

GAHC010184732022



2026:GAU-AS:1827

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5959/2022

ALOKE KUMAR GHOSHAL
S/O- SRI JAGABANDHU GHOSHAL, R/O- QUARTER NO. F-26, IIT
GUWAHATI CAMPUS, IIT GUWAHATI, AMINGAON, NORTH GUWAHATI,
KAMRUP (R), GHY-39, ASSAM

VERSUS

INDIAN INSTITUTE OF TECHNOLOGY AND 4 ORS.
(IIT), GUWAHATI, AMINGAON, NORTH GUWAHATI, KAMRUP (R), GHY-39
TO BE REP. BY THE DIRECTOR

2:THE DIRECTOR
INDIAN INSTITUTE OF TECHNOLOGY (IIT)
GUWAHATI
AMINGAON
NORTH GUWAHATI
KAMRUP (R)
GHY-39

3:THE DEAN OF FACULTY AFFAIRS
INDIAN INSTITUTE OF TECHNOLOGY (IIT)
GUWAHATI
AMINGAON
NORTH GUWAHATI
KAMRUP (R)
GHY-39

4:THE REGISTRAR
INDIAN INSTITUTE OF TECHNOLOGY (IIT)
GUWAHATI
AMINGAON
NORTH GUWAHATI

KAMRUP (R)
GHY-39

5:THE CHAIRPERSON
INTERNAL COMMITTEE FOR PREVENTION OF SEXUAL HARASSMENT OF
WOMEN AT WORKPLACE
IIT GUWAHATI
AMINGAON
NORTH GUWAHATI
KAMRUP (R)
GHY-3

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioner(s) : Mr. B. Gogoi, Advocate

For the Respondent(s) : Mr. R.P. Kakoti, Sr. Advocate
Mr. A.B. Dey, Advocate

Date on which judgment was reserved : **NA**

Date of pronouncement of judgment : **07.02.2026**

Whether the pronouncement is of the
Operative part of the judgment? : **NA**

Whether the full judgment has been
pronounced? : **Yes**

JUDGMENT AND ORDER (ORAL)

Heard Mr. B. Gogoi, the learned counsel appearing on behalf of the Petitioner. Mr. R.P. Kakoti, the learned Senior Counsel assisted by Mr. A.B. Dey, the learned counsel appears on behalf of the Respondent

Nos. 1 to 5.

2. The present writ petition has been filed challenging the Inquiry Report dated 27.06.2022 of the Inquiry Committee constituted vide the communication dated 28.03.2022 as well as the e-mail dated 26.08.2022 issued by the Chairperson of the Internal Complaints Committee (for short, "the ICC").

3. The brief facts which led to the filing of the instant writ petition are narrated herein under.

BREIF FACTS OF THE CASE

4. The complainant alleging that the Petitioner had sexually harassed her, is referred to as "X".

5. X filed an FIR before the All Women Police Station, Guwahati City, which was registered as All Women P.S. Case No. 130/2014 under Section 376(2)(b)/506 of the Indian Penal Code. This FIR was lodged on 11.12.2014. Basing on the said allegations, X also submitted a complaint on 16.12.2014 before the Presiding Officer, Women's Complaint Committee of the Respondent No. 1. On 19.12.2014, ICC decided that since the matter was under trial and sub-judice before a competent Court, no action could be taken on X's complaint. However, the ICC recommended certain welfare measures be provided to X as per Section 12(1) of the Sexual Harassment of Women at Workplace

(Prevention, Prohibition and Redressal) Act, 2013 (for short, "the Act of 2013"). Apart from that, the ICC made certain recommendations i.e. to transfer X to any other workplace, or grant leave to X up to the period of 3 (three) months, or grant such other relief to the X as may be prescribed.

6. It is further seen from the records that the Director of the Respondent No. 1 had advised the ICC to consult a higher legal authority about the role of ICC in handling such matters and as such, in a meeting held on 27.04.2015, the ICC again resolved that as the matter is sub-judice and beyond the jurisdiction of the ICC to take any action, the matter may be referred to the next higher State authority, i.e. the Assam State Commission for Women; District Women Cell, Kamrup (Rural).

7. The record further reveals that immediately upon receipt of the complaint submitted on 16.12.2014, the Petitioner was put under suspension vide an order dated 17.12.2014. He was also arrested, but was allowed to go on bail on 16.03.2015. It further appears from the records that on 15.06.2015, a show cause notice was issued enclosing therewith the Statement of Allegations against the Petitioner and asking the Petitioner to submit a statement of defence. The Petitioner thereupon challenged the said initiation of the departmental proceedings by filing a writ petition being WP(C) No. 3827/2015, and

the learned Coordinate Bench of this Court vide an order dated 25.06.2015 while issuing notice stayed the show cause notice dated 15.06.2015. It further appears that the stay order thereupon was continued from time to time. It so happened that the show cause notice which was issued by the Respondent No. 1 dated 15.06.2015 was recalled, and the Petitioner therefore withdrew the writ petition, being WP(C) No. 3827/2015 on 31.10.2016.

8. It is also very pertinent to take note of that the Petitioner simultaneously also challenged the suspension order by filing a writ petition which was registered and numbered as WP(C) No. 2229/2015. The said suspension order was set aside by the learned Coordinate Bench of this Court vide the judgment and order dated 28.07.2017 and the Petitioner was directed to be reinstated in service in his substantive post of Professor of Chemical Engineering.

9. This judgment and order dated 28.07.2017 passed in WP(C) No. 2229/2015 was put to challenge before the learned Division Bench of this Court by the Respondents which was registered and numbered as Writ Appeal No. 262/2017. The said Writ Appeal was dismissed vide an order dated 16.09.2017 and the Respondents herein thereupon preferred a Special Leave Petition before the Supreme Court which was registered and numbered as SLP(C) No. 1115/2018. Subsequently, the said proceedings upon leave being granted, was

renumbered as Civil Appeal No. 11889/2025. It has been submitted at the bar that the Supreme Court, while issuing notice in SLP(C) No. 1115/2018 had also stayed the order of reinstatement passed by learned Coordinate Bench of this Court dated 28.07.2017 passed in WP(C) No. 2229/2015.

10. In the meantime, the materials on record further show that vide an Office Order dated 28.03.2022, a Committee was constituted by the Respondents for instituting disciplinary proceedings against the Petitioner with 3 (three) members in terms with the 107th meeting of the Board of Governors held on 14.07.2021. The Petitioner, thereupon, was issued notice on 18.04.2022 to appear before the said Committee constituted vide the Office Order dated 28.03.2022. The Petitioner submitted his response vide the communication dated 09.05.2022 wherein a plea was taken that without providing the show cause notice indicating the specific charges, it would not be possible on the part of the Petitioner to submit a statement of defence. It was also mentioned that the Petitioner had earlier assailed the show cause notice dated 15.06.2015 by filing a writ petition which was registered and numbered as WP(C) No. 3827/2015, and there was an interim order being passed not to proceed with the said show cause notice dated 15.06.2015. It was also mentioned that in the meantime, the Respondent Authorities had withdrawn the said show cause notice

vide a communication dated 05.08.2015 citing technical reasons.

11. It further appears from the records of the present proceedings that the said Committee after taking the statements of the Petitioner as well as of X and others opined that there existed sufficient ground to probe into the allegations under the provisions of Section 3 of the Act of 2013 by the Appropriate Committee constituted under the said Act of 2013. It was also observed that the resolutions of the ICC of the Respondent No. 1 did not proceed on the plea that the matter being sub-judice and as such, the Committee felt that the ICC should examine the allegations in the light of the observations contained in the said Inquiry report. It was also mentioned that the question of examination of the matter being barred by limitation does not arise, as the aggrieved woman submitted her first complaint petition to the ICC on 16.12.2014, which was well within time.

12. The said report so submitted by the Inquiry Committee constituted vide the Office Order dated 28.03.2022 is the subject matter of challenge in the present proceedings.

13. Pursuant to the impugned Inquiry report dated 27.06.2022 submitted by the Committee constituted on the basis of the Office Order dated 28.03.2022, the Registrar of the Respondents had issued a communication dated 01.08.2022 to the Chairperson of the ICC of the Respondent No. 1 requesting to re-examine X as observed by the

Committee in its report, and submit its report and recommendation in terms with the Act of 2013.

14. It further appears that subsequent thereto, the ICC of the Respondent No. 1 so constituted under Section 4 of the Act of 2013 issued an e-mail dated 26.08.2022 to the Petitioner asking the Petitioner to submit a response by 10.09.2022 without any further delay. The deposition of X was attached to the said e-mail.

15. The Petitioner, upon receipt of the e-mail, approached this Court by filing the present writ petition on 08.09.2022 seeking the reliefs as already aforestated.

16. This Court vide an order dated 19.09.2022, issued notice and further stayed the proceedings initiated by the ICC of the Respondent No. 1 against the Petitioner. The stay order continues till date.

17. Pursuant to the filing of the instant writ petition, the Petitioner filed an additional affidavit on 19.09.2022 whereby the various Minutes of the Meeting of the ICC dated 19.12.2014, 27.04.2015 as well as the report dated 19.06.2018 were enclosed.

At this stage, it is pertinent to take note of that in the report dated 19.06.2018 of the ICC of the Respondent No. 1, it was opined by the said ICC that the cause of action arose almost 4 (four) years back, and the matter is barred by limitation in terms with Section

11(4) of the Act of 2013. It was therefore opined that complaint cannot be reverted back to the ICC for retrial or reconsideration. The ICC further stated in the report dated 19.06.2018 that it stands firm with its decision that was submitted vide its report dated 19.12.2014.

18. The Respondents have filed an affidavit-in-opposition on 19.09.2022 wherein a specific stand was taken that the ICC of the Respondent No. 1 started its inquiry and submitted a report. The Respondents thereupon examined the report and found that it only dealt with the issue of alleged rape and intimidation and did not examine aspects of sexual harassment for a continued period as allegedly undergone by X. It was also mentioned that under such circumstances, the Respondents decided to re-examine the issue in due course, for which, a Preliminary Committee was constituted to re-examine the entire issue and under such circumstances, the Committee was constituted vide Office Order dated 28.03.2022. The said Committee so constituted vide the Office Order dated 28.03.2022 submitted a report dated 27.06.2022. The report dated 27.06.2022 was informed to the ICC of the Respondent No. 1 and the ICC issued a notice dated 26.08.2022 to the Petitioner along with necessary attachment and directed the Petitioner to give a response by 10.09.2022. It was further mentioned that the report dated 27.06.2022 is preliminary in nature and no disciplinary proceedings as per the IIT Statutes or Rules can be drawn up solely based on the

Inquiry report dated 27.06.2022.

19. It is very pertinent to take note of that the Respondent Nos. 1 to 5 filed another affidavit-in-opposition on 24.07.2023 wherein apart from what has been stated in the affidavit-in-opposition dated 19.09.2022, the said Respondents enclosed the Office Memorandum dated 16.07.2015 wherein the steps for conduct of inquiry in complaints of sexual harassment were duly explained. In addition to that, the Respondents also enclosed the Office Memorandum dated 21.07.2016.

20. The record also reveals that another additional affidavit was filed on 17.06.2025 by the Respondents wherein the report dated 19.06.2018 of the ICC was enclosed.

21. The Petitioner also filed an affidavit-in-opposition to the additional affidavit filed by the Respondent Nos. 1 to 5, taking a stand that steps being taken to initiate proceedings before the ICC by the Respondent Authorities was a misuse of power, more so, when the ICC has on 3 (three) occasions stated that it was not a fit case for making any further inquiry.

22. This Court also finds it relevant to take note of another very relevant aspect which is brought on record by an additional affidavit filed by the Respondent Nos. 1 to 5 on 29.10.2025 wherein the order

dated 16.09.2025 passed in Civil Appeal No. 11889/2025 was enclosed. At the cost of repetition, it is very pertinent to observe that the proceedings in Civil Appeal No. 11889/2025 is in relation to the judgment and order passed by the learned Coordinate Bench of this Court dated 28.07.2017 passed in WP(C) No. 2229/2015 wherein the suspension order against the Petitioner was set aside and the Petitioner was directed reinstatement and the said judgment and order passed by the learned Coordinate Bench of this Court was confirmed in Writ Appeal preferred by the Respondent Authorities and registered as W.A. No. 262/2017. The said order dated 16.09.2025 passed by the Supreme Court being relevant, is reproduced herein under:

“ORDER

1. *Leave granted.*
2. *Having heard learned counsel for the parties, we are of the considered view that interest of justice would be best met with the disposal of the present appeal in the following terms:*
 - (A) *The impugned order dated 16.09.2017 passed in W.A. No. 262/2017 titled "Indian Institute of Technology (IIT) & Anr. vs. Alope Kumar Ghosal & Anr," quashing the order putting the Respondent(s)/delinquent officers under suspension is quashed and set aside.*
 - (B) *The appellant(s) shall proceed and conclude the departmental proceedings initiated against the delinquent officers expeditiously and preferably, within a period of six months from today.*

(C) The proceedings initiated by the delinquent officers pending consideration before the High Court of Guwahati are expedited, in terms of earlier order passed by this Court on 29.07.2025. Whether the outcome thereof, shall have any bearing on the departmental action initiated by the appellant(s) herein, shall be considered in an appropriate proceedings, should the need so arise.

3. The appeal is disposed of in the above terms

4. Pending application(s), if any, shall also stand disposed of."

23. A perusal of the above quoted order would reveal that the order of reinstatement of the Petitioner was set aside and the Respondents herein were directed to proceed and conclude the departmental proceedings initiated against the Petitioner expeditiously and preferably within a period of 6 (six) months from the date of the said order.

24. In the backdrop of the above pleadings, it is pertinent to take note of the submissions which were advanced by the learned counsels appearing on behalf of the parties.

SUBMISSION MADE BY THE LEARNED COUNSELS APPEARING ON BHEALF OF THE PARTIES

25. Mr. B. Gogoi, the learned counsel appearing on behalf of Petitioner submitted that a perusal of the Minutes of the Meetings of the ICC held on 19.12.2014, 27.04.2015, and the report dated

19.06.2018 clearly show that there was no recommendation made against the Petitioner and in fact, it was decided by the ICC not to pursue with the complaint. He therefore submitted that the ICC who is the authority in terms with the Act of 2013, having decided so, no proceedings could have been initiated thereafter. However, the Respondents, more particularly, the Respondent Nos. 1 to 5, for vested interest have continued to pursue with the complaint submitted by X dated 16.12.2014. The learned counsel for the Petitioner further submitted that a Committee was constituted on 28.03.2022, and such constitution of a Committee is foreign to the Act of 2013.

26. The learned counsel for the Petitioner further submitted that the ICC has not taken a decision on its own, but based upon a recommendation made by a Committee which could not have made any such recommendations within the purview of the Act of 2013. He therefore submitted that not only the initiation of the proceedings by the ICC by issuance of the e-mail dated 26.08.2022 is contrary to the Act of 2013, but it also suffers from malice in law.

27. The learned counsel for the Petitioner further submitted that when the ICC has already decided not to pursue with the complaint on 3 (three) different occasions, the Act of 2013 on the basis of which the ICC is being constituted, more particularly, Section 4 of the Act of

2013, do not empower the ICC to review its decision. He therefore submitted that this is a fit case in order to prevent the abuse of the process, the inquiry proceedings so initiated by the ICC vide the e-mail dated 26.08.2022 is required to be set aside and quashed.

28. Per contra, Mr. R.P. Kakoti, the learned Senior Counsel appearing on behalf of the Respondents submitted that the ICC so constituted under Section 4 of the Act of 2013 is required to make an inquiry into the allegations and based upon such inquiry, report is to be submitted, as to whether, any action is recommended or not against the officer against whom allegations have been made relating to sexual harassment in the workplace. The learned Senior Counsel referring to the Minutes of the Meeting dated 19.12.2014, 27.04.2015, as well as the report dated 19.06.2018 submitted that the ICC did not make any inquiry as was required as per the provisions of Section 11 and Section 13 of the Act of 2013. In fact, ICC had merely recused itself from further proceeding with the Complaint merely on the ground that certain proceedings are sub-judice before a Court. The learned Senior Counsel further submitted that it is the mandate of law that an inquiry must be conducted in the manner stipulated under Section 11 and Section 13 of the Act of 2013. Since the ICC, in the instant case, failed to do so, there was no inquiry at all. Consequently, the preliminary report submitted on 27.06.2022 examined this aspect and recommended that the ICC needs to investigate the said aspect.

29. The learned Senior Counsel for the Respondents submitted that though the Committee so constituted vide the Office Order dated 28.03.2022 as well as the report dated 27.06.2022 may not have been within the purview of the Act of 2013, but that is an internal report to look into, as to whether, the ICC had actually carried out their responsibilities as required under Section 11 and Section 13 of the Act of 2013. The learned Senior Counsel further referred to the recent judgment of the Supreme Court in the case of ***Dr. Sohail Malik Vs. Union of India & Another*** reported in ***(2025) SCC OnLine SC 2751*** and submitted that what is required to be carried out is an inquiry in the manner stated in the said judgment, and on the basis of the Office Memorandum dated 16.07.2015 which mandates the steps how the ICC is required to function.

30. In addition to that, Mr. R.P. Kakoti, the learned Senior Counsel for the Respondents also emphasized by taking this Court to the object behind the Act of 2013 and submitted that the said Act intends to uphold the women's right to equality under Article 14 and Article 15 of the Constitution of India as well as the woman's right to a dignified life under Article 21 of the Constitution of India. The learned Senior Counsel submitted that as these rights flows from Articles 14, 15 and 21 of the Constitution of India and under such circumstances, the technical argument that the Inquiry was to be completed within a period of 3 (three) months on the basis of Section 11(4) of the Act of

2013 cannot debar the aggrieved woman to seek redressal under the Act of 2013, if the ICC had failed to act as per law.

ANALYSIS AND DETERMINATION

31. The Preamble to the Act of 2013 specifically mentions that the Act was enacted to provide protection against sexual harassment of women at work place, and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith. It is also mentioned that sexual harassment results in work place is in violation of the fundamental rights of a Woman to equality under Article 14 and Article 15 of the Constitution. Her right to live a life with dignity under Article 21 of the Constitution of India includes her right to practice any profession or to carry out any occupation, trade or business, including a right to a safe environment, free from sexual harassment. Therefore, from the long title of the Act of 2013 and its Preamble which acts as internal aids for the purpose of interpretation of a Statue, it is clear that the legislature recognizing the legislative void which was highlighted by the Supreme Court in the case of ***Vishaka & Others Vs. State of Rajasthan & Others*** reported **(1997) 6 SCC 241** to uphold the women's rights to equality under Articles 14, 15 and 21 of the Constitution of India had enacted the Act of 2013.

32. A perusal of the provisions of the Act of 2013 would further show that the provisions not only merely punish the act of sexual

harassment, but also actively imposes a legal duty upon the employer to prohibit and prevent harassment. It further ensures that the woman in each work place has open access to a mechanism for redressal of complaint of sexual harassment in the form of ICC. It aims to bring about safety and accountability in the work place in order to enable women to pursue their career without the fear of a hostile environment. It is thus seen that the Act of 2013 is a social welfare legislation, and it has to be interpreted thus.

33. A conjoint reading of Sections 4, 9, 10, 11 and 13 of the Act of 2013 would also show that the ICC at the workplace is tasked with inquiring into an incident that may or may not have occurred in their employee's premises or in relation to their employees work environment. It further shows that there is a duty cast upon the ICC to inquire into the allegations so made and submit a report.

34. At this stage, this Court finds it very relevant to refer to the recent judgment of the Supreme Court in the case of ***Dr. Sohail Malik (Supra)*** wherein the Supreme Court dealt with the various steps by which the inquiry is required to be conducted by the ICC and thereupon to submit report. The Supreme Court further opines in the said judgment that based upon such Inquiry Report, the employer of the delinquent employee and the disciplinary authority has to decide, as to whether, disciplinary proceedings are warranted or not. It was

further held that if the disciplinary authority of the employee is of the opinion that disciplinary proceedings are warranted, a Charge Sheet has to be issued to the delinquent employee and initiate disciplinary proceedings against him/her. In this inquiry, the ICC constituted at the workplace of the Respondent No. 1 has to conduct the second stage formal inquiry, acting as the Inquiring Authority for the purpose of the disciplinary proceedings. Taking into consideration the manner in which the ICC is required to function is the prime issue in the present proceedings, this Court finds it pertinent to refer to paragraph Nos. 58 to 68 of the said judgment of the Supreme Court wherein the Supreme Court has detailed out the manner in which the inquiry is required to be conducted. The same being relevant are reproduced herein under:

“58. It has been vehemently urged before us by the Appellant that another reason why only the ICC of the Appellant's department has jurisdiction to entertain a complaint under Section 9 of the POSH Act is that it is only his department which can take disciplinary action against him, and so for the inquiry carried out by the ICC and its outcome to have any sanctity, the inquiry must be conducted by the ICC constituted under the aegis of the Appellant's employer.

59. While at first blush the argument might seem persuasive, but we are not impressed, since it is not in line with the scheme of the POSH Act. The core issue with this argument is that it fails to differentiate the authority to inquire into the facts and the authority to enforce or act on the findings. While the ICC constituted at the workplace of the aggrieved woman or the employer may not have the authority to impose a penalty/punishment on the 'Respondent' as a consequence of the

proceedings under the POSH Act, its findings can certainly be acted upon by the employer of the 'Respondent'. Such is the construction and scheme of Section 13 of the POSH Act as quoted above. Under Section 13, the inquiry report of the ICC along with its recommendations must be sent to the 'employer' and it is obligated to act upon the recommendations within sixty days. It is merely the factual inquiry which is to be conducted by the ICC constituted at the workplace of the aggrieved woman. It cannot be said, by any stretch of imagination, that the ICC itself is to take disciplinary action against the 'Respondent' in case the report suggests that the allegation has been proved. As intended, the ICC constituted at the aggrieved woman's workplace shall send its recommendations to the 'employer' of the 'Respondent' for further necessary action, i.e., initiation of disciplinary proceedings as per service rules, or to take action as prescribed. Section 13 does not state therein that the employer of the aggrieved woman and the 'Respondent' must be one and the same. If a factual conclusion is reached by the ICC constituted at one department, it can very well be acted on by the employer of the 'Respondent', even if it is a different department. It goes without saying that the sanctity of the report of the ICC is statutorily mandated and all employers are required to act upon the said report. Even though the ICC is constituted under a different department, it has a statutory backing in its constitution and functioning. It is also pertinent to mention here that if the recommendations of the ICC are brushed aside and not acted on by the employer, a right to appeal has been provided under Section 18 of the POSH Act.

60. *In the present case, the Appellant, who is the 'Respondent' under the meaning as prescribed in the POSH Act and the aggrieved woman are both Central Government employees, belonging to different departments. As discussed above, during the operation of the guidelines as laid down by this Court in Visakha (Supra) and prior to the enactment of the POSH Act, this Court had directed in Medha Kotwal Lele (Supra) that the Complaints Committee under the guidelines shall be deemed to be an inquiry authority for the purposes of the CCS Conduct Rules, 1964. In pursuance of the same, the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as "**CCS CCA Rules, 1965**") also came to be amended by inserting a*

proviso below sub-rule 2 of Rule 14 relating to treatment of the Complaint Committee as Inquiring Authority. This was notified vide Notification No. 11012/5/2001-Estt.A dated 01.07.2004 published in Gazette of India vide G.S.R. No. 225 dated 10.07.2004.

61. *Sub-rule 2 of Rule 14 of the CCS CCA Rules, 1965 and the proviso thereto is relevant and is therefore quoted as under:*

“(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants(Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules.”

62. *In order to further clarify the role of the ICC in conducting inquiry, the Government of India's Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training issued Office Memorandum being F No. 11013/2/2014-Estt (A-III) dated 16.07.2015 (hereinafter referred to as "**OM dated 16.07.2015**"), after the POSH Act had come into force, with the subject 'Steps for conducting inquiry in case of allegation of Sexual Harassment', which is also of much relevance. The said OM lays down the dual role of the ICC/Complaints Committee and envisages a two-step inquiry into an allegation of sexual harassment. Paragraphs 7 and 8 of the OM dated 16.07.2015 provide*

for the investigative role played by the ICC as follows:

“Need for investigation

7. The Complaints Committees may act on complaints of sexual harassment when they receive them directly or through administrative authorities etc, or when they take cognizance of the same suo-moto. As per Section 9(1) of the Act, the aggrieved woman or complainant is required to make a complaint within three months of the incident and in case there has been a series of incidents, three months of the last incident. The Complaints Committee may however extend the time limit for reasons to be recorded in writing, if it is satisfied that the circumstances were such which prevented the complainant from filing a complaint within the stipulated period.

8. As mentioned above, the complaints of sexual harassment are required to be handled by Complaints Committee. On receipt of a complaint, facts of the allegation are required to be verified. This is called **preliminary enquiry/fact finding enquiry** or investigation. The Complaints Committee conducts the investigation. They may then try to ascertain the truth of the allegations by collecting the documentary evidence as well as recording statements of any possible witnesses including the complainant. If it becomes necessary to issue a Charge Sheet, disciplinary authority relies on the investigation for drafting the imputations, as well as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation.”

63. Paragraphs 9, 10 and 11 of the OM dated 16.07.2015 clarify the dual role of the ICC as follows:

“Dual Role

9. In the light of the Proviso to the Rule 14 (2) mentioned above, the

Complaints Committee would normally be involved at two stages. The first stage is investigation already discussed in the preceding para. The second stage is when they act as Inquiring Authority. It is necessary that the two roles are clearly understood and the inquiry is conducted as far as practicable as per Rule 14 of CCS (CCA) Rules, 1965. Failure to observe the procedure may result in the inquiry getting vitiated.

10. As the Complaints Committees also act as Inquiring Authority in terms of Rule 14(2) mentioned above, care has to be taken that at the investigation stage that impartiality is maintained. Any failure on this account may invite allegations of bias when conducting the inquiry and may result in the inquiry getting vitiated. As per the instructions, when allegations of bias are received against an Inquiring Authority, such Inquiring Authority is required to stay the inquiry till the Disciplinary Authority takes a decision on the allegations of bias. Further, if allegations of bias are established against one member of the Committee on this basis, that Committee may not be allowed to conduct the inquiry.

11. In view of the above, the Complaints Committee when investigating the allegations should make recommendations on whether there is a prima facie substance in the allegations which calls for conducting a formal inquiry. They should avoid making any judgmental recommendations or expressing views which may be construed to have prejudiced their views while conducting such inquiry."

64. *After the fact-finding inquiry is conducted by the ICC, paragraphs 12, 13 and 14 of the OM dated 16.07.2015 provide for the power of the Disciplinary Authority to examine the report and decide as to whether formal charge sheet needs to be issued or not, and at which stage an inquiry is to be conducted. The said paragraphs of the OM are quoted herein:*

"Decision to issue Charge sheet, and conducting Inquiry

12. *On receipt of the Investigation Report, the Disciplinary Authority should examine the report with a view to see as to whether a formal Charge Sheet needs to be issued to the Charged Officer. As per Rule 14(3), Charge Sheet is to be drawn by or on behalf of the Disciplinary Authority. In case the Disciplinary Authority decides on that course, the Charged Officer should be given an opportunity of replying to the Charge sheet. As per Rule 14(5), a decision on conducting the inquiry has to be taken after consideration of the reply of the charged officer.*

13. *If the Charged Officer admits the charges clearly and unconditionally, there will be no need for a formal inquiry against him and further action may be taken as per Rule 15 of the CCS(CCA) Rules.*

The Inquiry-stages

14. *In case the Charged Officer denies the charges and his reply is not convincing, the Charge sheet along with his reply may be sent to the Complaints Committee for formal inquiry, and documents mentioned in Rule 14(6) will be forwarded to the Complaints Committee. As per Section 11(3) of the Act, for the purpose of making an inquiry, the Complaints Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—*

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

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

(c) any other matter which may be prescribed.”

65. *It is clear from OM dated 16.07.2015 of the Central Government that in respect of Central Government employees, inquiry into a complaint of sexual*

harassment is to be conducted in two distinct stages. Firstly, the ICC is to conduct a fact-finding inquiry or preliminary inquiry, investigating the veracity of the complaint under the POSH Act. Thereafter, the report or recommendation of the ICC is to be sent to the Disciplinary Authority, which shall examine the report and decide as to whether a formal chargesheet must be issued to 'Respondent'/employee. Upon issuance of such a formal chargesheet by the Disciplinary Authority against the employee, comes the second stage, where the ICC is required to act as the inquiring authority in the formal disciplinary inquiry under the CCS CCA Rules, 1965 in order to decide the disciplinary action which may or may not be imposed upon the employee.

66. *It goes without saying that the OM dated 16.07.2015 does not specifically address the situation which has arisen in the present case. However, under the scheme of the POSH Act and particularly looking to Section 13 of the POSH Act, nothing prevents the ICC constituted at the workplace of the aggrieved woman from carrying out the preliminary/fact-finding inquiry at the first stage. After completion of the fact-finding inquiry, the ICC constituted at the workplace of the aggrieved woman can send its recommendation and report to the employer of the 'Respondent'. Upon receiving the findings and recommendations of the ICC constituted at the aggrieved woman's workplace, the employer of the 'Respondent' and the Disciplinary Authority, upon making a decision that disciplinary proceedings are warranted, can then issue a chargesheet to the 'Respondent' and initiate disciplinary proceedings against him. In this inquiry, the ICC constituted at the workplace of the 'Respondent' may conduct the second stage formal inquiry, acting as the inquiring authority for the purpose of the disciplinary proceedings. As such, the OM dated 16.07.2015, in respect of employees of the Government of India treats inquiry into complaints of sexual harassment as a two-stage process where there is a preliminary/fact-finding inquiry at first and then a disciplinary proceedings based on the findings of the preliminary/fact-finding inquiry.*

67. *Much emphasis has been laid by the learned Senior Counsel appearing for the appellant on the fact that disciplinary action cannot be taken against him on the basis of the recommendations of an inquiry authority who is not from the same department. However, any punishment which is to be imposed upon the errant employee after completion of the disciplinary proceedings is to be imposed by the 'employer' or disciplinary authority of the 'Respondent', based upon the findings which come through in the second-stage disciplinary proceedings. The fact that ultimately disciplinary action against the 'Respondent' has to be taken by his employer and his department cannot be an impediment for the ICC constituted at the workplace of the aggrieved woman to take up the fact-finding inquiry under Section 11 of the POSH Act when read with the OM dated 16.07.2015. In this context, particular reference must be made to Section 13(3)(i) of the POSH Act quoted above, which lays down that the ICC, upon reaching the conclusion that the allegations against the 'Respondent' are proved, shall recommend to the employer to take disciplinary action for sexual harassment as a misconduct in accordance with the provisions of the service rules of the 'Respondent'.*

68. *In view of the findings as recorded above in respect of Issue 3, we find that the ICC proceedings instituted in the aggrieved woman's department can be considered the first-stage of inquiry which carries out a preliminary/fact-finding inquiry, after which the report of the ICC may be sent to the employer/department of the 'Respondent'. Depending on the findings of the ICC (at the aggrieved woman's workplace) as the first stage, the 'employer' may then take a decision to initiate disciplinary proceedings under the applicable service rules and in such disciplinary proceedings, the ICC constituted at the workplace of the 'Respondent' shall be the inquiring authority. While conducting the disciplinary proceedings against the 'Respondent', the ICC at the workplace of the 'Respondent' shall have reference to the report of the fact-finding inquiry by the ICC constituted at the workplace of the aggrieved woman. Issue 3 is answered as such."*

35. This Court also finds it relevant to take note of paragraph No. 72 which is the conclusion derived by the Supreme Court in the said judgment on the basis of the analysis. Paragraph 72 is reproduced herein under:

“72. In the present case, considering the wide definition of the word ‘workplace’ under the POSH Act, particularly as contained in Section 2(o)(v), if we were to accept the contentions of the appellant, the said interpretation would run contrary to the object of the POSH Act and its intent as a social welfare legislation. In the interest of clarity and easy comprehension, the following are our conclusions in terms of the above discussion:

(i) The phrase ‘where the Respondent is an employee’ as contained in Section 11 of the POSH Act, cannot be interpreted to mean that ICC proceedings against a ‘Respondent’ may only be instituted before the ICC constituted at the workplace of the ‘Respondent’;

(ii) Such a restrictive interpretation of the POSH Act will run contrary to the scheme of the Act, specifically in light of the all-encompassing and wide definition which has been given to the term ‘workplace’ in Section 2(o) of the POSH Act, particularly in light of Section 2(o)(v) which expands the scope of ‘workplace’ to include any place visited by the employee ‘arising out of or during the course of employment’;

(iii) Under Section 13 of the POSH Act, the recommendations and report of the ICC are to be sent to the ‘employer’ which shall then take a decision with respect to initiation of disciplinary action. In light of the OM dated 16.07.2025, the ICC has a dual-role - to conduct the preliminary/fact-finding inquiry under the POSH Act and to act as the inquiry authority in the formal disciplinary proceedings under the CCS CCA Rules, 1965 as discussed, since nothing prevents the ICC constituted at the Department of the aggrieved woman from

conducting the preliminary/fact-finding inquiry and upon receiving the report of the said ICC, if the employer initiates disciplinary proceedings, the ICC constituted at the Department of the 'Respondent' shall act as the inquiry authority in the disciplinary proceedings.

(iv) In case the ICC constituted at the aggrieved woman's workplace is conducting a fact-finding inquiry under the POSH Act, the employer of the 'Respondent', even if it is a different department, must abide its duties under Section 19(f) of the POSH Act to swiftly cooperate and make available information upon a request by the ICC of the aggrieved woman's workplace."

36. From the above quoted paragraph, it clearly transpires that when a complaint is filed by an aggrieved person, the inquiry to be conducted by the ICC is in 2 (two) stages. First, when the ICC would conduct a preliminary/fact-finding inquiry. Based upon the preliminary/fact-finding inquiry, the ICC is required to send its recommendation and report to the employer of the delinquent employee.

37. It is further clear that upon receiving the findings and recommendations of the ICC, the employer of the delinquent employee and the disciplinary authority shall take note of the fact-finding inquiry as well as the recommendation and if it is found by the disciplinary authority that a case has been made out for initiation of disciplinary proceedings, a Charge Sheet would be issued to the delinquent employee, which will lead to initiation of disciplinary proceedings against the said employee. Upon submission of the said

Charge Sheet, the ICC then would conduct the second stage formal inquiry, acting as the Inquiring Authority for the purpose of the disciplinary proceedings.

38. It is also a settled proposition of law as opined by the Supreme Court in the case of ***Medha Kotwal Lele & Others Vs Union of India & Others*** reported in ***(2013) 1 SSC 311***, the complaint Committee under the guidelines shall be deemed as Inquiry Authority for the purpose of the Central Civil Services (Conduct) Rules, 1964. It is also relevant to take note of that pursuant to the judgment passed by the Supreme Court in the case of ***Medha Kotwal Lele (supra)***, the Central Civil Services (Classification, Control & Appeal) Rules, 1965 was also amended by inserting a proviso below Sub-Rule 2 of Rule 14 relating to treatment of Complaint Committee as Inquiring Authority. This amendment was notified by the Notification dated 01.07.2004 and published in the Gazette of India dated 10.07.2004.

39. In the backdrop of the above, if this Court now takes note of the facts as delineated in the previous segments of the instant judgment coupled with the contentions which has been made by the respective learned counsels for the parties, it would show that though on 16.12.2014, a complaint was submitted to the ICC of the Respondent No. 1, but the ICC constituted by the Respondent No. 1 did not inquire into the said complaint. Rather, the ICC so constituted by the

Respondent No. 1, abdicated its duties reposed upon them by the provisions of Sections 10, 11, and 13 of the Act of 2013.

40. It appears from the reports submitted by the ICC so constituted by the Respondent No. 1 dated 19.12.2014, 27.04.2015 as well as 19.06.2018, that the ICC of the Respondent No. 1 were not conversant with the provisions of the Act of 2013, more particularly, to the effect that the ICC were empowered to look into the complaint and carry out an inquiry *de hors* investigation being carried out in the FIR so filed by X before the All Women's Police Station.

41. The Reports dated 19.12.2014, 27.04.2015 and 19.06.2018 therefore under no circumstances, can be considered to be a recommendation by the ICC, so constituted by the Respondent No. 1 as there was no fact-finding/preliminary report submitted by the ICC of the Respondent No. 1 who were mandated by law to carry out.

42. This Court now finds it very pertinent to take note of the Office Memorandum dated 16.07.2015 wherein detailed procedures have been set out. The said aspect was also dealt with by the Supreme Court in the case of ***Dr. Sohail Malik (supra)***. The relevant paragraphs of the said judgment have already been reproduced hereinabove.

43. It is disheartening to note that pursuant to the Office Memorandum dated 16.07.2015, the ICC of the Respondent No. 1 did

not take any steps which were required. On the other hand, in the report submitted by the ICC of the Respondent No. 1 dated 19.06.2018, the said ICC of the Respondent No. 1 continued to run away from the duties reposed upon them by stating the reasons that there was a delay by 4 (four) years. In fact the ICC of the Respondent No. 1 failed to notice that the delay was not on account of X but due to their fault. Under such circumstances, the Minutes of the Meetings dated 19.12.2014, 27.04.2015, as well as the report dated 19.06.2018, under no circumstances can be said as fact-finding inquiry or recommendation being made by the ICC, so constituted by the Respondent No. 1 in respect to the grievances of X.

44. The Supreme Court, in the case of ***Dr. Sohail Malik (supra)*** had categorically observed that the Act of 2013 is a welfare and a beneficial legislation for the purpose of protecting the rights under Articles 14, 15 and 21 of the Constitution of India. Under such circumstances also, it is the opinion of this Court that on account of the fault of the ICC for not carrying out the responsibility reposed upon them by law, the grievance of X cannot remain unredressed.

45. Let this Court deal with the submission so made by Mr. B. Gogoi, the learned counsel appearing on behalf of the Petitioner to the effect that in view of the decisions of the ICC, so constituted by the Respondent No. 1, in the Minutes of the Meetings held on 19.12.2014,

27.04.2015 as well as the report dated 19.06.2018, the ICC so constituted by the Respondent No. 1, cannot be permitted to proceed with the inquiry in pursuance to the e-mail dated 26.08.2022. The submission so made is misconceived in the facts of the present case inasmuch as the ICC of the Respondent No. 1 did not conduct any fact-finding inquiry at all which was required to be done as per law. What the ICC of the Respondent No. 1 did was failed to exercise the jurisdiction conferred upon it by law.

46. It is the further opinion of this Court that though the Committee constituted vide the Office Order dated 28.03.2022 and the report so submitted on 27.06.2022 by the said Committee would not come within the purview of the Act of 2013 or the steps which are required to be taken in terms with the Office Memorandum dated 16.07.2015, but it is also the opinion of this Court that the said Committee was constituted only to ascertain whether, the opinions rendered by the ICC so constituted by the Respondent No. 1 in the Minutes of the Meetings dated 19.12.2014, 27.04.2015 and the report dated 19.06.2018 was as per Section 11 and Section 13 of the Act of 2013. The said report dated 27.06.2022 was only an internal report which would have no bearing on the inquiry to be conducted on compliant by the ICC. The ICC shall carry on the inquiry as per the Act of 2013 as well as the Office Memorandum dated 16.07.2015.

47. The ICC of the Respondent No. 1 having failed to discharge its duties and responsibilities in accordance to Section 11 and Section 13 of the Act of 2013 as well as the Office Memorandum dated 16.07.2015, is otherwise obligated to carry out the fact-finding/preliminary inquiry as mandated under law.

48. Considering the above, this Court does not find any merit in the instant writ petition. Accordingly, the instant writ petition stands disposed of with the following observations and directions:

(i) The writ petition lacks merit and accordingly stands dismissed.

(ii) Interim order(s) passed earlier stands vacated.

(iii) The ICC so constituted by the Respondent No. 1 shall forthwith initiate the preliminary/fact-finding inquiry, which constitutes the first stage in terms with the Office Memorandum dated 16.07.2015. Upon completion of the said inquiry, the ICC shall submit its report.

(iv) The Respondent No. 1 as well as the disciplinary authority of the Respondent No. 1 are further directed, upon submission of such report to consider, as to whether, any action for initiation of disciplinary proceedings is warranted against the Petitioner. This Court further directs that, if in the circumstances the Respondent

No. 1 and the disciplinary authority of the Respondent No. 1 are of the opinion that disciplinary proceedings are warranted, a Charge Sheet be issued to the Petitioner. Upon issuance of the Charge Sheet, the ICC so constituted by the Respondent No. 1 shall conduct the second stage formal inquiry as the Inquiring Authority.

(v) Taking into account that the Central Civil Services (Classification, Control And Appeal) Rules, 1965 would be applicable, post the submission of the Inquiry Report submitted by the ICC of the Respondent No. 1, the needful be done.

(vi) It is also observed that keeping the timelines given by the Supreme Court in the order dated 16.09.2025 as already quoted above, the Authorities concerned are directed to expedite the proceedings.

JUDGE

Comparing Assistant