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2026:DHC:10377

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: November 17th, 2026***

\# **CNR No. DLHC014352632015**

\+ **W.P.(C) 8622/2015 & CM APPL. 18737/2015, CM APPL. 18738/2015, CM APPL. 21444/2015, CM APPL. 40053/2023, CM APPL. 43266/2023**

AX .....Petitioner

Through: Mr. Pulkit Malhotra, Adv. through V.C.

versus

UNION OF INDIA & ORS .....Respondents

Through: Mr. Rajesh Kumar, SPC for UOI with Ms. Saumya Johari & Mr. N. Kumar, Advs. for R1.
Mr. Gaurav Gupta, Ms. Rupal Gupta & Ms. Shambhavi Khare, Advs. for R-4.
Mr. Ashish Dixit & Mr. Umar Hashmi, Advs. for R-5.

\# **CNR No. DLHC010333732023**

\+ **W.P.(C) 11267/2023 & CAV 435/2023, CM APPL. 43868/2023, CM APPL. 43870/2023**

X NAME WITHHELD .....Petitioner

Through: Mr. Ashish Dixit & Mr. Umar Hashmi, Advs.

versus

UNION OF INDIA AND ORS .....Respondents

Through: Mr. Sandeep Vishnu, SPC for UOI with Mr. Rajesh Kumar & Mr. N. Kumar, Advs. for UOI.
Mr. Pulkit Malhotra, Adv. through V.C. for R-3.

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Mr. Gaurav Gupta, Ms. Rupal Gupta & Ms. Shambhavi Khare, Advs. for R-4.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. *(Oral)*

1. The Petitioner/Complainant *[in W.P. (C) 8622/2015] (employed as Research Assistant)* submitted a complaint on 09.02.2015 against the Respondent No. 5/Accused *(erstwhile Director General of The Energy Resources Institute)* under the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 to the Internal Complaints Committee ("**ICC**") and after culmination of the proceedings, the ICC filed its report dated 19.05.2015 returning findings against the Respondent No. 5/Accused.

2. The Petitioner approached this Court, by way of the present W.P. (C) 8622/2015, *inter alia*, seeking appropriate directions to the Respondents for initiating action against the Respondent No. 5 under the provisions of the Act as well as for prevention of any further victimization or harassment of the petitioner.

3. Since, the Respondent No. 5/Accused had preferred an appeal before the learned Industrial Tribunal, assailing the recommendations of the ICC, the following order was passed by this Court on 06.01.2017: -

> *"1. By way of present writ petition, the petitioner has challenged the vires of Rule 11 of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (hereinafter referred to as "the Rules") qua the rule making power*

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of the Central Government under section 29(k) of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as "the Act") and seeking appropriate directions to the respondents for initiating disciplinary action against the respondent No. 5 under the provisions of the Act as well as for prevention of any further victimization or harassment of the petitioner.

2. By order dated 17.05.2016, ***we directed that the order if any passed by the Industrial Tribunal in the appeal preferred by the respondent No. 5 shall not be given effect to.*** *We also directed the respondent No.4 to file an additional affidavit explaining the subsequent events and to produce the entire record relating to recommendations of the Internal Complaint Committee (ICC) of the respondent No.4.*

***

5. The learned counsel for the respondent No.4 has produced the record containing the copies of the report of ICC dated 19.05.2015 and ***the appeal preferred by the respondent No.5 before the Industrial Tribunal and we have perused the same.*** *We have also heard the learned counsel for both the parties.*

6. Section 18 of the Act which enables any person aggrieved from the recommendations made by ICC under Section 13(2) or Section 13(3)(i) or (ii) to prefer an appeal to the Court or Tribunal in accordance with the provisions of the service rules applicable to the said person …..…..

7. We may also note Rule 11 of the Rules which deals with the remedy of appeal…

***

9. A combined reading of the above provisions shows that in the absence of service rules applicable to the person aggrieved from the recommendations of ICC, the appellate authority shall be an authority notified by the appropriate Government in the Official Gazette.

10. According to the respondents 4 and 5, the Industrial Tribunal has been notified as the appellate authority by the Central Government in terms of Rule 11 of the Rules. It is stated that the respondent No.5 has accordingly preferred an appeal before the Industrial Tribunal-I in terms of the provisions of the

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Act and the Rules read with Industrial Employment (Standing Orders) Act, 1946.

11. ***It is not in dispute that the said appeal preferred by the respondent No.5 is pending before the Industrial Tribunal-I and the writ petitioner entered appearance and has been contesting the appeal.***

12. ***We are, therefore, of the view that it would be appropriate to leave it open to the Industrial Tribunal-I to proceed further and decide the appeal following due process of law subject to further orders in this petition. It is open to both the parties to raise all the grounds as permissible under law before the Tribunal and the same be considered and determined in accordance with law. We make it clear that the pendency of this writ petition shall not preclude the Tribunal to proceed with the appeal pending on its file and to pass an appropriate order in accordance with law on its own merits.***

13. We also make it clear that the interim order dated 17.05.2016 shall continue and the final order if any passed by the Industrial Tribunal in the appeal filed by the respondent No.5 shall not be given effect to except with the permission of this Court. For the said purpose, liberty is granted to both the parties to move an appropriate application after the appeal is decided by the Industrial Tribunal.

14. The main petition be listed for hearing in the week commencing 10.04.2017.

15. The respondents are at liberty to file additional counters if any on the issue of the vires of Rule 11 of the Rules within four weeks from today. Rejoinder, if any, within two weeks thereafter.

16. The record submitted by the learned counsel for the respondent No.4 be returned in a sealed cover under proper acknowledgement."

4. During the pendency of this petition, the appeal preferred by Respondent No. 5/Accused before the learned Industrial Tribunal, came to be decided and the learned Industrial Tribunal, by its judgment dated 03.07.2023, declined to interfere with the findings of the ICC.

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5. It is also relevant to note that Respondent No. 5/Accused had expired on 13.02.2020 and thus, his legal representatives instituted the connected writ petition, being W.P.(C) 11267/2023, challenging the judgment dated 03.07.2023 passed by the learned Industrial Tribunal as well as the ICC report dated 19.05.2015.

6. It stands recorded in Order dated 18.09.2023 that the Petitioner/Complainant had submitted that she is not pressing certain reliefs in her amended writ petition and these petitions were directed to be heard together. The Order dated 18.09.2023 reads as under: -

> *"Learned Counsel for the Petitioner, on instructions, submits that **she is not pressing the reliefs prayed for in prayer clause b), c) and d) of the amended writ petition,** which relate to the constitutional validity of Rule 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.*
>
> *At this stage, Learned Counsel brings to the notice of this court that another **writ petition arising out of the same facts i.e., W.P. (C) No. 11267/2023 is pending before the Learned Single Judge.***
>
> *As the Learned Counsel is no longer pressing the aforenoted relief clauses; and similar matter is pending before the Learned Single Judge, the office is directed to list the present matter along with the W.P.(C) No. 11267/2023 on 10.01.2024 before the learned Single Judge."*

7. Today, on being pointedly asked, this court has been informed that in view of the subsequent developments and the culmination of proceedings before the learned Industrial Tribunal, the petition bearing W.P. (C) 8622/2015 filed by the Complainant, is rendered infructuous as no effective relief survives for consideration.

8. As regards W.P. (C) 11267/2023, it has been argued on behalf

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of the Petitioner/Accused, that, the Petitioner/Accused was admittedly the Director General of TERI and as the Chief Executive officer of Respondent and Head of Organization, the Internal Committee/s of TERI were constituted by him under Section 4 of the POSH Act and he was the '*Employer*' within the meaning of Section 2 (g) of POSH Act. Thus, in terms of Section 6 of the POSH Act, the Internal Committee was *coram non judice* and could not have taken cognizance of complaint dated 09.02.2015, as, in case a complaint is against an employer, the jurisdiction to adjudicate the same is vested with the District Committee. Thus, the Complaint could not have been examined within the Organization.

9. It is further submitted that though witnesses were examined by the ICC, no statements were provided to the Accused and he was also given any opportunity to cross-examine the witnesses.

10. On being queried on the above aspects, the learned Counsel for the Complainant has though not disputed that the Accused was the "*Employer*", but has submitted that this objection of ICC lacking jurisdiction was not raised before the two forums and thus, cannot be entertained at this juncture. It is submitted that, as regards the argument of violation of principles of natural justice and no opportunity to cross-examine the witnesses is concerned, in cases concerning sexual harassment there is no absolute right to cross-examine the witnesses. It is further submitted, that even otherwise, the report and impugned Order passed by the learned Industrial Tribunal, categorically takes note of the emails/messages exchanged between the parties to hold that the same show physical and mental

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exploitation of the Complainant by the Accused and despite she expressing her discomfort, the Accused continued to harass her by misusing his position/designation and also pressurized/emotionally blackmailed her. Thus, no interference is warranted by this court, at this stage.

11. At the outset, without going into the merits of the case, this Court deems it appropriate to deal with the objection regarding lack of jurisdiction raised by the Respondent No. 5/Accused.

12. Section 2 (i) provides that the *"Local Committee" means the Local Complaints Committee constituted under section 6.*

13. Chapter III of the POSH Act pertains the Constitution of the Local Complaints Committee. Section 5 and Section 6 of the Act read as under: -

> *"*
>
> *CHAPTER III*
> *CONSTITUTION OF LOCAL COMPLAINTS COMMITTEE*
>
> ***5. Notification of District Officer.—****The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.*
>
> ***6. Constitution and jurisdiction of 1 [Local Committee].—*** ***(1) Every District Officer shall constitute in the district concerned, a committee to be known as the "1 [Local Committee]" to receive complaints of sexual harassment from establishments*** *where the 1 [Internal Committee] has not been constituted due to having less than ten workers or* ***if the complaint is against the employer himself****.*
>
> *(2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned 2 [Local Committee] within a period of seven days.*
>
> *(3) The jurisdiction of the 2 [Local Committee] shall extend*

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to the areas of the district where it is constituted."

14. Further, the term "*employer*" has been defined in Section 2(g) of the POSH Act, which reads as under: -

> *"g) "employer" means -*
> *(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;*
> *(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.*
>
> *Explanation. -- For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of polices for such organization;*
>
> *(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;*
>
> *(iv) xx ... xx ... xx;*

15. Section 6 (1) of the POSH Act categorically provides that where a complaint of sexual harassment is against the *employer* himself, the same shall be made to the Local Committee. In the present case, it is not disputed that Respondent No. 5 was the Director General of TERI and, thus, fell within the definition of '*Employer*' under Section 2(g) of the POSH Act.

16. In view thereof, the complaint was required to be entertained by the Local Committee and not the Internal Committee constituted by TERI under Section 4 of the POSH Act.

17. The fact that the objection as to the jurisdiction of the Internal

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Committee was not raised before the Committee or the learned Industrial Tribunal would not, by itself, validate proceedings conducted by a forum lacking statutory jurisdiction. The question goes to the very authority of the Internal Committee to entertain and inquire into the complaint and, therefore, cannot be defeated merely on the ground of failure to raise an objection at an earlier stage. Where the statute specifically entrusts the inquiry into a complaint against the employer to the Local Committee, the Internal Committee cannot assume such jurisdiction. The defect, therefore, strikes at the root of the proceedings and cannot be cured by the subsequent appellate scrutiny of the learned Industrial Tribunal.

18. Consequently, the report dated 19.05.2015, as well as the judgment dated 03.07.2023 passed by the learned Industrial Tribunal affirming the same, cannot be sustained and are set aside.

19. It is also significant that the learned Counsel for Respondent No. 5/Accused has contended that the statements of the witnesses, which were relied upon by the Internal Committee, were not furnished to the Accused and he was not afforded an opportunity to cross-examine them. The said position has not been disputed by the learned Counsel for the Petitioner/Complainant, who has only sought to contend that, having regard to the sensitive nature of proceedings relating to sexual harassment, no absolute right of cross-examination can be claimed.

20. In this regard, reference may be made to the judgment passed by a Division Bench of this Court, in ***Avinash Mishra v. Union of India*****, 2014 SCC OnLine Del 1856,** wherein a similar issue arose for

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consideration. While recognising the need for sensitivity in proceedings concerning sexual harassment, it was emphasised that the procedure adopted must remain fair and that the person against whom the allegations are made must have a meaningful opportunity to deal with material relied upon against him. The relevant extract is reproduced as under: -

> ***"*** *15. In the present case, the petitioner's complaint is that his Explanations to the allegations leveled were not considered and that the witnesses examined by the Complaints Committee were in his absence.* ***He also argues that the copies of the statements of those witnesses were not furnished to him and most importantly, he was denied the right of cross-examination.***
>
> ***16.*** *There is no doubt that sexual harassment at the workplace is a serious misbehavior and if found to be true, dealt with severely. At the same time, the procedure adopted in arriving at a finding - considering the likely adverse finding of a charged official in a given case - has to be fair, and the materials also should be considered in a fair, reasonable and dispassionate manner. Barring rare instances where the security of the witness or the victim would be in peril (probably the only kind of exception recognized in terms of the declaration of the Supreme Court in Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : AIR 1985 SC 1416), the cross-examination of witnesses ought not to be denied. In this regard, this Court recollects the earlier Division Bench ruling in Pushkar Saxena v. Govt of NCT of Delhi [W.P. (C) 7592/2001, decided on 16-5-2012****], where the Court balanced the two interests - of the sensitivity and sensibility of the witnesses who depose in such proceedings, with the public interest in affording the charged official with fair opportunity. The Court had in that instance, indicated that the procedure to be adopted may be suitably modified. The directions made in that decision were to the following effect:***
>
> > *"16. XXXXXX XXXXXX XXXXXX*
> >
> > *2. (iii) Further inquiry in the matter would begin from the stage of cross-examination of the witnesses. The*

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> *petitioner would be entitled to cross examine the witnesses who were earlier examined by the inquiry officer, through a female defence Assistance of his choice. He would, however, not be present at the time of their cross-examination. If the petitioner does not avail the services of a female Defence Assistant, he will submit a questionnaire, giving the questions he wants the witnesses to answer, and the answers to the questions will be obtained by the Inquiry Committee. The petitioner will not be present at that time."*

17. In the present case, the respondents do not deny that the opportunity of cross-examination or cross-examining of witnesses who deposed before the Complaints Committee was not given to the petitioner. Equally, it is not known whether those witnesses had submitted any material or documents which contained any material implicating the petitioner, or adverse to him. *In these circumstances, it was proposed to the learned counsel for the parties that an approach as indicated in Pushkar Saxena (supra) would be adopted in the present case; at the same time, unlike in that case - the need to keep away the petitioner from the enquiry was not shown. The facts there were that the victims were young students; here the complainant is a fairly senior officer, holding the rank of Joint Advisor. Therefore, the petitioner can be present in the course of enquiry during cross-examination of witnesses. The learned counsel for the petitioner did not object to it, but at the same time stressed that the proceedings should be concluded at the earliest opportunity and that the respondents should not pass any orders prejudicing the petitioner's right to be appointed to the post of Advisor (Water Resources), particularly in view of his selection by the DPC. The learned counsel for the respondents did not object to the suggestion of the Court.*

18. In view of the above discussion, the inquiry report made by the Complaints Committee is hereby set aside.

19. The Complaints Committee shall now take-up the matter for further inquiry in terms of the following directions:

(a) The respondents shall ensure that copies of all material which had not been furnished to the petitioner till date and which contain anything adverse to him shall be supplied within a week from today. The petitioner's

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> ***written response/representation in respect of these shall be given within a week thereafter.***
>
> ***(b) The further inquiry into the matter would begin from the stage of cross-examination of witnesses. The petitioner would be entitled to cross-examine all witnesses who were examined earlier by the Committee and in respect of whom cross-examination was not permitted. Such cross-examination shall be conducted through a female defence assistant of the petitioner's choice failing which by a male defence assistant of his choice. In case the petitioner does not avail of the services of defence assistant, he can submit a questionnaire giving the questions which he wishes the witnesses to answer; the answers to such questions will be obtained by the inquiry committee.****"***

21. There is no quarrel with the proposition that cross-examination is not an absolute right or a pre-requisite in cases of sexual harassment, however, in the facts of the present case, where strong reliance is placed on certain statements of the witnesses or documents, the same should be supplied to the accused and a fair opportunity to defend/rebut them must be given, before arriving at any adverse findings. While the standard of proof in such proceedings is not that of *proof beyond reasonable doubt*, the same does not dispense with the requirement of a fair opportunity to deal with the material relied upon.

22. Accordingly, the matter is remitted to the competent Local Committee for fresh consideration. The Committee shall independently examine the complaint and the material available on record. The effect of Respondent No. 5's demise on the maintainability and feasibility of any further proceedings would necessarily require consideration by the competent forum.

23. It is also clarified that the competent Committee, while

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undertaking fresh consideration, shall ensure due compliance with the principles of natural justice and the applicable procedure.

24. The parties are at liberty to avail appropriate remedies if any grievance remains in future.

25. In view of the above, the petitions are disposed along with pending applications, if any.

26. Copy of this Order be placed in both the matters.

AMIT MAHAJAN, J

NOVEMBER 17, 2026
"SK"