be it *quasi* judicial or otherwise, it has to be applied with *rigour* provided the legislators confers power to extend the same without keeping any outer cap. The proviso to Section 9 though confers power upon the LCC to extend the time limit but not exceeding 3 months provided the LCC is satisfied that the circumstances which prevented the complainant to lodge the complaint for the normal period of limitation was beyond her control. While extending the time it is

obligatory on the part of the LCC to record reasons in writing. It is no longer *res integra* that putting a time limit within which the action is to be initiated does not destroy the right but disentitles the person to get relief from the authority. The object for putting a time limit is to ensure a timely approach and to eradicate any stale claim nor to resurrect the claim. At times, the time limit put forth in the statutory provisions may act harshly upon the seeker of the justice but the moment it is so incorporated, it partakes the character of the law and to be accepted. In this regard, the legal maxim *dura lex sed lex* can be gainfully applied meaning thereby the law is hard but it is the law. The Apex Court in ***Popat Bahiru Govardhane & Ors.*** (*supra*) recognized the said legal maxim in the following:

“16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its regour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.”

The question often come up before the Court whether the authority can extend the time beyond the outer cap set forth in the statutory provision, indefinitely. A distinction must be drawn between a statutory

provision conferring right of the authority of the Court to condone the delay of whatever period and a statutory provision restricting the exercises of such power to extend the time up to a certain period. In a former case, the Court can condone an inordinate delay on recording satisfaction that the litigant was prevented by sufficient cause in not approaching the authority of the forum within the normal period of limitation but in later case, though the discretion is conferred upon the authority to extend the time but not beyond the maximum limit provided in the statutory provision. The decision of the Supreme Court in ***National Spot Exchange Ltd. Vs. Anil Kohli, Resolution Professional for Dunar Foods Ltd., reported in (2022) 11 SCC 761*** can be aptly applied wherein it is held that the moment the outer cap is put for exercise of the discretion to extend the normal period of limitation, the authority or the Court should exercise such discretion within the circumference of the outer limit and cannot transgress such limit even in an deserving case in the following:

“14. It is true that in a given case there may arise a situation where the applicant/appellant may not be in a position to file the appeal even within a statutory period of limitation prescribed under the Act and even within the extended maximum period of appeal which could be condoned owing to genuineness viz. illness, accident, etc. However, under the statute, Parliament has not carved out any exception of such a situation. Therefore, in a given case, it may cause hardship, however, unless Parliament has carved out any exception by a provision of law, the period of limitation has to be given effect to. Such powers are only with Parliament and the legislature. The courts have no jurisdiction and/or authority to carve out any exception. If the courts carve out an exception, it would amount to legislate which

would in turn might be inserting the provision to the statute, which is not permissible.

15.3. In Popat Bahiru Govardhane, this Court has observed and held that it is a settled legal position that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. It is further observed that the statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it by giving full effect to the same.”

It admits no ambiguity to the proposition that the plea of limitation are often considered to be a mixed question of fact and law as held in **Urvashiben & Anr. (supra), Shakti Bhog Food Industries Ltd. (supra)** and **P. V. Gururaj Reddy (supra)** but such proposition of law is to be applied in the context of a given case and does not have the universal application. The issue of limitation may be purely an issue of law or sometimes the issue of mixed question of law and fact as held by one of us in **Sri Debjyoti Bhattacharjee (supra)**. The court while considering the plea of limitation must read the pleadings in its entirety and in the event, it is found that it cannot be decided as an issue of law as it largely depends upon the facts so pleaded and the evidence in this regard to be produced, it should postpone the determination to the stage of final decision.

The plea taken by the respondent would have been accepted provided the circumstances contemplated under Section 3 of the POSH Act is related to or connected with the sexual harassment defined under Section 2 (n) of the said Act. As we do not find those circumstances relatable to the sexual

harassment but unconnected with it for the reason that such decision were taken by an executive council collectively and not by the appellant alone; even if the appellant being one of the constituent of the executive council but the decisions are taken by the majority and looking upon the constitution of the executive council consisting of notable academicians and the jurists including the judges of the Supreme Court and the High Court, it is improbable that the appellant would exert his position and would manipulate the decision taken by the executive council. Since the last incident of the sexual harassment is alleged in the complaint to have taken place in the Month of April, 2023 and admittedly the complaint was filed on 26th December, 2023 much beyond the normal period of limitation or for argument sake if the period is extended. Therefore there is no infirmity in the decision of the LCC in dismissing the said complaint. The Single Bench has committed error in setting aside the order of the LCC without adverting to the proposition of law as discussed above.

The Order impugned is thus set aside. The decision of the LCC is restored.

The appeal therefore succeeds.

All the connected applications filed in the instant appeal are accordingly disposed of.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Harish Tandon, J.)

I agree.

(Prasenjit Biswas, J.)