IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11696 OF 2025

Dr. Shyam Bihari,
Major of years, Occupation : Medical Officer/
F, Employee Code No. 1119516,
NPCIL Tarapur Maharashtra Site
Residing at Type-D-6/5, TAPS-3 & 4
Colony (Anuvikas Township),
PO – TAPP, Boisar, Taluka & District – Palghar,
Maharashtra – 401501.
Mobile No. 9421543235.
Email ID : drsamey23@gmail.com ...Petitioner

Versus

1. **Nuclear Power Corporation of India Ltd.**
   Through its Chairman & Managing Director,
   Nabhikiya Urja Bhavan, Anushaktinagar,
   Mumbai – 400094.

2. **Internal Complaints Committee**,
   NPCIL Tarapur Maharashtra Site
   Through Site Director,
   Tarapur Maharashtra Site,
   PO – TAPP, Boisar, Taluka & District – Palghar,
   Maharashtra – 401504. ...Respondents

Dr. Uday P. Warunjikar a/w Ms. Gargi U. Warunjikar, Advocates for the Petitioner.

Mr. Vishal Talsania a/w Ms. Nukshinaro i/b M. V. Kini & Co., Advocates for Respondent Nos. 1 & 2.

CORAM : RAVINDRA V. GHUGE & ASHWIN D. BHOBE, JJ.

RESERVED ON : 23rd SEPTEMBER, 2025.
PRONOUNCED ON : 14th OCTOBER, 2025.

JUDGMENT (*Per Ashwin D. Bhobe, J.*) :-

1. Heard Dr. Uday Warunjikar, learned Advocate for the Petitioner

and Mr. Vishal Talsania, learned Advocate for Respondent Nos. 1 & 2.

2. Rule. Rule made returnable forthwith. Heard Petition finally with the consent of learned Advocates appearing for the parties.

3. Challenge in the present Petition filed under Articles 226 and 227 of the Constitution of India, is to the Memorandum of Charges No. NPCIL/HR-DC/2(46)/2024/424 dated 14th December, 2024 issued by Respondent No. 1 ("*said Memorandum dated 14th December, 2024*"); to the Notice dated 31st July, 2025 issued by Respondent No. 1 through GM, HR-DC ("*said Notice dated 31st July, 2025"*); and to the Inquiry Report dated 14th July 2025 of the Internal Complaints Committee ("ICC" for short) constituted by Respondent No. 1, under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("*said Act*" for short).

4. The material facts in this Petition are that the Petitioner is a Medical Officer in the employment of Respondent No. 1, since 2005. On 27th July, 2024, Mr. D. Ghosh, a Scientific Officer working with Respondent No. 1, filed a complaint on behalf of his daughter "aggrieved woman", alleging sexual harassment at the hands of the Petitioner, during her medical examination. Complainant is referred to as the "aggrieved woman", in terms of the direction of this Court in the case of ***P v/s. A &***

Ors.[1]. Allegations against the Petitioner being salacious, reference to the same is avoided.

4a. Vide Notification bearing No. TMS/HR/ER-3&4/28/vol.II/2024, dated 29th July, 2024, Respondent No. 1 constituted Respondent No. 2 (ICC) to investigate the complaint filed by Mr. D. Ghosh. Respondent No. 2 comprised of the following members :-

a] Dr. (Smt.) Sugnya Sachin Patil,
MO/F, Presiding Officer, ICC;

b] Smt. K. S. Kalpanadevi,
SO/D, Member ICC;

c] Smt. Shobha Rajeev,
PPS, Member ICC;

d] Smt. Kriti Lakra,
SM (F&A), Member ICC;

e] Dr. (Smt.) Jeeva Philip,
ENT Specialist, Member ICC; and

f] Shri. K. C. Verma,
DGM (Legal), Member Secretary, ICC.

4b. Respondent No. 2 conducted the inquiry in terms of the NPCIL (Disciple & Appeal) Rules, 1996. Preliminary report was made on 4th October, 2024 (Page No. 167 of the paper-book). Respondent No. 2 submitted its final recommendations dated 3rd December, 2024 (Page No. 172 of the paper-book) to Respondent No. 1.

1. Order dated 24th September, 2021 passed in Suit No. 142 of 2021.

4c. Vide the said Memorandum dated 14th December, 2024, Respondent No. 1 notified the Petitioner of the proposed inquiry under Rule 12 of NPCIL (Discipline and Appeal) Rules, 1996. Statement of Article of Charges; Statement of the Imputation of Misconduct and Misbehavior along with documents and list of witnesses were appended to the said Memorandum dated 14th December, 2024.

4d. Respondent No. 2 conducted the Inquiry into the charges leveled against the Petitioner. In the said Inquiry, Petitioner was afforded opportunity to file his written statement of defence; he was afforded opportunity to admit/deny the charges; he was afforded opportunity to nominate defence assistance of his choice; he was afforded opportunity to inspect the documents/to submit documents; present his evidence; examine/cross-examine witnesses as also an opportunity to submit written brief.

4e. The aggrieved woman, her father Mr. D. Ghosh and mother Mrs. Emily Ghosh in addition to three other officials of the hospital were examined in support of the prosecution case, whereas the Petitioner deposed in the said inquiry before Respondent No. 2.

4f. Respondent No. 2 submitted its Inquiry Report dated 14th July, 2025, holding the charges leveled against the Petitioner as proved.

4g. Vide Notice dated 31st July, 2025, the Inquiry Report dated 14th July, 2025 was forwarded to the Petitioner, calling upon the Petitioner to submit his representation/submission in writing, failing which the Petitioner was notified that the Disciplinary Authority would pass further orders as deemed appropriate.

5. Petitioner is before this Court, seeking the following substantive reliefs :-

> *A. Issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned Memorandum of Charges No. NPCIL/HR-DC/2(46)/2024/424 dated 14.12.2024 issued by Respondent No.1, as well as the impugned Notice dated 31.07.2025 issued by Respondent No.1 (through GM, HR-DC) enclosing the Inquiry Report dated 14.07.2025 and quash all proceedings and actions taken pursuant thereto, including the Inquiry Report of the ICC/Inquiry Authority.*
>
> *B. Issue a writ of mandamus directing the Respondents to constitute a fresh Internal Committee/Inquiry Committee to inquire into the complaint against the Petitioner afresh by law, ensuring compliance with the POSH Act, 2013, DoPT guidelines and principles of natural justice - with the Petitioner being given full opportunity to defend himself (including cross-examination of witnesses and production of relevant evidence like medical records) so that a fresh, unbiased consideration of the matter can be done.*

6. Respondent No. 1 has filed reply dated 20th February, 2025 opposing the Petition. In response to the reply, Petitioner has filed Affidavit-in-Rejoinder.

7. Dr. Uday Warunjikar, learned Advocate for the Petitioner has

advanced the following arguments :-

a. Constitution of Respondent No. 2 (ICC) is not in accordance with the requirement of Section 4 and section 11 of the said Act and not in compliance with the Office Memorandum dated 21st December, 2022, issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions Department of Personnel and Training ESTT. (Estt. A-III). He submits that the Presiding Officer of Respondent No. 2 though was headed by a woman, however the said Presiding Officer is an employee of the organization, but is not senior to the Petitioner. To clarify, he submits that the law requires a higher level woman officer to preside over Respondent No. 2, in terms of Section 4(2)(a) of the said Act. He submits that the non-compliance of the said requirement vitiates the inquiry since its inception.

b. He submits that Respondent No. 2 did not include a member from a non-governmental organization or association committed to the cause of women or any person familiar with the issues of sexual harassment, as required by Section 4(2)(c) of the said Act. He submits that Dr. Smt. Jeeva Philip a member of the said committee, who was appointed as an Expert Member of Respondent No. 2, had an agreement dated 25th July, 2024 with Respondent No. 1 for

providing consultancy services, i.e. ENT consultation to the beneficiaries, as such, does not qualify to be a member in terms of Section 4(2)(c) of the said Act.

c. He submits that the other member of Respondent No. 2 Smt. K. S. Kalpana Devi lives in the same building where Mr. D. Ghosh, father of aggrieved woman resides, as such, possibility of the said member influencing Respondent No. 2 cannot be ruled out. Thus, according to Dr. Uday Warunjikar, the constitution of Respondent no. 2 (ICC) fails to meet the required criteria.

d. He by referring to the report dated 4th October, 2024 of Respondent No. 2, submits that all the members of Respondent No. 2 having observed that "there is no sufficient evidence to support the complainant's allegations", the proceedings against the Petitioner were required to be dropped. He submits that Respondent No. 2 has no jurisdiction to submit a modified final report dated 3rd December, 2024 after a period of about 2 months, of its report dated 4th October, 2024. He submits that the inconsistency in the said two reports should accrue to the benefit of Petitioner.

e. Dr. Warunjikar has relied on the following decisions :-

(i) ***Punjab and Sind Bank and Others v/s. Mrs. Durgesh***

Kuwar[2] and

(ii) ***Dr. A. Manimekalan v/s. The Registrar, Bharatiya University, Coimbatore and other connected Petitions***[3].

8. Mr. Vishal Talsaniya, learned Advocate for the Respondents by relying on the reply dated 20th February, 2025 filed by Respondent No. 1, has advanced the following arguments :-

a. Petitioner was aware of the composition of Respondent No. 2, as early as on 29/07/2024. At no point of time prior to filing of the present Petition, the Petitioner raised any objection to the composition of Respondent No. 2. He submits that the Petitioner participated in the inquiry without any objection or demurrer. He submits that the contention of the Petitioner with regards to the composition of ICC, sought to be raised after a delay of about 9 months is with malafide intentions, only to delay the disciplinary proceedings. He submits that the present Petition is an abuse of process of law and is liable to be dismissed on this count.

b. He submits that the provisions of Section 4(2)(a) of the said Act requires the Presiding Officer to be a woman employed at a

2. 2020(19) SCC 46.
3. WP No. 5764 of 2023 decided by the High Court of Judicature at Madras on 27th July, 2023.

senior level, however the same does not specify that the Presiding Officer must be senior to the Delinquent Officer. He, by referring to para 6 of the reply filed by Respondent No. 1 submits that the Presiding Officer of Respondent No. 2 was in the same grade as that of the Petitioner, which position is of a senior level. He therefore submits that the Presiding Officer was an employee at the senior level in Respondent No. 1. He relies on the NPCIL (Disciple & Appeal) Rules, 1996 governing the service conditions of the Petitioner.

c. He submits that Dr. Smt. Jeeva Philip is a ENT Specialist and is experienced in sexual harassment issues. He submits that Dr. Smt. Jeeva Philip is not an employee of Respondent No. 1 and she is an independent medical professional having her own private practice. No prejudice is caused to the Petitioner by her inclusion in the Committee.

d. He submits that the allegation in the memo of Petition that a member being known to the father of aggrieved woman are vague. He submits that it is in the rejoinder that the Petitioner claims Smt. Kalpana Devi residing in the same building where the father of aggrieved woman resides. He submits that the claims of the said member having influence on Respondent No. 2 is mischievous and

at any rate speculative, malafide and without any evidence on record to support such contention.

e. He submits that the Office Memorandum dated 21st December, 2022 issued by Government of India, Ministry of Personnel, Public Grievances & Pensions Department of Personnel and Training ESTT. Estt. A-III, relied by the Petitioner pertains to regular disciplinary inquiry and not to the inquiries conducted under the said Act. He relies on the Office Memorandum dated 9th September, 2016 issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions Department of Personnel and Training ESTT. A-III Desk, which specially states that there is no bar under either CCS (CCA) Rules or under the said Act to the Chairperson of ICC being junior to the suspect officer or the charged officer.

9. Having considered the rival contentions, the issue which fall for consideration in the present Petition is, 'whether the composition of Respondent No. 2 (ICC) in the present case is contrary to the provisions of the said Act ?'

10. Sum and substance of the challenge in the present Petition is to the constitution of Respondent No. 2 (ICC).

11. Dr. Warunjikar in support of his challenge to the appointment of the Presiding Officer, has relied on Section 4(2)(a) and Section 11 of the said Act read with the Office Memorandum dated 21st December, 2022 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension Department of Personnel & Training Establishment A-III Desk.

12. Section 4(2)(a) to (c) of the said Act reads as follows :-

> "***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 Committee 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 organisation;*
>
> *(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 organisations 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.

13. Clause No. 2.9 of the said Office Memorandum dated 21st December, 2022 is extracted herein below :-

"*2.9 IO senior from the CO: DoPT, vide OM No. 7/1/70-Est.(A) dated 06.01.1971, requested all the Ministries/ Departments to note the observations of the Committee on Subordinate Legislation (Fourth Lok Sabha), which examined the question of appointment of inquiry officers to conduct oral inquiry into the charges leveled against delinquent officer under CCS (CCA) Rules, 1965. The Committee observed that though they agree that it may not be possible to entrust always inquires against delinquent officer to gazette officers the inquiries should be conducted by an officer who is sufficiently senior to the officer whose conduct is being inquired into as inquiry by a junior officer cannot command confidence which it deserves.*

(emphasis supplied)"

14. Question revolves around the interpretation of the words and the language "*a woman employed at a senior level at workplace from amongst the employees*" used in Section 4(2)(a) of the said Act. According to Dr. Warunjikar the requirement of the section is a lady member, who must be a officer senior in rank to the officer against whom allegations of sexual conduct are made. *Per contra*, Mr. Vishal Talsania interprets the said section to mean a lady member working at a senior level, who need not be senior in rank to the an officer against whom allegations of sexual conduct are made.

15. Principle of interpretation of statute in every system of interpretation is the literal rule of interpretation. All that is to be seen is what does the provision say? The Hon'ble Supreme Court in Paragraph No. 22 of the decision in ***M/s. Hiralal Rattanlal Etc. Etc. v/s. State of U. P. and Another***[4] has observed as under :-

> *"22… In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear. …".*

16. The decision in the case of ***M/s. Hiralal Rattanlal*** (*supra*) was followed by the Hon'ble Supreme Court in the case of ***B. Premanand and Ors. v/s. Mohan Koikal and Ors.***[5] Paragraph No. 9 of the said decision, is extracted herein below :-

> *"9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB v. SEBI [(2004) 11 SCC 641 : AIR 2004 SC 4219]"*

17. A plain reading of Section 4(2)(a) of the said Act indicates that the Presiding Officer of the Internal Complaints Committee shall be a

4. (1973) 1 SCC 216.
5. (2011) 4 SCC 266.

woman employed at a senior level at the workplace from amongst the employees. Proviso to the said section makes a reference to the eventuality of a senior level women employee not available, then the Presiding Officer shall be nominated from the other offices or administrative units of the workplace. Intention of the legislation is deduced from the words and language used in the said provision. There is no ambiguity in the language of Section 4(2)(a) of the said Act. The legislature has consciously used the word woman employee at a senior level and not a woman at the workplace senior to the officer against whom allegations of sexual conduct are made.

18. In the case of ***Smt. Shobha Goswami v/s. State of U. P. and 2 Ors.***[6] before the Allahabad High Court, the Petitioner therein had sought for quashing of the order passed by the Internal Complaints Committee on the ground that the said Committee was not constituted as required under Section 4(2)(a) of said Act. Contention therein was that the woman officer was required to be of a senior level rank, meaning thereby that she must be senior to the officer against whom the allegations were made. Negating the said contention, the Allahabad High Court observed as under :-

> *"In my opinion, there is nothing in the Scheme of the section which requires the lady member to be senior in rank to the officer against whom the allegation of sexual harassment are*

6. WRIT-A No.-31659 of 2015 decided on 27th May, 2015.

brought. The language of Section 4 of the Act only requires the lady member to be of Senior Level. What is to be noted is that the Committee consists of four members out of which three are women and one is from an NGO and is an independent member altogether. It is not shown or even submitted that Smt. Navisa Sharma, DGM, Planning does not belong to Senior Level. Therefore, the submissions of Shri Ojha per se have to be rejected."

19. The Government of India Ministry of Personnel, Public Grievances and Pension Department of Personnel & Training Establishment A-III Desk, Office, referring to the decision of the Allahabad High Court issued Office Memorandum dated 9th September, 2016, in respect of matters pertaining to seniority of Chairman of the Complaints Committee :-

"F. No. 11013/2/2014-Estt.A-III
Government of India
Ministry of Personnel, Public Grievances and Pension
Department of Personnel & Training
Establishment A-III Desk

North Block, New Delhi-110001
Dated: 09.09.2016

OFFICE MEMORANDUM

Subject: Prevention of Sexual Harassment of working women at workplace - Seniority of the Chairperson of the Complaint Committee-regarding.

The undersigned is directed to refer to the DOPT OM no. 11013/2/2014-Estt.A-III dated 16 July, 2015 as the Para 1 of the Guide attached to the OM, it was clarified that the Complaints Committee set up to inquiry into charges of sexual harassment should be headed by a women and at least half of its member should also be women. In case a women officer of sufficiently senior level is not available in a particular office, an office from another officer may be so appointed. It was also indicated that to prevent the possibility of any undue pressure, the Complaints Committee should also involved a third party either NGO or some other body which is familiar with the issue of sexual harassment.

2. The issue of legality of a committee conducting inquiry against an officer

against whom there are allegations of sexual harassment but where the Chairperson happens to be junior in rank to the suspect officer has been examined. It is clarified that there is no bar either in the CCS (CCA) Rules or under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act. 2013 to the Chairperson of the Complaints Committee being junior to the suspect officer or the charged officer. Hon'ble Allahabad High Court has in Smt. Shobha Goswami vs State of U.P. And 2 Ors, in WRITA No.-31659 of 2015 observed as follows:

> "In my opinion, there is nothing in the Scheme of the section which requires the lady member to be senior in rank to the officer against whom the allegation of sexual harassment are brought. The language of Section 4 of the Act only requires the lady member to the Senior Level".
>
> This also does not in any way cause any prejudice to the charged officer.

3. Further, to ensure fair inquiry, Ministries/Departments may also consider transferring the suspect officer/ charged officer to another office to obviate any risk of that officer using the authority of his office to influence the proceedings of the Complaints Committee.

4. Hindi Version will follow.

(Mukesh Chaturvedi)
Director (E)

Tel: 2309 3176"

20. In the wake of the above, the Office Memorandum which would apply to the inquiries conducted in the work place of Respondent No. 1 is the Office Memorandum dated 9th September, 2016 and not the Office Memorandum dated 21st December, 2022. Respondent No. 1 in Paragraph No. 6 of its Affidavit-in-Reply dated 20th September, 2025 has stated that the Presiding Officer of Respondent No. 2 is in the same grade as the Petitioner. Though the Petitioner has attempted to raise a dispute about the *interse* seniority between the Petitioner and the Presiding Officer, however the rejoinder filed by the Petitioner does not dispute the Presiding Officer of Respondent No. 2, being employed at a senior level

at the workplace.

21. Dr. (Smt.) Jeeva Philip is a member of Respondent No. 2 appointed under Section 4(2)(c) of the said Act. Respondent No. 1 in its Affidavit-in-Reply has stated that Dr. (Smt.) Jeeva Philip, Designation- ENT Specialist, is a independent medical professional having her own private practice and a person having experience in sexual harassment issues. Respondent No. 1 has further stated that Dr. (Smt.) Jeeva Philip is not an employee of Respondent No. 1. Objection of the Petitioner to the appointment of Dr. (Smt.) Jeeva Philip, essentially is based on the agreement dated 25th July, 2024 executed between Respondent No. 1 and Dr. (Smt.) Jeeva Philip, by which she has agreed to be a visiting ENT Surgeon to give ENT consultation. Neither the said agreement indicates any employer-employee relationship between Dr. (Smt.) Jeeva Philip and Respondent No. 1 nor has the Petitioner placed any such material on record to rebut Dr. (Smt.) Jeeva Philip being a person familiar with the issues relating to sexual harassment. So also, the Petitioner has not pleaded of any prejudice specifically caused to him, by her inclusion in the Committee.

22. Objection to the other member of Respondent No. 1 Smt. K. S. Kalpanadevi is on the ground of she being the neighbour of the father of the aggrieved woman, thus possibility of she influencing Respondent No.

2 cannot be ruled out. Such objections are not found in the memo of Petition and the same is raised in the Affidavit-in-Rejoinder. Apart from a bald statement of Smt. Kalpanadevi being a neighbour of the aggrieved woman, there is no material placed on record to even remotely indicate presence of Smt. K. S. Kalpanadevi having influenced Respondent No. 2.

23. In the case of ***G. Sarana v/s. University of Lucknow***[7], the Petitioner having participated in the selection process, upon his failure to get appointment challenged the selection result, pleading bias against the members of the Selection Committee. The Hon'ble Supreme Court in Paragraph No. 15 has observed as under :-

> *"15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood or bias as despite the fact that, the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution. of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not, now open to him to turn round and question the constitution of the Committee. This view gains strength from a decision of this Court in Manak Lal's case (Supra) where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:-*
>
> > *'9……It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."*

7. (1976) 3 SCC 585.

24. In the case of ***P. D. Dinakaran v/s. Judges Inquiry Committee***[8], the Hon'ble Supreme Court in Paragraph No. 86 has observed as under :-

> *"86. In conclusion, we hold that belated raising of objection against inclusion of respondent No.3 in the Committee under Section 3(2) appears to be a calculated move on the petitioner's part. He is an intelligent person and knows that in terms of Rule 9(2)(c) of the Judges (Inquiry) Rules, 1969, the Presiding Officer of the Committee is required to forward the report to the Chairman within a period of three months from the date the charges framed under Section 3(3) of the Act were served upon him. Therefore, he wants to adopt every possible tactic to delay the submission of report which may in all probability compel the Committee to make a request to the Chairman to extend the time in terms of proviso to Rule 9(2)(c). This Court or, for that reason, no Court can render assistance to the petitioner in a petition filed with the sole object of delaying finalisation of the inquiry."*

25. Inquiry was conducted by Respondent No. 2 under Section 11 of the said Act. Inquiry Report was submitted under Section 13 of the said Act. Section 18 of the said Act reads as follows :-

> "***18. Appeal.***-*(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the Court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.*
> *(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.*"

26. Petitioner if aggrieved by the Inquiry Report of Respondent No. 1, could have availed remedies against the same under Section 18 of the

8. (2011) 8 SCC 380.

said Act. Petitioner has not availed the said statutory remedy.

27. Another contention raised by the Petitioner is that the proceedings initiated against him under the said Act were required to be dropped in view of the conclusions of Respondent No. 2 in its report dated 4th October, 2024. We are unable to accept the said contention. Petitioner has made an attempt to misread the said report dated 4th October, 2024. Paragraph No. 14 of the Report dated 4th October, 2024 reads as follow :-

> *"14. Mr. Ghosh on behalf of her daughter mentioned in her statement that they want to know about the action taken or being taken against him for his un-punishable crimes (Exhibit-38).*
>
> *The ICC meticulously analyzed all the evidence, witness, testimony and cross-examination. After, a thorough review of evidence and testimonies, the ICC findings are as follows :*
>
> *There is not sufficient evidence to support the complainant's allegations.*
>
> *As a sole testimony is a prosecutrix, in a criminal case involving sexual harassment and molestation would suffice it is otherwise reliable, there is no justifiable reasons not to accept the sole testimony of a victim of sexual harassment and molestation there is a standard of proof required is that, preponderance of possibilities and not proof of beyond reasonable doubt. Hence, the preponderance of possibilities is very high.*
>
> *Based on the above, finally the committee concluded that the allegations levelled by aggrieved woman against Dr. Shyam Bihari sole testimony of prosecutrix, sufficient for next course of action.*
>
> *Submitted to competent authority."*

28. We therefore conclude that the Petitioner has failed to make out

any case of any legal defect, much less any defect in the constitution of Respondent No. 2(ICC). Constitution of the Respondent No. 2 (ICC) is in accordance with the provisions of the said Act. Material placed on record indicate Respondent No. 2 having complied with the principles of natural justice as also with the other requirements of the service rules i.e. NPCIL (Disciple & Appeal) Rules, 1996 while conducting the Inquiry.

29. Records placed in this Petition indicate Petitioner having participated in the proceedings before Respondent No. 2 (which was constituted on 29th July, 2024) till the conclusion of the Inquiry, without any objection to the constitution of Respondent No. 2. There is no material on record to suggest participation of the Petitioner in the said Inquiry was under protest. It is by the present Petition filed on 22nd August, 2025, that the Petitioner for the first time has chosen to raise objection to the constitution of Respondent No. 2. Participation of the Petitioner in the said inquiry without demur, gives an impression of the Petitioner having waived his right to object to the constitution of Respondent No. 2 and having acquiesced in the constitution of Respondent No. 2. Having received an unfavourable result in the said Inquiry, the Petitioner is estopped from questioning the constitution of Respondent No. 2. Useful reference can be made to the decisions of the Hon’ble Supreme Court and this Court :-

a. In the case of ***Madanlal v/s. State of J & K***[9], the Hon'ble Supreme Court in Paragraph No. 9 held as under :-

> *"**9.** Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285 : 1986 SCC (L&S) 644 : AIR 1986 SC 1043] it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."*
>
> *(emphasis supplied)*

b. In the case of ***ABP Pvt. Ltd. v/s. Union of India***[10], the Hon'ble Supreme Court in Paragraph Nos. 40 & 41 has observed as follows :-

> *"40) On perusal of the materials available, we are satisfied that the Wage Boards have functioned in a fully balanced manner.*

9. 1995(3) SCC 486.
10. 2014 (3) SCC 327.

Besides, it is a fact that the petitioners had challenged the constitution of the Wage Board before the High Court of Delhi, admittedly, the High Court had declined to grant interim relief. The said order declining/refusing to grant interim relief attained finality as the petitioners did not choose to challenge it before this Court. Thereafter, the petitioners have participated in the proceedings and acquiesced themselves with the proceedings of the Board. In view of the fact that they have participated in the proceedings without seriously having challenged the constitution as well as the composition, the petitioners cannot now be allowed to challenge the same at this stage. More so, it is also pertinent to take note of the fact that the petitioners herein opted for challenging the independence of the nominated independent members only after the recommendations by the Wage Boards were notified by the Central Government.

41) Hence, the attack of the petitioners on the independence of the appointed independent members by saying that they were not sufficiently neutral, impartial or unbiased towards the petitioners herein, is incorrect in the light of factual matrix and cannot be raised at this point of time when they willfully conceded to the proceedings. Consequently, we are not inclined to accept this ground of challenge."

(emphasis supplied)

c. This Court in the case of ***Kishore v/s. Joint Commissioner and Vice Chairman***[11], in Paragraph No. 6 has held as under :-

"6. We would have considered these objections had it been the case that the petitioner had not taken any part in the proceeding before the Scrutiny Committee in the present case. here, the petitioner participated in the proceedings before the Scrutiny Committee and when he found that the Scrutiny Committee's decision was against him, it dawned upon the petitioner that the constitution of the Committee was improper. A person, who has taken a chance in this way, it is settled law, cannot be permitted to turn around and raise a challenge which ought to have been made before his participation in the process. Therefore, we are not inclined to entertain any challenge to the validity of section 6 of the Act of 2000 and Rule 9 of the Rules, 2003, raised herein. Similar is the view taken by another Division Bench of this Court in the case of Ajaykumajr Yadaorao Nikhare vs. State of Maharashtra and ors., 2011 Mh.L.J Online 92 = 2012(1) ALL MR 280. The view commends to us. Accordingly, the constitutional challenge is rejected."

11. 2020(6) Mh.LJ. 117.

(emphasis supplied)

30. In the case of ***Punjab and Sind Bank*** (*supra*) relied by Dr. Warunjikar, the Petitioner therein had raised the objection to the constitution of committee before the ICC, which objections were dealt by the ICC in its report. Similarly, the facts of the case in ***Dr. A. Manimekalan*** (*supra*), are neither similar nor identical to the case of the Petitioner herein. The Office Memorandum dated 9th September, 2016 was not placed before the Single Judge of the High Court of Madras.

31. Respondent No. 1 vide said Notice has called upon the Petitioner to offer/make representation/submission in writing to the Disciplinary Authority. Mr. Vishal Talsania submits that the said notice is issued in terms of Clause No. 5 of the NPCIL (Disciple & Appeal) Rules, 1996. Said Clause No. 5 reads as follows :-

> *"5.0 ACTION ON INQUIRY REPORT*
>
> *5.1 After receipt of an Inquiry Report, the Disciplinary Authority shall where it agrees with the findings of the ICC & Inquiring Authority, forward or cause to be forwarded a copy of the Inquiry Report to the Complainant and Respondent Employee with the direction that the Complainant and Respondent Employee, may if they so desire, make any representation or submission in writing within 15 days of the receipt of the Inquiry Report.*
>
> *5.2 The Disciplinary Authority shall after consideration of the written representation or submission made by the employee, record its own findings on such charge, if the evidence on record is sufficient for the purpose.*
>
> *5.3 If the Disciplinary Authority having regard to its findings on all*

or any of the articles of charge is of the opinion that any of the penalties specified under the provisions of NPCIL (Discipline & Appeal) Rules should be imposed on the employee, it shall, notwithstanding anything contained in any other provisions make an order imposing such penalty.

5.4 If the Disciplinary Authority having regard to the findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned."

32. Petitioner would thus have the opportunity to meet, explain and controvert the matter on merits. Useful reference can be made to the decision of the Hon'ble Supreme Court in the case of ***Managing Director, ECIL, Hyderabad And Others v/s. B. Karunakar And Others***[12] in Paragraph Nos. 26 and 27 has observed as under :-

"*26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority,*

12. (1993)4 Supreme Court Cases 727.

that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

27. *It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose a penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.*"

33. For the above said reasons, no case is made out for interference of this Court. **This Writ Petition is devoid of merits, as such dismissed**. Rule discharged.

34. No order as to costs.

[ASHWIN D. BHOBE, J.] **[RAVINDRA V. GHUGE, J.]**

GITALAXMI KRISHNA KOTAWADEKAR

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