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WP-5625-2020

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT PETITION No. 5625 of 2020*Versus**UNION OF INDIA AND OTHERS*

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Appearance:

*Shri Yogesh Chaturvedi - Advocate for the petitioner.**Shri M.S. Jadon - Government Advocate for the State.**Shri Praveen Kumar Newaskar - Dy. Solicitor General of India for
respondent No.1.**Shri Anil Sharma - Advocate for respondent No.2.**Shri Siddharth Sharma - Advocate for respondents No.6 to 9.*
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RESERVED ON : 02/07/2025

DELIVERED ON : 15/7/2025

ORDER

The petitioner, by way of present petition under Article 226/227 of the Constitution of India, has not challenged any particular order, rather is seeking directions to provide a safe and fearless environment at workplace in the Laxmi Bai National Institute of Physical Education (LNPIE) Gwalior/respondent No.2, where the petitioner, who was posted on the post of Yoga Instructor, was sexually harassed by respondent No.6/Charged Officer and also for enforcement of her fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India.



FACTS

2. Short facts of the case are that the petitioner has been working on permanent post of Yoga Instructor (Female) in respondent No.2(i) Institute since year, 2015. In the month of March, 2019 at around 7 AM, when the petitioner was going to take a Yoga class of the students, the respondent No.6/Charged Officer stopped her and started touching and putting hand on her lower back. Startled with the attitude of the respondent No.6/Charged Officer, the petitioner ran away from the spot and as the respondent No.6/Charged Officer was the Vice-Chancellor didn't made any complaint to anyone, but again on 28.08.2019, respondent No.6/Charged Officer called the petitioner in his Office and informed her that the present respondent No.8/Dr. Indu Bora had made a complaint against her regarding he not completing the formalities to take leave and to suppress the said complaint asked for sexual favours. This time, the petitioner thought that if breaks are not put to the behaviour of respondent No.6/Charged Officer, then the situation in future might get worse, therefore, on 14.10.2019, the petitioner made a complaint in the Department of Sports wherein it was alleged that the present respondent No.6 (Shri Dilip Kumar Dureha), who was Vice-Chancellor of LNIPE, Gwalior, was subjecting her to mental/physical harassment. The Department of Sports vide its letter dated 30.10.2019 sought comments of the respondent No.6 /Charged Officer on the allegations levelled by the complainant/petitioner, which were denied vide communication dated 13.11.2019. Thereafter, the complaint was referred to the I.C.C. (Internal Complaints Committee) constituted in the LNIPE,



Gwalior, but the inquiry could not be completed by the said Committee due to complete lock-down in wake of Pandemic of Covid-19. Meanwhile, with the approval of MOS(IC), a fresh committee vide order No.70-1-10/2018-SP-VI, dated 29.05.2020 was decided to be set up with following composition:-

S.N.	Name	Designation	Department	Position held
1	Smt. Usha Sharma	Secretary	Youth Affairs	Chairperson
2	Shri Asit Singh	Joint Secretary	Youth Affairs	Member
3	Dr. Megha Sahu	Asst. Professor	LNIPE	Member
4	Ms.Sumita Hazarika	Advocate on Record	Supreme Court of India	Member
5	Smt. GS Chitra	Deputy Secretary	Youth Affairs	Member Secretary/Convenor

3. The relevant extract of the text of the complaint dated 14.10.2019 made by the petitioner/complainant are as under: -

- *is being mentally and emotionally harassed by the VC, LNIPE. The VC, LNIPE threatens her by deliberately damaging and tarnishing her personal file and academic profile with the intention to physically harass her.*
- *She has also alleged that the Head of Department of Yoga, LNIPE and an Assistant Professor on the behest of the VC, LNIPE are tampering with the official documents and creating fake documents to put pressure on her.*



- *That this is not the first instance where the VC, LNIPE has misused his position (Present tenure as well as past tenure)*
- *The VC often calls women officer/officials to his room late in the evening and the main CCTV camera is switched off and a hidden camera is used by him. He also doesn't allow mobile phone in his room.*
- *There is no lady official working in the Olo the VC, LNIPE.*
- *He threatens to spoil the personal files, if any objection is raised or if not attending such meetings.*
- *has been handling all this alone in Gwalior while her family is in Delhi.*
- *She also feels that her life is under threat and she felt insecure at the LNIPE campus.*

4. Comments of the respondent No.6/Charged Officer were sought by the Department of Sports vide letter dated 30.10.2019. The contents of Charged Officer's reply forwarded by the Registrar to the Committee vide letter dated 13.11.2019 are reproduced as under:

1. "The para-wise comments/rebuttal is submitted as follows:

*(a) The contentions of .
regarding her mental and emotional torture are absolutely,*



baseless, wrong, wishful, imaginary and with an ulterior motive not only unethical but with a motive to tarnish my personal and social reputation. The involvement of an Assistant Professor of the Department on my consent is also an imaginary and baseless idea of

(b) I as the Vice Chancellor, Head of the Institute have never misused my appointment and always have a totally fair, transparent and justified dealing/ conduct with everyone.

(c) I have laid down a proper procedure to interact with students, faculty members or anyone else, no lady is allowed to come to my office alone, whenever any lady comes to my office minimum two individuals are always present in my office, this fact can be verified from the CCTV footage installed in my office. I never call anyone leave aside the ladies to my office late in the evenings, the contents are not only absolutely wrong but are mischievous. We have a central designated conference hall in the Institute all the conferences are conducted in this hall at a nominated time only.

(d) Prior to meeting of Board of Management, I came to Jonow through the reliable sources that some kind of conspiracy with nefarious designs is being hatched against me to defame me and the Institute, anticipating this I had



reported the matter to Superintendent of Police, Gwalior verbally on 14 October, 2019, followed by in writing on 16 October 2019. My fears were proved to be true when this mischievous news was published in a local newspaper on 21 October 2019, the date on which Board of Management and Finance Committee meetings was held

2. It will be absolutely relevant and pertinent to mention here that is a habitual/perpetual offender regarding her professional functioning. the leave details annexed with my comments are the testimony to this effect. Out of her total 4 years 8 months (approx) she has availed 113 days EL, 50 days HPL, 263 days LWP and 9 days 21 October, 2019 to till gave medical leave for which sickness certificate has not been submitted (thus making it total 435 days of various types of leave) excluding CL (Casual Leave).

3. It would also be pertinent to mention here that Mrs. is not having cordial relations with her co-employees and the authorities have been receiving various complaints made by her against her co-employees and various complaints against her made by co-employees.

4. For the first time in her service career she was assigned the duties of warden girls hostel for that too she has expressed her unwillingness and wants to be relieved of the



assigned bonafide government duty. I would like to submit with total authority that all my faculty members, coaches and other employees are fully committed in fact in some cases there are teachers who are taking minimum 36 classes every week and are over loaded reason being the shortage of faculty staff but nobody has ever complained or show unwillingness.

5. I being the Head of the Institute it is my moral and official duty to run the Institute in the best possible manner, for which each and every member of the Institute is supposed to contribute but rather than contributing has been resorting to defame the Institute as well as the Vice Chancellor, which warrants a legal action against her Le. Defamation Suit."

5. The final meeting of the I.C.C. was held on 18.09.2020. The I.C.C. ensured that enquiry was being conducted as per the prescribed guidelines. Detailed discussions were held and the Charged Officer was given an opportunity to cross-examine the witnesses. The minutes of the meetings, the document submitted by the complainant at various occasions including the complaint forwarded to the Committee, the briefs dated 01.07.2020 and 16.09.2020 respectively submitted by the complainant/petitioner were also provided to the respondent No.6/Charged Officer. He was given sufficient time to submit his written reply.

6. The respondent No.6/Charged Officer upon his request to cross-examine the complainant was asked to provide a questionnaire (questions



which he wanted to put) to the complainant/victim through the I.C.C., but no reply to the aforesaid questionnaire was received by the I.C.C. The first meeting of the ICC was held through VC on 10.06.2020 wherein it was decided to call the complainant to be heard in person to know her version. A second meeting was held on 23.06.2020 wherein the petitioner/complainant appeared and deposed her version. She was even asked by the Committee to give in writing the submissions made by her before it, which were submitted on 01.07.2020 wherein her version was as under:

- *Since last one year, i.e., from March,2019 when she objected to the VC's inappropriate behavior of touching her back below the waist while she was on her way to take Yoga class for the student at 7 am in the morning in the LNIPE Campus, has been subjecting her to mental and physical harassment;*
- *He, with malicious intent, despite her repeated refusal, is forcing her to accede to his advances by threatening her of removal from the employment and spoiling her personal file;*
- *Compelling other faculty members of LNIPE to act against her;*
- *Fabricating administrative issues with the ulterior motive for wreaking vengeance against her with the view to threaten her for lodging a complaint against him;*



- *He uses harsh, intimidating, threatening language and tone while interacting with her;*
- *Victimizing her for making a complaint against him;*
- *Because of his behavior she is suffering from acute anxiety state and is unable to return to her work;*
- *Given his official position, the LNIPE management has been unsupportive and obstructive to her complaints and grievances;*
- *Non-setting up of Internal Complaints Committee in LNIPE;*
- *Upon questioning the non-setting up of the ICC, setting up of ICC with officers who are either amenable or have personal relationship with him and are biased towards her with a view to influence the enquiry;*
- *He removed the CCTV recordings and footages and did not give the same to her when asked for;*
- *He controlled the CCTV cameras from his office."*

7. In the third meeting of the ICC held on 06.07.2020, the Charged Officer/respondent No.6 was heard. The submissions made by him were as under:

- *he mentioned that he belongs to Banaras Hindu*



University (BHU) and joined LNIPE on 30.09.2015 and his tenure is due to end in September, 2020.

- *he said . has had troubled relationship with her Head of the Department (HOD) and her colleagues at LNIPE especially Ms. Payel Das.*
- *He categorically denied happening of the March 2019 incident. He said that the incident is creation and an imaginary story.*
- *He further submitted that in her complaint dated 14.10.2019 clearly indicated that the VC is putting pressure on her with the intension to sexually/physically harass her. Whereas she claims that the incident had already happened in March, 2019 and is making complaint one year later in 2020. He also submitted that if such incident happened in March, 2019 as stated by , then how she, on 31st August 2019 can write to him saying that she treats him as a father figure.*
- *He further submitted that between March 19 and October 19, had made several complaints to various authorities and nowhere has she made a mention about the March 19 incident and suddenly in her complaint dated 14-10-2019 she mentions that he had misbehaved with her.*



- *He further submitted that the complaint is motivated and a conspiracy against him so as to defame him and so that he does not get extension of tenure at LNIPE.*
- *He further questioned as to why _____ has not approached the police if such incident happened.*
- *He submitted that he has never met her personally.*
- *He submitted that _____ is irregular in attending the office; she has taken 1250 leaves in her 5 years of service.*
- *He has got CCTV installed in his office and also does not meet any girl student or lady staff alone.*
- *He alleged that _____ is trying to misuse law.*
- *he has a witness to support his claim that Ms. _____ is conspiring against him but he does not want to disclose the identity of the witness at this point in time.*
- *he has filed a complaint dated 16-10-2019 in the nearest police station indicating that it is likely that some kind of conspiracy is being hatched against him.*
- *the matter at BHU was not related to sexual harassment, it was related to some athlete's issues and he has been given clean chit in that case.*
- *Further, he submitted that he never called her to*



his room; in fact, she was on leave in August. She came to join duty on 28 August 2019 and she might have signed the register at that time but he never met her on that day/date.

- *Further regarding March'19 incident, he submitted that since did not mention exact date and place, he is not able to recall whether or not he met her. Since many of the staff of LNIPE, students, almost everyone go for jogging, walking and other activities in the morning in the campus at one particular stretch, so it is not possible for him to say whether he met her or not.*
- *He has not initiated any inquiry against Ms. and that the Disciplinary Committee of the institute headed by Shri. Vinay Pandey, is in-charge of all enquiries.*
- *since the CCTV Camera footage is available for a limited period, it may not be possible for him to make available the same. However, he said he will look into it.*
- *ICC, LNIPE never summoned him because of the Covid 19 situation.*
- *On the claim of the complainant that there was no ICC set up in LNIPE, he submitted that he will make*



available the details of ICC of the last 5 years.

- *Regarding the contention of the complainant that the ICC was constituted by people who are either close to him or have some kind of influence of the VC, he submitted that as a Vice Chancellor of the Institute, the whole Institute can be influenced by him. He said that all the Members of the Committee are qualified and being a legal matter, they are not influenced by anyone.*
- *Observations of the VC on the submission of the witness in the meeting held on 28/07/2020 and written brief dated 23-08-2020 submitted by the VC.*

8. The fourth and fifth meetings of the ICC were held on 28.07.2020 and 01.09.2020 respectively wherein the witnesses of the complainant were heard, who were cross-examined by the respondent No.6/Charged Officer.

9. After conclusion of the hearing, the complainant/petitioner and the respondent No.6/Charged Officer were asked to submit their written statements vide e-mail dated 14.09.2020, to which the petitioner submitted her written reply vide letter dated 16.09.2020, which was given to the respondent No.6/Charged Officer and the respondent No.6 submitted his written reply on 16.09.2020 which was also forwarded to the complainant/petitioner.

10. Prior to completion of the aforesaid inquiry, the petitioner on 14.10.2019 herself forwarded a copy of the complaint to respondents No.4 and 5, who had assured to take appropriate action against respondent



No.6/Charged Officer, but receiving of the said complaint was not given to the petitioner. On 21.10.2019, the news even was published in the daily newspaper.

11. Respondent No.8/Smt. Indu Bora, H.O.D., acting as an accomplice of intentions of respondent No.6 made a false remark on the leave application of the petitioner and made a false complaint against her before respondent No.10/Payal Das, Assistant Professor, Yoga Department. On the said complaint, a show cause notice was given to the petitioner and when she approached in pursuance to the said show cause notice before them and request was made to show original copy of her leave application, the respondent No.6 to 9 denied the request just to harass the petitioner, as she was having copy of leave application with remarks of leave sanctioned, getting the intentions of the respondents clearly, the petitioner made a complaint against respondent No.8 on 31.08.2019.

12. The petitioner though was appointed under the category of non-teaching staff, but was given the work of teaching along with additional duty of warden of girls' hostel, to which respondent No.8 had made a fuss that she had got promotion by getting favours from respondent No.6 and by bribing him, therefore, the petitioner on 13.09.2019 moved a written request to relieve her from the additional duty of warden of girls' hostel, but to her surprise, respondent No.7 (Janak Singh Sekhawat, Registrar) gave a letter dated 27.09.2019 to the petitioner and instead of relieving her, again made allegation that she had not taken permission to leave the headquarter. The aforesaid letter was responded by the petitioner on 03.10.2019 and had



denied all the allegations made therein were denied. In the letter dated 27.09.2019, respondent No.7 had also informed the petitioner that present respondent No.10/Payal Das had made a complaint about her misbehaviour with the senior staff. A reply was forwarded by the petitioner to the aforesaid letter on 01.10.2019 wherein she had specifically mentioned that she was subjected to physical harassment, mental torture, misbehaviour, abuse and she had been threatened no right to speak and there was no equality in the Institute for her and as she is facing the said terrible situation for long, she is looking forward positively for some favourable response so that she can focus on her work.

13. Instead of resolving the dispute, the complaint made by respondent No.10/Payal Das was forwarded to a Six-Member Committee which was formed by respondent No.6/Charged Officer, the Vice-chancellor where she was noticed to make her appearance on 21.11.2019 vide letter dated 14.11.2019. The petitioner replied to the aforesaid letter on 18.11.2019. The very act of the respondents confirmed that since the petitioner had raised a complaint before the Ministry of Women Commission and Human Rights Commission regarding sexual harassment, therefore, the respondent No.6/Charged Officer was using the Committee as a tool to implicate the petitioner on the basis of a false complaint made by respondent No.10/Payal Das.

14. Another glaring fact, which the petitioner came through when she applied under the RTI to provide information with regard to the Committee so formed to inquire about the complaint made against her, to which vide



letter dated 31.12.2019, it was informed that no order was issued from the Office of Vice-Chancellor, which abjectly implied that the Committee so formulated was not under the UGC Guidelines. Thereafter, the petitioner made several complaints to National Human Rights Commission (N.H.R.C.), P.M.O. Office and C.M. Helpline, but no action thereupon was taken, so the petitioner on 18.02.2020 submitted an application for leave mentioning that she is under threat and if she continues her job, then respondent No.6/Charged Officer, misusing his power, can again harass her, therefore, she will join the institute after her complaints are being redressed, but no action was taken by respondent No.7.

15. Getting no relief from any forum, the petitioner then filed a private complaint/application under Section 156(3) of CrPC before the Judicial Magistrate First Class, Gwalior to lodge an F.I.R. against respondents No.6 to 10, which was dismissed vide order dated 02.11.2021 with a liberty to the petitioner/complainant to pursue her a case under Sections 200 & 202 of CrPC before the competent Court. Against the said order, the petitioner preferred a petition under Section 482 of CrPC before this Court, which was also dismissed vide order dated 06.01.2022. Against which, the petitioner went before the Apex Court in SLP(Crl.) No.1674 of 2022, wherein vide order dated 05.08.2022, the said SLP was allowed and directions were issued to the police to register a crime, thus, vide Crime No.508 of 2022, Police Station Gola Ka Mandir, Gwalior registered a crime against respondents No.6 to 10 under Sections 354-A, 509 and 120-B of IPC.

16. Even though, crime was registered against respondents No.6 to 10,



no action was taken under the provisions of the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** and the petitioner was not provided safe working environment; thus alleging the action to be in contravention of the provisions of Act of 2013 and the law laid down by the Apex Court in the matter of **Vishaka & Others v. State of Rajasthan & Others** reported in (1997) 6 SCC 241, the present petition has been filed.

ARGUMENTS

17. Learned counsel for the petitioner has argued that the Committee while arriving at conclusion has found that the petitioner was subjected to unwelcomed sexually determined behavior of respondent No.6/Charged Officer (Shri Dilip Kumar Dureha, Vice-Chancellor, LNIPE, Gwalior) in March, 2019, which comes under the definition of Rule 3(C) of the **Central Civil Services (Conduct) Rules, 1964** and provisions of Section 3 of the Act of 2013. Apart from the aforesaid, the Committee has further observed that the conduct of the respondent No.6/Charged Officer against his junior female employee was offensive to her dignity and such behavior which amounts to unbecoming of the head of the institute and was a kind of behavior was not expected from a superior officer towards a young, very junior subordinate lady officer.

18. It was further argued that in the inquiry report, it was further held that respondent No.6/the Charged officer had tarnished the modesty and image of a subordinate lady officer to the extent that she suffered great mental agony & harassment and was unable to return to her place of duty



since the day, she complained which establishes the fact that respondent No.6/Charged Officer didn't ensure safe working environment to women in their work-place, which amounts to violation of the Rules.

19. Learned counsel has also argued that the Committee has also found that the various administrative issues raised against the complainant/petitioner and not providing fair and just redressal of her grievances and complaints, not providing her opportunity to enable her to return to her work-place despite her repeated request proves that she was subjected to threat of detrimental treatment in her employment, interference with her work and creating an intimidating, offensive and hostile work environment for her and humiliating treatment affecting her health and safety, thus, the charges against respondent No.6/Charged Officer were held to be proved, but no action was proposed or taken against him under the Act of 2013.

20. Learned counsel, while referring to para 13 of the report, has further argued that the I.C.C. set-up in LNIPE, Gwalior i.e. respondent No.2 was a mere farce and didn't deal with the complaint dated 14.10.2019 in a right perspective and the said inaction on the part of the LNIPE has deprived the petitioner of timely justice, which proves the allegation that the LNIPE administration was being controlled by the respondent No.6/the Charged Officer.

21. It was further argued that with regard to issuance of various show-cause notices to the petitioner whereby creating a hostile work environment and inaction to address her concern with regard to safety in campus was also



found proved against respondent No.6 and it was held that he was victimizing the petitioner for raising voice against the head of the institute.

22. Learned counsel for the petitioner has also argued that the contentions of the respondents that the petitioner's complaint of sexual harassment made by her was due to the administrative action taken against her, were also negated and it was held that a small tiff between the petitioner/complainant and respondent No.10/Payal Das could have been resolved by counselling and reprimanding both the Officers and there was no need to refer it to a six-member committee headed by a Professor and as the said incident was blown out of proportion, which is indicative of the fact that the administration of LNIPE was also not inclined to let go off the opportunity to victimize the petitioner.

23. Further referring to para 13.4 of the report, it was argued that though a show cause notice was issued to the petitioner on a complaint of respondent No.10/Payal Das, but no action was taken on a complaint made by the petitioner and besides this, so far as the grant of sanctioning of leave for the Institute employees is concerned, the Authority was Registrar, which came in the statement of respondent No.8/Smt. Indu Bora, but the leave application of the petitioner in the month of August, 2018 was marked to respondent No.6/Charged Officer and this fact proved the charge made against respondent No.6 that he has misused the official position to intimidate the petitioner and created a hostile work environment, thus, it was proved that the petitioner was even harassed in the month of August, 2018.

24. Learned counsel for the petitioner has further pointed out that



though CCTV cameras were installed in the premises, respondent No.6 showed his inability to provide the CCTV footages, which was viewed seriously by the Committee and it was observed that he doesn't seem to be willing to make any effort to retrieve the recordings, rather he is not even ready to talk about the recordings at all when was asked for, coupled with the fact that in the statements made by the Shri Tomar, Camera In-charge, he had raised doubt that the respondent No.6/Charged Officer could have tampered and tinkered with the CCTV recordings, as alleged by the petitioner.

25. On the basis of the aforesaid arguments, it was submitted that appropriate action under the provisions of Act of 2013 against respondents No.2/Institute and 6/Charged Officer and even the police authorities, who had kept a blissful silence over the complaint of the petitioner till they were thrashed by the Apex Court for registration of F.I.R. against the respondents No.6 to 10 is required ordered, to give a message to public at large that such action at a workplace would not be tolerated and would be punished. To bolster his arguments, reliance was placed in the matter of **Global Health Private Limited vs. Local Complaints Committee, District Indore & Others** reported in (2019) 4 MPLJ 424.

26. On the other hand, Shri Anil Sharma - learned counsel for the respondent No.2 had argued that respondent/Institute is 100% resident co-educational deemed to be University having 04 Girls' Hostel and many other residential premises in which families are residing and such incident had never been reported. Further, the present dispute is only between the petitioner and respondent No.6, which does not mean that there is no safe



environment in the respondent/institute in fact, the Institute has all its safety mechanism and zero tolerance policy for any such activity, which is evident from the fact that the complaint of the petitioner regarding sexual harassment by respondent No.6 was given due and immediate cognizance by the competent authority of respondent Ministry.

27. It was further argued that the prayer of the petitioner to treat report of sexual harassment Committee as misconduct under service rules and initiate action for misconduct against respondent No.6 would fall under the jurisdiction of Central Administration Tribunal and as present institute falls under the domain of Union of India and the rules thereof are applicable to the employees of the Institute, for the said relief, the petitioner may approach the Tribunal and no relief, in that regard, can be granted to her.

28. It was also argued that petitioner's prayer to initiate action against respondent No.6 as per dictum of Hon'ble the Apex Court as well as service rules, the Internal Complaints Committee (ICC) of respondent No.1/Ministry has already taken due cognizance to her complaint and had conducted an inquiry as per the norms and procedure, wherein the petitioner had also participated and as such, the Committee can be deemed to be inquiring authority, hence, action thereupon can only be taken by the Disciplinary Authority and since the respondent No.6/Charged Officer is no more an employee of respondent/Institute, who was appointed as Vice-Chancellor for 05 years and on completion of his tenure on 29.9.2019, he has left the institute and had joined the Banaras Hindu University, Varanasi, no action by respondent No.2/Institute can be taken against respondent No.6.



29. It was further submitted that the respondent No.1, Ministry vide letter dated 15.04.2021 had informed the respondent that the Ministry had examined report and had sent it to the Vice Chancellor, BHU, Varanasi for taking necessary action. It was, thus, submitted that since already inquiry has been completed and has been forwarded to the BHU, which is competent to take action against respondent No.6 and also since the FIR has been registered against respondents No.6 to 10, nothing survives in the petition for further adjudication, therefore, deserves to be dismissed.

30. Learned counsel for the respondent No.6, in furtherance of the arguments as advanced by learned counsel for respondent No.2, has argued that the reliefs sought by the petitioner are vague and the Committee against whom the relief was sought and allegation were levied has not been impleaded as party. Thus, the petition deserves to be dismissed.

31. It was further argued that the Committee was already constituted and had submitted its report and as he has nothing to do with the said Committee, therefore, the allegations of him affecting enquiry doesn't survive.

32. It was further argued that so far as the contention of petitioner that no action has been taken on her complaint is concerned, already the Committee constituted under the Act of 2013 and had submitted its report and so far as no action was taken on the complaint made against respondent No.10 is concerned, the Committee had been constituted, which will take its own course and in relation to the fact finding enquiry, no interference is enquired, as the said Committee is not a party before this Court and these



factual aspect cannot be looked into.

33. It was further submitted that so far as the contention that safety environment at work-place be provided, the institution is having large number of employees and girl students and since no-one had made such complaint, except the petitioner and the veracity of her complaint is still under enquiry, the petition has no force and it is required to be dismissed.

34. Learned Govt. Advocate for the respondents/State has also submitted that since a criminal case is already registered against respondent No.6 (also against respondents No.7 to 10), which is under investigation and as will it its own turn, the grievance of the petitioner since redressed, the petition be dismissed.

35. Heard counsel for the parties and perused the record.

DISCUSSION AND CONCLUSION

36. The Coordinate Bench in the matter of **Global Health Private Limited vs. Local Complaints Committee, District Indore** (*supra*) in paragraph No.9 has held as under:

"(A) Sexual Harassment at Workplace:

9. Before adverting to rival contentions, it is considered apposite to glance through the scope and dimensions of "sexual harassment at workplace" as perceived and crystalized in the shape of resolutions, sanctions and treaties at international platforms.

'Sexual harassment' is a cause of concern due to its universalization and outcome of unfavourable condition at



workplace. It is one of the most venomous problems that the society is facing today. In the fast developing world, there is increased participation of women in almost each and every walk of life and the profession. The statistics reveal that there has been tremendous hike in sexual harassment cases all over the world. Sexual harassment at workplace is an unscrupulous behaviour of sexual instinct which is inhuman. Modesty, dignity, ability, self esteem and respect are invaded shattering confidence of women at workplace.

Right to work with dignity and safeguard against the sexual harassment for women in fact is an essential component of the gender discrimination universally recognized basic human right. International community has expressed its serious concern about the challenge.

The United Nations has also reaffirmed its faith in securing and preserving the equal human rights of men and women to have better standards of life with freedom and dignity.

The Convention of the Elimination of all Forms of Discrimination against Women (CEDAW); one of the most comprehensive and dedicated initiative of the UN towards protection and empowerment of women came into force on 3rd September 1981. India has also signed the convention on 3rd July, 1980 and ratified it on 25th June, 1993 with a



declaration to eliminate violation of women's rights whether by private persons, groups or organizations.

CEDAW Convention has adopted intentional standards in relation to sexual harassment at workplace under various Articles with hallmark of basic human rights:

(a) the right to work is an inalienable right of all human beings;

(b) the right to protection of health and to safety in working conditions;

(c) the Convention committee recognized: sexual harassment as 'unwelcome sexually determined behaviour [such] as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands whether by words or actions. It further elaborates that "such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment."

The Fourth UN World Conference on Women in the year 1995 has prepared two important documents: Beijing Declaration and the Beijing Platform For Action professing to take all possible steps for elimination of all forms of



discrimination against women and remove all obstacles to gender equality and advancement of women empowerment to prevent and eliminate all forms of violence against women and girls.

The declaration included in its list of critical areas of concern “violence against women” and “inequality in economic” structures and policies, in all forms of productive activities. It also outlines specific measures that States should undertake to achieve the objectives set forth in the Beijing Declaration. The BPFA includes Sexual Harassment and intimidation in its definition of violence against women. It further states that “the experience of sexual harassment is an affront to a worker’s dignity and prevents women from making a contribution commensurate with their abilities.” Accordingly, the BPFA recommends that states “enact and enforce laws and develop workplace policies against gender discrimination in the labour market, especially, regarding discriminatory working conditions and sexual harassment.”

The Indian judicial experience with sexual harassment started with the case of Vishaka and others v. State of Rajasthan and others, (1997) 6 SCC 241. The case dealt with the brutal gangrape of Bhanwari Devi, a social worker involved in the activity of spreading awareness to end child marriage in the State of Rajasthan.



The Hon'ble Supreme Court decided to use this opportunity to provide a protective umbrella to women exposed to hazardous social environment and sexual harassment/exploitation at workplace at the hands of male workers, defying gender equality with masculine power and influence rendering women at workplace a vulnerable class of victim. Through the judgment for want of codified law in the field, the Hon'ble Supreme Court has adopted the general recommendations of CEDAW and the Beijing Declaration and the Beijing Platform For Action professing elimination of all forms of discrimination against women, removal of all obstacles to gender equality, the advancement and empowerment of women to prevent and eliminate all forms of violence against women and to ensure women's equal access to economic resources.

The Hon'ble Supreme Court in the case of Apparel Export Promotion Council v. A.K.Chopra, AIR 1999 SC 625, emphasized and reinforced that sexual harassment is gender based discrimination. The sexual harassment at the place of work is incompatible with the dignity and honour of women and needs to be eliminated with no exception or debate. International treaties, instruments and conventions should be given full force in evolving ways and methods for elimination of violation of human rights and in particular



gender equality. Of course, with a note of caution that there is no conflict between the international norms and the municipal laws. The Court also laid emphasis that in a holistic manner each case must be examined on its own facts regard being had to the concept, meaning, scope, extent and dimensions of 'unwelcomed sexual harassment of women at workplace'. In paragraph 27, it has been held as under:

“27. There is no gainsaying that each incident of sexual harassment, at the place of work, results in violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty the two most precious Fundamental Rights guaranteed by the Constitution of India. As early as in 1993 at the ILO Seminar held at Manila, it was recognized that sexual harassment of woman at the work place was a form of gender discrimination against woman. In our opinion, the contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate. The



message of international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) and the Beijing Declaration which directs all State parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women is loud and clear....”

In one of the latest pronouncements, Hon'ble Supreme Court in the case of Additional District and Sessions Judge 'X Vs. Registrar General, High Court of Madhya Pradesh and others (2015) 4 SCC 91, it has been held as under:

“25.....The issue of sexual harassment has a variety of fine connotations. Its evaluation may sometimes depend upon the sensitivity of the person concerned. And also whether, the perception of the harassed individual was known to the one against whom the accusing finger is pointed...”

37. So far as the complaint made by the petitioner with regard to sexual harassment against respondent No.6 is concerned, the Committee constituted vide order dated 29.05.2020 had already given a detailed finding & conclusion and had found that the allegations made in the complaint to be proved. For reference, the observations of the Committee and its conclusions are quoted hereinbelow:-

"13. Observations of the ICC



Based on the Statement of the complainant, Charged Officer, witnesses, the documents provided to the ICC and the written briefs submitted by the complainant and the charged officer the chairperson and 3 members (Shri Asit Singh, Ms. Sumita Hazarika and Smt. G S Chitra) of the ICC observed as under:-

13.1 The complainant contended that no action was taken by the ICC set up in LNIPE, Gwalior on her complaint dated 14.10.2019. Her contention that she did not expect fair trial from the committee which had all the members who were controlled by VC, seems to be well-founded. The ICC, LNIPE, Gwalior have informed that the reason the inquiry could not be proceeded further was because

did not appear before the committee and that enquiry could not be completed due to situation arising out of Covid-19 Lockdown. This explanation has been found unsatisfactory by the ICC because . was the complainant and not the Charged Officer. The ICC, LNIPE could have called the witnesses, the charged officer, examined the CCTV recordings to verify the claim of the complainant and could have conducted the inquiry and concluded the inquiry ex-parte. Keeping the enquiry pending because the complainant did not appear is unreasonable. Also, lockdown due to Covid-19 was imposed after



22.03.2020 and the inquiry was to be conducted during the Month of January, February, 2020. Even so, the inquiry could have been conducted online. Instead they sat upon the complaint despite the fact that the complaints of sexual harassment are to be heard sensitively and, in a time bound manner. The inaction on the part of the LNIPE has deprived the complainant of timely justice and proves the allegation levelled by the complainant that LNIPE administration was being controlled by the Charged Officer.

13.2 It was the duty of the Registrar, LNIPE to ensure that the inquiry is conducted in a fair and just manner and report submitted, as the VC of the institution was himself the charged officer in the instant cases, which the ICC, LNIPE as well as the institute failed, substantiating the allegations of the complainant that the Charged Officer was using his official position against her and the Committee was controlled by the VC through the people amenable to him.

13.3 Also the number of show-cause notices issued to the complainant on various charges, thereby creating a hostile work environment and inaction to address her concern of safety in the campus, not providing any kind of counselling to help her enable to return to the campus to resume her duty, despite her repeated request to re work, substantiates her claim that the VC, the Charged Officer is



using his official position and putting pressure on the office bearers and the faculty towards victimizing her for raising her voice against him. The charges against Sh. Dilip Kumar Durcha that he was victimizing for raising a voice against the head of the institute stands proved accordingly.

13.4 The views of ICC on the argument of Charged Officer that the complainant rained the complaint of Sexual Harassment after the administrative actions were initiated against her, does not inspire confidence on the ground that a small tiff between the complainant and Ms. Payal Das, Assistant professor was referred to a six-member committee headed by a Professor. Whereas no action was taken on the complaint of The incident between Ms. Payal Das and could have been settled by counseling and reprimanding both the officers. lastend this was blown out of proportion indicating that the administration of LNIPE was ant inclined to let go of the opportunity to victimize the complainant. Further, the LNIPE administration had issued a show cause notice to on the complaint of Ms. Payal Das, whereas no such action seems to have been taken against the charged officer by the ICC committee of LNIPE, Gwalior instead they waited for to show up before the committer. Besides, it was stated by



Dr. Indu Bora in her deposition that the authority concerned to sanction leave for the University employees is the Registrar. However in this case we found that the approval for the Complainant's leave application in August was marked to the VC. This proves the charges made against Shri Dilip Kumar Dureha, VC LNIPE that he misused the official position to intimidate and created a hostile work environment. The Charged Officer lastly harassed the complainant in August 2018.

13.5 The contention of the charged officer that the complainant could not mention the exact date of the March 19 incident (where in the complainant while she was going to take the yoga class of the student in the morning at around 07:00 A.M., was stopped by the VC and had touched and put a hand on her lower back, the Complainant shoved off his hand left and the place angrily shouting at him) and also his contention that she did not approach the police or immediately report the incident is devoid of merit. The delay in complaining or bringing it in the knowledge of the higher authority could be anzituted to the fact that in sexual harassment cases, due to variety of reasons, particularly the reluctance of the complainant to go to police and complain about the incident which concem the reputation of the complainant. It is only after giving it a cool thought that a



complaint of sexual harassment is generally lodged. That Ms. Anusha Tyagi has presented a witness, Shri Avishesh Kumar Singh, Technical Assistant, LNIPE, who had before the committee submitted that he saw shoving off the hand of Shri Dilip Kumar Dureka and angrily shouting at him, proves that the March 19 incident actually happened and it is not an imaginary story. created by Ms. as claimed by Shri Dureka.

13.6 The contention of the Charged Officer that this is part of conspiracy against him does not inspire confidence and ICC does not find any merit in it. The Charged Officer has neither presented any witness to prove there has been a conspiracy nor has submitted any documentary evidence. Further, it must be realized that a woman, ordinarily, will not stake her reputation by levelling a false charge concerning her chastity given the stigma attached on the victims of sexual of sexual harassment as an accomplice in a conspiracy.

13.7 The contention of the charged officer that the witness also could not recollect the date of the reported incident is not acceptable as it is not expected of witnesses to recall the exact date of any incident. A witness has come forward to speak against the head of the institute putting his own career at stake must be appreciated. To say that the



witness had a grudge against the VC and was attacking him in the guise/pretext of helping the complainant does not bode well for the VC. ICC is obliged to rely on the statement of the witness and is not inclined to accept this contention of the Charged Officer.

13.8 The contention of the charged officer that he had installed CCTV cameras goes against his deposition before the committee because he expressed his inability to provide the CCTV footages. He expressed his inability to provide such recordings given the time limit of the retention capacity of the DVRs. He does not seem to be willing to make any efforts to retrieve the recordings nor has he presented any witness in his favor. Accordingly, the ICC is not in a position to acknowledge his innocence in the case.

13.9 He raised many other issues but does not talk about the recordings at all when asked about the CCTV recordings. Also, corroboration of Sh. Tomar, Camera In charge's statement raises the probability of doubt that the VC could have tampered and tinkered with the CCTV recordings as alleged by the complainant.

13.10 He has not produced any witness although he claims to have a witness which he has stated that he will produce before the court.

13.11 The overlapping of dates of complaint by the



complainant (14-10-2019) and the charged Officer complaint filed before the SP, Gwalior (16-10-2019) raises doubts about the intention of Shri DK. Dureha. If there was any issue/conspiracy as claimed by the him, the charged officer should have registered a police complaint before complained. Raising the issue after complained proves the allegation that Shri Dureha is creating fake documents to put pressure on her and appears to have been an afterthought on the part of the charged Officer.

13.12 The complainant has been graded as 'very good' while assessing her ACR. There is no mention of her irregular attendance, unprofessionalism and troubled relationship with her superiors or colleagues in the ACR. If the complainant was so irregular in attending office, necessary administrative action should have been initiated. Raising these issues while submitting the written statement to the sexual harassment charges appears to be motivated and with a malafide intention to malign her reputation before the inquiry committee and trivializing the issues raised by her proving the allegation of

13.13 The submission of Ms. Nisha Verma, Ex-employer of LNIPE that the VC, Shri Dureha gave her unrealistic targets, made her sit late in office and used to send work to her residence and made her attend office on



holidays and made her sit in his office to complete her work and that it was uncomfortable for her and felt unsafe, proves the allegation of that her was not the only incidence where Shri Durehe misused his position and created a hostile working environment for female employees.

13.14. The deposition of the contractual employee Shri Sunil Bhuria, Office Assistant, in favour of

also gives substance to the case. ICC is of the view that no contractual employee would put at risk his own employment and agree to stand witness to false charges. ICC is therefore obliged to rely on the statement of Shri Sunil Bhuria, that a hostile suustion was created over the leave issue of with the view to victimize her.

13.15 During the course of inquiry it was brought to the knowledge of the ICC that the LNIPE Administration was victimizing the complainant, witnesses and putting pressure on them as vendetta also proves the allegation that the charged officer is misusing his official position as VC to deny justice to the complainant.

14. Rules position

14.1 Rule 3-C of CCS (Conduct) Rules, 1964 prohibits sexual harassment of any woman at her workplace.

(1) No Government servant shall indulge in any act of sexual harassment of any woman at her work place,



(2) Every Government servant who is in-charge of a workplace shall take appropriate steps to prevent sexual harassment to any woman at such workplace,

Explanation -For the purpose of this Rule, sexual harassment includes such unwelcomed sexually determined behavior whether directly or otherwise, as-

- (a) physical contact and advances;*
- (b) demand or request for sexual favour*
- (c) sexually coloured remarks:*
- (d) showing any pornography, or*
- (e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.*

14.2 Section 3(1) and 3(2) of The Sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 provides as under:

1. No Woman shall be subject 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 behavior 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 treating an intimidating or offensive & hostile work environment for her, or

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

15. Views and findings of chairperson and 3 members (Shri Asit Singh, Ms. Sumita Hazarika and Smt. GS Chitra) of ICC:

15.1 The chairperson and 3 members (Shri Asit Singh, Ms. Sumita Hazarika and Smt. GS Chitra) of the ICC contends that given the social stigma associated with Sexual Harassment, a majority of instances of Sexual Harassment go unreported or even unmentioned. It also contends that, in most cases of Sexual Harassment, there are no witnesses. Circumstantial evidences have to be taken into consideration to determine the genuineness of the complaint. Where the evidence/statement of the victim inspires confidence, as is the position on the instant case, the ICC is obliged to rely on it. The statement of the victim must be appreciated with the background of the entire case. No woman would tamish her own reputation and image voluntarily to falsely claim that



she had been sexually harassed. And, when in face of these factors the incident is brought to light, there is a built-in acarwice that the charge is genuine rather than fabricated, ICC is of the view that ignoring the shout out of the female employees is bound to hove demoralizing effect and would he a retrograde step. In any case, even if two interpretations in the matter are possible, ICC is of the opinion dat the leaning should be in favor of an interpretation which will protect and safeguard the honor, dignity and safety of the female employee.

15.2 Accordingly, the ICC is obliged to rely on the statement of the complainant and of the witnesses that she was subjected to unwelcome sexually determined behavior by Shri Dilip Kumar Dureha VC. LNIPE, Gwalior in March, 2019 where in the complainant while she was going to take the yoga class of the student in the morning at around 07:00 A.M., was stopped by the VC and hand touched and put a hand on her lower back, the Complainant had shoved off his hand left the place angrily shouting at him, which is defined as sexual harassment under Rule 3-C of CCS (Conduct) Rules, 1964 and Section 3 of the Sexual harassment of women at workplace prevention, prohibition and Redressal) Act, 2013. ICC observes that the conduct of the Charged Officer against his junior female employee was offensive to



her dignity. Such behavior of the charged Officer amounts to unbecoming of the head of the institute and behavior not expected from a superior officer towards a young, very junior subordinate lady officer. The Charged officer tarnished the modesty and image of a subordinate lady officer to the extent that she suffered great mental agony and harassment and was unable to return to her place of duty since the day she complained establishes the fact that Shri Dilip Kumar Dureha, VC, LNIPE did not ensure safe working environment to women in their work place amounting to violation of the rules. The various administrative issues raised against the complainant and not providing fair and just redressal of her grievances and complaints, not providing her opportunity to enable her to return to her workplace despite her repeated request proves that she was subjected to threat of detrimental treatment in her employment, interference with her work and creating an intimidating and offensive and hostile work environment for her and humiliating treatment affecting her health and safety. The charges against Shri Dilip Kumar Dureha, Vice chancellor LNIPE, Gwalior stands proved.

16. One of the members of ICC: Dr. Megha Sahu, Assistant Professor, UNIPE dissented with the observations and findings of the chairperson and other members of the



committee. She decided to submit her observation separately."

38. The aforesaid observation and conclusion arrived at had not been challenged by the respondent No.6 or to the aforesaid extent by respondents No.7 to 10. Also, respondent No.2/Institute has not challenged the findings given by the said Committee, which were made in paragraph 13.1. Thus, this Court is not required to go into further details with regard to the conclusions and findings arrived at by the said Committee and thus is accepting it to be true in *toto*.

39. Even the counsel for the respondent No.6 could not bring to the notice of this Court any fact, which could compel this Court to take contrary view to the observations and the findings given by the ICC.

40. Thus, this Court holds that the petitioner was subjected to sexual harassment at her workplace and no steps were taken by the respondent No.2/Institute in timely extending justice to the petitioner, which had deprived her valuable time, energy & reputation and respondent No.2/Institute had let its administration being controlled by a person, who was not even fit to be kept in service of any nature.

41. This Court also holds that the police authorities are responsible for not taking action in time on the complaint made by the petitioner and had waited for three long years to register a crime, that too upon directions of the Apex Court, which had added to the agony of the petitioner, thus, had also made liable to be penalized.

42. In the obtaining facts and circumstances of the case, it is held that



the petitioner was subjected to unwelcome sexual harassment at her workplace, which comes within the meaning of Section 2(n) and Section 3(2) of the Act of 2013.

43. Respondent No.6 is directed to pay compensation to the tune of **Rs.35 Lakhs** towards loss of salary for two years, pain & suffering, loss of reputation and emotion distress forthwith.

44. A sum of Rs.1 Lakh as penalty is imposed upon the Institute for not taking appropriate action in timely extending justice to the petitioner at her workplace, which shall be paid within a period of four weeks from the date of order of pronouncement.

45. So far as part of the police authorities is concerned, in the light of judgment passed by the Apex Court in the matter of **Lalita Kumari v Government of Uttar Pradesh** reported in (2014) 2 SCC 1, this Court finds that when a report of cognizable offence was made by the petitioner, what was necessary of the police officials to have registered the crime, as the information given to the police had disclosed the commission of a cognizable offence, but it had failed to do so.

46. Thus, this Court finds that the inhumane and unsympathetic behaviour shown by the police officials makes them also liable for penalty. Accordingly, the State is directed to pay a compensation of **Rs.5 Lac** to the petitioner within a period of four weeks from the date of order of pronouncement, which shall be recovered from erring officials from their own pocket.

47. It is also directed that if the petitioner, still wants to be shifted to



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some other institute, respondent No.1 is directed to consider her prayer and post her to some other place of her choice.

48. With the aforesaid observations and directions, the present petition is **allowed** and **disposed of**.

(MILIND RAMESH PHADKE)
JUDGE

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