

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No. 10069/2020

(Arising out of impugned final judgment and order dated 14-08-2020 in WP No. 9772/2020 passed by the High Court of M.P. Principal Seat at Jabalpur)

SHAMBHOO SINGH RAGHUVANSHI

Petitioner(s)

VERSUS

THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR & ANR.

Respondent(s)

(With IA No. 125441/2020 - APPLICATION FOR PERMISSION and IA No. 112266/2020 - EARLY HEARING APPLICATION and IA No. 82161/2020 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 82008/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No. 82009/2020 - EXEMPTION FROM FILING O.T. and IA No. 82159/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 16-02-2021 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s)

Mr. R. Balasubramanian, Sr. Adv.
Mr. Sachin Sharma, AOR

For Respondent(s)

Mr. Ravindra Shrivastava, Sr. Adv.
Mr. Arjun Garg, AOR
Ms. Shrutika Garg, Adv.

UPON hearing the counsel the Court made the following
O R D E R

List the matter next week.

(NIDHI AHUJA)
AR-cum-PS

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

P-9772-2020

THE HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

Heard through Video Conferencing

Writ Petition No.9772/2020

Shambhoo Singh Raghuvanshi

... Petitioner

versus

High Court of Madhya Pradesh and another
Respondents

...

Shri R. Balasubramaniam, learned Senior Counsel with Shri Sanjay Sarwate, learned counsel for the petitioner.

CORAM :

Hon'ble Shri Justice Sanjay Yadav, Judge
Hon'ble Shri Justice B.K. Shrivastava, Judge

Date of decision : 14.08.2020

.....
.....

ORDER

Per Sanjay Yadav, J :-

Petitioner, member of Higher Judicial Service, State of Madhya Pradesh, presently posted as District and Sessions Judge, Sheopur, calls in question the legality of Final Report dated 30.04.2019 by the Gender Sensitization and Internal Complaint Committee for the High Court and Subordinate Courts, and the show cause notice dated 29.11.2019. The petitioner seeks

quashment thereof and direction that a settlement shall be recorded on the conciliation application dated 24.11.2018 submitted by the complainant. Further direction is sought that, the petitioner be relieved of all the consequences arising from the issue of show cause notice dated 29.11.2019.

2. The genesis of the action proposed is the written complaint received by Registrar (Vigilance) from a lady Judge, once posted under the petitioner, against the present petitioner who, at the relevant time, was posted as District and Sessions Judge, Khandwa. The copy of complaint is filed by the petitioner as Annexure P/3; however, we refrain from reproducing the same in order to protect the complainant, a lady Judicial Officer from ignominy. (For the sake of privacy, we are not disclosing the identity of the concerned Judge who hereinafter referred as "officer"). The complaint as is borne out from the pleadings on record led for a discreet inquiry, which is taken recourse to, to ensure the truthfulness of the complaint, so that a senior officer or for that any person, who is subjected to complaint is not falsely implicated. The fact finding discreet inquiry found the complaint to be genuine which led the matter to be referred to Complaint Committee of the High Court

dealing with matters relating to sexual harassment of women at the work place. The said Committee noticed the petitioner on 15.05.2018 who was then transferred from Khandwa and posted as District and Sessions Judge, Damoh, for his comment on said complaint. A detail reply was submitted by the petitioner on 18.06.2018. In paragraph 8.3, the petitioner admits of having exchanged messages; though he submits that the exchange of messages were responsive in nature. In concluding paragraph, the petitioner denied of having interacted with pornographic, preferential and detrimental messages. Be that as it may. The complaint being found genuine led the Registrar General issue a show cause notice on 07.08.2018, informing the petitioner that the Gender Sensitization and Internal Complaint Committee (GSICC) has received the matter containing complaint made by the officer against the indecent act committed against her and was called upon to show cause why an action be not taken. The petitioner was informed that if he wishes to inspect any document pertaining to the enquiry, he may do so through Member Secretary, GSICC.

3. Responding to said show cause notice, the petitioner filed exhaustive reply on 04.09.2018 with a further plea to discard ex

parte statements of the complainant and her two witnesses recorded in the fact finding enquiry conducted by the District Judge and allow him to appear before the GSICC and take part in pending enquiry into the complaint. In another reply filed by him on 04.09.2018, the petitioner admitted the whatsapp messages, being "consensual and flirting" (OgkV~1,i lans'k lg&laosnh ,ao euekSth (consensual and flirting) iz-fr ds jgs gS % extracted from the reply filed by the petitioner : Page 107 of the compilation). That, additional legal submissions were made by the petitioner on 25.09.2018.

4. The GSICC in its meeting held on 26.09.2018, considering the reply and additional submission filed by the petitioner, constituted Internal Sub-Committee in accordance with the provisions of Regulation 9(1) of the Gender Sensitization and Sexual Harassment of Women at High Court of Madhya Pradesh and its Sub-ordinate Courts (Prevention, Prohibition and Redressal) Regulation, 2015. The Internal Sub-Committee, accordingly, was made functional vide communication dated 23.10.2018.

5. It is further borne out from the record of the petition that the complainant on 24.11.2019 addressed an application to the GSICC

purportedly under Section 10 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short "2013 Act"), stating therein, which we extract for ready reference :

"1. That a complaint of sexual harassment sent by aggrieved woman, against the respondent to the registry of the high court of M.P. is now received to the GSICC. The internal Sub-Committee of the GSICC has to initiate a fact finding inquiry into the complaint, in accordance with the Regulation No.9 of the High court of Madhya Pradesh and its Subordinate Courts (Prevention, Prohibition and Redressal) Regulation, 2015.

2. That the aggrieved woman request to take steps to settle the matter between her and the respondent through conciliation, by internal Sub-Committee.

3. That the aggrieved woman declare that no monetary settlement has been made between her and the respondent, with regard to conciliation and settlement so arrived.

4. That the aggrieved woman request to record the settlement based on conciliation so arrived between the parties.

Aggrieved woman humbly request not to conduct further inquiry against the respondent, into the complaint made by her, in view of the conciliation/settlement arrived at between her and the respondent, amicably."

6. The Internal Sub-Committee on receiving the application referred the same to GSICC in its meeting held on 29.11.2018, stating that the Internal Complaint Committee have no authority to take up the matter in conciliation. The GSICC took up the matter on 07.12.2018 whereon the following was recorded :

"The Internal Sub Committee constituted under Rule 9(1) of the Regulation 2015 by the Gender Sensitization and Internal Complaint Committee (GSICC), made a reference to the Committee that the complainant ... has made an application under section 10 of the SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 seeking conciliation/settlement of the matter. In the meeting of the committee, the application is considered. As under Section 10 of the Act 2013, the application for conciliation can be made before the initiation of the inquiry and since the inquiry has already been initiated by the committee prior to making of the application, prima facie, it would not be maintainable.

However, under Regulation 7(3) of Gender Sensitization and Sexual Harassment of Women at the High Court of Madhya Pradesh and Subordinate courts (Prevention, Prohibition and Redressal) Regulations, 2015 entitling function of the Gender Sensitization and Internal Complaint Committee, It has been provided that the Committee (GSICC) will consider the application for

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quick disposal and would also have the power to examine the mediation and settlement between the parties, after examining and satisfying itself that the said mediation settlement is voluntary, fair, unbiased and free from any extraneous consideration or influence. It is deemed appropriate that the settlement as prayed by the complainant may be examined on these aspect by the Committee (GSICC) by recording statement of the complainant and respondent separately.

For the said purposes the meeting is to be convened on 08.01.19 for recording of the statements of the complainant before the committee (GSICC).

Therefore, may if approved:-

1. May permit to convene the meeting of GSICC on 08.01.19 through video conferencing at V.C. room in the High Court of Madhya Pradesh.
2. May permit to first call the complainant ... for recording of the statements of the complainant before the Gender Sensitization and Internal Complaint Committee (GSICC)"

7. That, on 08.01.2019, the complainant got the following statement recorded :

th0,10vkbZ0lh0lh0 desVh ds le{k vkosfndk ----- dk dFku&
lk{kh Øekad &1 vkosfndk Lor% lk{; vkt fnukad 08-01-2019 dks
ys[kc) fd;k x;kA
eSa ----- 'kiFk ij fuEukuqlkj dFku djrh gwW%&

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1- esjs dks lh0vkj0 [kjk dj nsus dh ckr dgh tkrh FkhA eSa ml LFkku ls viuk LFkkukarj.k pkgrh Fkh] blfy;s eSaus f'kdk;r dh FkhA esjh tc Jherh lfjrk flag th us çjafHkd tkap dh Fkh] rc f'kdk;r esa fy[ks x;s dFkuksa ds leFkZuksa esa eSus c;ku fn;k Fkk] D;ksafd bl tkap dh xksiuh;rk Hkax gks x;h vkSj ;g vke pppZ dk fo"k; cu x;h] ftlls eq>s vkSj esjs ifr dks ijs'kkfu;kW mBkuh iMh] blfy;s eSa ;g tkap lekIr djuk pkgrh gWw] blfy;s f'kdk;r okil ys jgh gWwA lk{kh ds }kjk vkxs c;ku nsus ds fy;s le; pkgkA lfevr }kjk fopkj dj le; fn;k x;kA

8. Further, statement of the complainant was recorded on

28.02.2019 which is extracted below :

th0,10vkbZ0lh0lh0 desVh ds le{k vkosfndk ----- dk dFku&
lk{kh Øekad &1 vkosfndk Lor% lk{; vkt fnukad 28-02-2019 dks
ys[kc) fd;k x;kA
eSa ----- 'kiFk ij fuEukuqlkj dFku djrh gWw%&
eSus ,d deysUV iwoZ ftyk ,oa l= U;k;k/kh'k Jh j?kqoa'kh ds
f[kykQ dh FkhA mles esjs çkjafHkd dFku gq;s FksA ;g ckr lgh gS fd
tk eSus dEIysUV çLrqr fd;s gS] og esjs }kjk dh x;h gS A ;g ckr
lgh gS fd tks dqN eSus dEIysUV esa fy[kk gS] og lgh gSA eSa vius
dEIysUV ds laca/k esa dksbZ lk{; vc ugha nsuk pkgrh gWw vkSj u gh
blds leFkZu esa dksbZ xokg izLrqr djuk pkgrh gWwA tks dEIysUV eSusa
izLrqr dh gS] mlds laca/k esa eSa vkxs dksbZ dk;Zokgh ugh pkgrh gWwA
eq>s
;g ekywe gS fd ;fn eSa dEIysUV ds laca/k esa lk{; ugha nsrh gWw rFkk
mls çekf.kr ughs djrh gWw rks >wBh dEIysUV ds laca/k esa esjs f[kykQ
foHkkxh; dk;Zokgh ekuuh; mPp U;k;ky; ds }kjk dh tk ldrh gSA
eq>s vkSj dqN ughas dguk gSA

9. The petitioner was furnished the copy of statement vide notice dated 06.03.2019. The petitioner filed an exhaustive reply on 19.03.2019 and sought following reliefs :

(1) to close the proceedings of the complaint, in view of the explanation and statement of stand (response) filed by the respondent and supported with dependable official documents.

OR

(2) to close the proceedings of the complaint, by allowing conciliation application dated 24.11.2018, pending in the matter, approve conciliation/mediation settlement and effectuate the same.

OR

(3) to close the proceedings of the complaint, on the basis of the statement of the complainant recorded on 28.02.2019 that she does not want any further action into the complaint and does not has to say anything more.

OR

(4) to close the proceedings of the complaint, for want of oral as well as documentary evidence of the complainant.

10. The petitioner also got his statement recorded on 03.04.2019 before the GSICC.

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11. Pertinent it is to note that the reply filed by the petitioner was forwarded to the complainant on 09.04.2019 whereon she gave the following reply :

**çfr]

Jheku lnL; lfpo egksn;
th-,l-vkbZ-lh-lh-
ekuuh; mPp U;k;ky; e/;çns'k
tcyiqj ¼e-ç-½

fo"k;%& Jh ,l-,l- j?kqoa'kh ftyk ,oa l= U;k;k/kh'k neksg }kjk çLrqr tokc ds laca/k esaA
lanZHkZ%& ekuuh; e/;çns'k mPp U;k;ky; tcyiqj dk Kkiu Øekad lh@1737 tcyiqj fnukad 09-04-2019
ekuuh; egksn;]

mijksDr fo"k;kUrxZr vuqjks/k gS fd lanfHkZr Kkiu ds ek;/e ls esjs dFku fnukad 28-02-2019 rFkk desVh }kjk fn;s x;s dkj.k crkvks lwpuk i= fnukad 06-04-2019 ds laca/k esa Jh ,l-,l- j?kqoa'kh ftyk ,oa l= U;k;k/kh'k neksg }kjk çLrqr tokc fnukad 19-03-2019 ds laca/k esa esjh VhdK@ çfr tokc pkgk x;k gSA

mijksDr lanfHkZr Kkiu ds ikyu esa fuosnu gS fd Jh ,l-,l- j?kqoa'kh ftyk ,oa l= U;k;k/kh'k neksg }kjk muds tokc fnukad 19-03-2019 esa eq>ls lacaf/kr leLr vk{ksi iw.kZr% vlR; ,oa >wBs gS] ftudk esjs }kjk fof'k"V :i ls badkj fd;k tkrk gS rFkk mDr vk{ksi iw.kZr% vlR; gksdj dsoy vius cpko esa eux<ar dgkuh cukdj çLrqr fd;s x;s gSA mDr tokc esa mYysf[kr rF;ksa ds laca/k esa eSa viuk foLr`r mRrj çLrqr djus rFkk mRrj ds leFkZu esa nLrkost rFkk lk{; çLrqr djus dk vf/kdkj Hkfo"; esa vko';drk gksus ij lqjf{kr j[krh gWw pwafd eSa ekeys esa vkxs dk;Zokgh ugha

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pkgrh gwW blfy, esjs }kjk viuk tokc laf{kIr esa çLrqr fd;k tk
jgk gSA

Jh ,l-,l- j?kqoa'kh ftyk ,oa l= U;k;k/kh'k neksg }kjk
vius tokc esa esjs }kjk çLrqr okWVli eSlst ds laca/k esa dksbZ [kaMu
ugha fd;k x;k gSA

;g Hkh vuqjks/k gS fd esjs }kjk çLrqr jkthukek vkosnu
fnukad 24-11-2018 dk fujkdj.k gksuk 'ks"k gSA vr% esjs }kjk çLrqr
jkthukek vkosnu fnukad 24-11-2018 Lohdkj dj dk;Zokgh lekIr
djus dk d"V djsaA **

12. Evidently, the complainant categorically denied the defence taken by the petitioner alleging the same being cooked up and she reserved her right to give further evidence.

13. The GSICC in its meeting held on 23.04.2019 rejected the application filed by the complainant. The Committee observed :

"The Committee considered the application made by the complainant in terms of the provision of the Act and regulations made under the said Act. It is seen that Section 10 is made specifically for the purposes of conciliation between the complainant and the respondent, before initiation of any inquiry under Section 11 of the Act on the complaint. If any settlement has been arrived on the basis of the application for conciliation, the orders are to be passed in respect of those terms of settlement and the employer or the district officers are to be informed accordingly by the committee. It is also seen that in fact

there was no conciliation nor any settlement between the complainant and the respondent. On the other hand, the complainant has tried to withdraw the complaint in the garb of conciliation, therefore, such an application is not maintainable for the simple reason that it was made after initiation of the inquiry by the Committee.

However, in the interest of the justice, the committee had decided in the proceeding dated 07.12.2018 to record the statement of the complainant and the respondent in respect of the conciliation, separately. For the said purposes, the complainant was called to make a statement. In her statement dated 08.01.2019, the complainant stated that the threats were given to spoil her confidential reports and since she was willing to get her transfer from the place, she made the complaint. When the preliminary inquiry was conducted, the complainant has given the statement, before the inquiry officer. She further stated that the confidentiality of the inquiry was breached and she and her husband were facing the difficulties, she wanted to get the inquiry closed. However, she stated that she want to give some more statements for which some time is required.

In her statement dated 28.02.2019, she made the statement before the committee that whatever the allegations are levelled in the complaint are correct but she is not willing to produce any evidence in the proof of the said allegation. She has stated that she wants that the inquiry be closed.

After recording of these statements when the respondent was called upon to make the statement, he stated that the allegations made in the complaint are incorrect and false. He tried to raise the defence and rather contested the complaint on merits. After the recording of the statement of the respondent the committee has called for the explanation of the complainant, which has been referred to hereinabove.

Keeping in view the aforesaid situation, it is clear that the conciliation application was not made with free mind, without any pressure and therefore, the same is not to be considered at this stage. The application, therefore, stands rejected.

Now we will proceed further to examine whether further inquiry is necessary in respect of the complaint made by the complainant. It is seen from the conduct of the complainant that she is not willing to make any statements in proof of the allegations made in the complaint. It is not possible in the given circumstances to examine into the veracity of the complaint.

We have already given ample opportunity to the complainant to adduce evidence in support of allegation made in the complaint. She has reiterated that facts in her statement recorded before the committee but has deliberately not produced any evidence whereas, the evidence was made available before the inquiry officers when the preliminary inquiry was conducted by Smt. Sarita Singh, the then District and Session Judge, Dewas.

In view of this, it is not possible for the committee to record any further evidence or to seek production of any evidence in the proof of the allegations and therefore it will not be justify to proceed with the inquiry any further.

Therefore, the Committee reject the application for the conciliation made by the complainant, and close the matter for giving final report in terms of the Act and Regulation.”

14. The GSICC then gave the Final Report on 30.04.2019. It found :

9. The fact remains that the complainant has made very serious allegations against the respondent with respect to action and certain orders passed by the respondent and specially has made allegations with respect to exchange of WhatsApp Chat conversations. Some of the messages sent have been produced which have been responded to by the respondent. Though other matters relating to the allegations are not to be treated as proof because the cogent evidence in that respect has not been made available by the complainant and as the Committee has already decided not to be influenced by the preliminary inquiry report's finding, basically there is nothing available on record to hold that any of the charges levelled by the complainant against the respondent are made out. However, the respondent by his own conduct has admitted the fact that he was chatting with the complainant on

WhatsApp social media. In the first response to the show-cause notice, the respondent has referred to various messages of which factual aspect was considered by the preliminary inquiry officer, but which was not being examined by the Committee. From these facts, it is clear that the respondent was making response to the WhatsApp messages sent to him by the complainant. The language and the specific words used in the said WhatsApp chat are not appropriate looking to the status of the respondent as a Senior District Judge. It is necessary for a District Judge to maintain dignity of the post by keeping cordial relations with the Subordinate Judicial Officers, but it is not open to the District Judge to remain in constant touch with each and every judicial officer especially a Lady Judicial Officer on WhatsApp social Media. It was well known to the respondent that there were complaints made in respect of sexual harassment by the complainant or someone else on her behalf and one of such complaints was inquired by the respondent himself while he was working as District Judge, Khandwa. He has admitted this fact that he has sent a report to the High Court in respect of such a complaint. Even if the complainant was not involved in that complaint, the respondent was required to remain more vigilant in respect of relation and exchange of conversations with the Lady Judicial Officer. In case such messages were received by the respondent from the complainant, he could have blocked the number of the complainant, could have warned the complainant not to

send such messages instead of responding to such message. The conduct of the respondent, therefore, cannot be said to be appropriate for maintaining the dignity of the post of District Judge. It is not authorized under the Service Rules to remain in touch or contact with the Subordinate Officers on WhatsApp or other Social Media, and such lapses indicate that the respondent has committed misconduct of unbecoming of a Senior Judicial Officer."

- And, after dwelling on the messages verbatim in paragraph 10, the Committee recommended for disciplinary action against the petitioner as also the complainant who while affirming the complaint and the contents therein sought withdrawal from the proceedings under garb of conciliation. The GSICC held :

"11. In view of these findings, the Committee unanimously recommends that disciplinary action against the respondent be initiated for committing such service misconduct. This observation and recommendations of the Committee is in consonance with the provisions of Section 11 read with Section 13 of the Act and Regulation 11(2) of the Regulations.

12. At the same time, the complainant who is also a Judicial Officer and who has enough experience of service is also not to be excused of making complaint and trying to withdraw the same. It is a fact that the complaint was sent to the Registry of the High Court. It is also to be seen

that the complainant was directed to remain present before the Preliminary Inquiry Officer and she gave her statement before the said officer. It is also a fact that when initiation of inquiry was done by the Committee, the complainant has not made any prayer for settlement of the complaint. Rather she waited till response was received from the respondent and thereafter, till she was called for making statement before the Internal Sub-Committee. At the time she made the application for conciliation. The reasons for making such a request, as recorded hereinabove, are also to be kept in mind. Was it not known to the complainant that in case inquiry is conducted on the complaint made by her, the facts will come to the notice of others. It is also expected that the complainant was fully aware of the fact that in case of failure to prove the allegations made in the complaint, disciplinary proceedings could be initiated against her. Despite all this, she was not making her statement before the Committee. On one hand, she was constantly stating that the complaint was correct and the allegations made by her are genuine; and, on the other hand, she was trying to get the complaint withdrawn. This conduct of the complainant is also not correct in terms of the Discipline of the Department, especially when it comes to the Judiciary.

13. In view of this, the Committee strongly recommends that action against the complainant for making such complaint and withholding the evidence, to prove the allegations made in the said complaint, which amounts to

unbecoming of a Judicial Officer in true sense, be conducted and orders in terms of the Service Rules may be passed.”

15. These recommendations led to issuance of show cause notice on 29.11.2019 as to why departmental proceedings be not initiated against the petitioner.

16. The petitioner contemplating a departmental enquiry has filed this petition on the ground that the allegation of sexual harassment at work place is not sustainable in law and facts. That, the entire proceedings undertaken by the GSICC is contrary to the provisions contained under Section 10 and 11 of 2013 Act. It is urged that, the entire proceedings is in violation of the rule of audi alteram partem so much so that the discreet enquiry was conducted and evidence were gathered behind the back of the petitioner. That, it was beyond the competence of the GSICC to have caused an enquiry and recommended for a departmental action. That, GSICC committed grave error in not accepting the conciliation application and erred in advising for departmental enquiry.

17. It is further contended that the GSICC having held that it is not possible in the given circumstances to examine into the veracity

of the complaint and therefore, it will not be justify (sic just) to proceed with the enquiry, it was beyond the competence of the GSICC to have recommended a departmental action. The petitioner has also relied on the provisions of Madhya Pradesh Higher Judicial Services (Recruitment and Conditions of Service) Rules, 2017, Madhya Pradesh Civil Services (Conduct) Rules, 1965 and Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 and, more particularly, proviso to sub-rule (2) of Rule 14 of 1966 Rules to bring home the submissions that in discreet enquiry, the petitioner was not afforded any opportunity. Reliance is also placed on the decisions in A.K. Kraipak vs Union of India AIR 1970 SC 150, Kumaon Mandal Vikas Nigam Ltd. vs Girja Shankar Pant AIR 2001 SC 24 and Canara Bank vs V.K. Awasthy (2005) 6 SCC 321. On these contentions, the petitioner seeks quashment of Final Report dated 30.04.2019 and the show cause notice dated 29.11.2019 with a further direction that a settlement shall be recorded on the conciliation application dated 24.11.2018 submitted by the complainant in accordance with law. And, that the petitioner be relieved of all the consequences arising from the show cause notice dated 29.11.2019.

18. Heard learned Senior Counsel at length and perused the entire pleadings and the documents on record.

19. One of the reliefs sought by the petitioner is for a direction that a settlement shall be recorded on the conciliation application dated 24.11.2018 submitted by the complainant.

20. Section 10 of 2013 Act makes provision regarding conciliation; Sub-section (1) whereof stipulates that, the Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under Section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation. Trite it is that a conciliation is a without prejudice non-binding dispute resolution process in which an independent third party assists the disputing parties to settle their differences. In conciliation, such third party is however not precluded from delivering the opinion as to the merits of the dispute. In Salem Advocate Bar Assn. (II) vs Union of India (2005) 6 SCC 344, it is held that in conciliation, there is little more latitude and a conciliator can suggest some terms of settlement too :

61. It seems clear from the Report that while drafting the model rules, after examining the Mediation Rules in various countries, a fine distinction is tried to be

maintained between conciliation and mediation, accepting the views expressed by the British author Mr Brown in his work on India that in "conciliation" there is a little more latitude and a conciliator can suggest some terms of settlements too.

21. It is, thus, not imperative under Section 10 of 2013 Act that settlement shall always be arrived at on an application.

22. In the case at hand, it is seen that the GSICC seized the matter in May, 2018 and after receiving exhaustive reply and additional legal submissions on 18.06.2018 and 04.09.2018, which was in response to notice dated 15.05.2018, the GSICC constituted an Internal Sub-Committee on 26.09.2018. The application under Section 10 of 2013 Act was filed thereafter on 24.11.2018 which was after initiating the inquiry. The inquiry under Section 11 was initiated with the notice issued to the petitioner on 15.05.2018. Even otherwise, as evident from the statement of the complainant given on 28.02.2019 that there was no element of conciliation; nor any mutual agreement was arrived at between the petitioner and the complainant. On the contrary, the complainant in her response to reply to show cause notice given by the petitioner had affirmed her stand in the complaint vide her reply dated 18.04.2019. These facts

led the GSICC reject the application for conciliation filed by the complainant in its meeting held on 23.04.2019 which, in given fact situation, and that it is not imperative to accept under Section 10 of 2013 Act, cannot be faulted with. Thus, since no settlement was arrived under law, the GSICC was not obliged to take any of the steps provided under sub-sections (2), (3) and (4) of Section 10 of 2013 Act. The GSICC was, thus, within its jurisdiction to have proceeded with the inquiry under Section 11 of 2013 Act.

23. It is a matter of record that the complainant did not deny the allegation in the complaint, as is evident from her statement of 28.02.2019 and the written reply dated 18.04.2019, which led the GSICC to recommend for a departmental action, as contemplated under Section 13(3) (i) of 2013 Act. Though the petitioner has taken exception to the recommendation that the GSICC at one point having recorded that "nothing is available on record to hold that any of the charges levelled by the complainant against the respondent are made out". These lines, the petitioner has carved out from Paragraph 9 of the Final Report. Under section 11(1), the GSICC is required to "provide report of its findings", therefore, essential it is to take into consideration the entire report and not to draw

conclusion on the basis of some lines as adverted by the petitioner. In the instant case, immediately after the "lines" picked up by the petitioner in Paragraph 9, the GSICC took note of the petitioner's own admission in reply to show cause and found that the conduct of the petitioner cannot be said to be appropriate for maintaining the dignity of the post of District Judge. Thereafter, the GSICC adverted to the messages which the petitioner had exchanged with the officer, unanimously recommended action against the petitioner for committing such service misconduct. The findings when adjudged on the basis of material on record, cannot be faulted, because "any other unwelcome physical, verbal or non-verbal conduct of sexual nature" is also a "sexual harassment" under Section 2(n) of 2013 Act.

24. In Apparel Export Promotion Council v. A.K. Chopra (1999) 1 SCC 759, it is held :

"24. Against the growing social menace of sexual harassment of women at the work place, a three-Judge Bench of this Court, by a rather innovative judicial law-making process, issued certain guidelines in Vishaka v. State of Rajasthan [(1997) 6 SCC 241 : 1997 SCC (Cri) 932 : JT (1997) 7 SC 384] after taking note of the fact that the present civil and penal laws in the country do not

adequately provide for specific protection of women from sexual harassment at places of work and that enactment of such a legislation would take a considerable time. In Vishaka case [(1997) 6 SCC 241 : 1997 SCC (Cri) 932 : JT (1997) 7 SC 384] a definition of sexual harassment was suggested. Verma, J., (as the former Chief Justice then was), speaking for the three-Judge Bench opined: (SCC p. 252, para 17)

"2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

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

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or

work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto."

25. An analysis of the above definition shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her.

26. 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 women at the workplace was a form of "gender discrimination against women". 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. The International Covenant on Economic, Social and Cultural Rights contains several provisions particularly important for women. Article 7 recognises her right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate the working environment. These international instruments cast an obligation on the Indian State to gender-sensitise its laws and the courts are under an obligation to see that the message of the international instruments is not allowed to be drowned. This Court has in numerous cases emphasised that while discussing constitutional requirements, court and counsel must never forget the core principle embodied in the international conventions and instruments and as far as possible, give effect to the principles contained in those international instruments. The courts are under an obligation to give due regard to

international conventions and norms for construing domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. (See with advantage – Prem Shankar Shukla v. Delhi Admn. [(1980) 3 SCC 526 : 1980 SCC (Cri) 815 : AIR 1980 SC 1535] ; Mackinnon Mackenzie and Co. Ltd. v. Audrey D' Costa [(1987) 2 SCC 469 : 1987 SCC (L&S) 100 : JT (1987) 2 SC 34] ; Sheela Barse v. Secy., Children's Aid Society [(1987) 3 SCC 50, 54 : 1987 SCC (Cri) 458] SCC at p. 54; Vishaka v. State of Rajasthan [(1997) 6 SCC 241 : 1997 SCC (Cri) 932 : JT (1997) 7 SC 384] ; People's Union for Civil Liberties v. Union of India [(1997) 3 SCC 433 : 1997 SCC (Cri) 434 : JT (1997) 2 SC 311] and D.K. Basu v. State of W.B. [(1997) 1 SCC 416, 438 : 1997 SCC (Cri) 92] SCC at p. 438.)

27. In cases involving violation of human rights, the courts must forever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field. In the instant case, the High Court appears to have totally ignored the intent and content of the international conventions and norms while dealing with the case.

28. The observations made by the High Court to the effect that since the respondent did not "actually molest" Miss X but only "tried to molest" her and, therefore, his removal from service was not warranted, rebel against realism and lose their sanctity and credibility. In the

instant case, the behaviour of the respondent did not cease to be outrageous for want of an actual assault or touch by the superior officer. In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or the dictionary meaning of the expression "molestation". They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance. The High Court overlooked the ground realities and ignored the fact that the conduct of the respondent against his junior female employee, Miss X, was wholly against moral sanctions, decency and was offensive to her modesty. Reduction of punishment in a case like this is bound to have a demoralising effect on the women employees and is a retrograde step. There was no justification for the High Court to interfere with the punishment imposed by the departmental authorities. The act of the respondent was unbecoming of good conduct and behaviour expected from a superior officer and undoubtedly amounted to sexual harassment of Miss X and the punishment imposed by the appellant was thus

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commensurate with the gravity of his objectionable behaviour and did not warrant any interference by the High Court in exercise of its power of judicial review.”

25. Furthermore, the allegation that there was no opportunity of hearing, is belied from the facts on record that at each stage, the GSICC afforded an opportunity of hearing to the petitioner.

26. In view whereof, since the petition does not merit consideration, we decline indulgence.

27. However, before parting with the matter, few words of caution. Section 16 of 2013 Act prohibits publication or making known contents of complaint and inquiry proceedings. It stipulates :

“16. Prohibition of publication or making known contents of complaint and inquiry proceedings.—Notwithstanding anything contained in the Right to Information Act, 2005 (22 of 2005), the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:

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 Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to
 to the identification of the aggrieved woman and witnesses."

28. Despite such prohibition, the petitioner who claims to be seasoned Senior Judicial Officer did not take any steps to protect
 the
 identity of the officer. The petitioner ought to have effaced her identity from all the documents obtained through RTI and relied in the present petition. It must be remembered that no matter what grievance a person may have, but he is duty bound in the matter,
 as
 the present one, to have concealed the identity of the officer concerned.

29. Consequently, petition fails and is dismissed. No costs.

Shrivastava)

(Sanjay Yadav)

(B.K.

JUDGE

JUDGE

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 Date: 2020.08.14
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