

depositions of the complainants and the relevant material to the appellant, called upon him to give his reply in defence and directed him to furnish the list of witnesses that he proposed to rely on. Records also reveal that the appellant had furnished a detailed reply in defence. He had also submitted a list of witnesses and depositions. This goes to show that he was well-acquainted with the nature of allegations levelled against him and knew what he had to state in his defence. Given the above position, non-framing of the articles of charge cannot be said to be detrimental to the interest of the appellant.

71. In fact, the glaring defects and the procedural lapses in the inquiry proceedings took place only thereafter, in the month of May, 2009, when 12 hearings, most of them back-to-back, were conducted by the Committee at a lightning speed. On the one hand, the Committee kept on forwarding to the appellant, depositions of some more complainants received later on and those of other witnesses and called upon him to furnish his reply and on the other hand, it directed him to come prepared to cross-examine the said complainants and witnesses as also record his further deposition, all in a span of one week. Even if the medical grounds taken by the appellant seemed suspect, the Committee ought to have given him reasonable time to prepare his defence, more so when his request for being represented through a lawyer had already been declined. It was all this undue anxiety that had led to short-circuiting the inquiry proceedings conducted by the Committee and damaging the very fairness of the process.

72. For the above reasons, the appellant cannot be faulted for questioning the process and its outcome. There is no doubt that matters of this nature are sensitive and have to be handled with care. The respondents had received as many as seventeen complaints from students levelling serious allegations of sexual harassment against the appellant. But that would not be a ground to give a complete go by to the procedural fairness of the inquiry required to be conducted, more so when the inquiry could lead to imposition of major penalty proceedings. When the legitimacy of the

decision taken is dependent on the fairness of the process and the process adopted itself became questionable, then the decision arrived at cannot withstand judicial scrutiny and is wide open to interference. It is not without reason that it is said that a fair procedure alone can guarantee a fair outcome. In this case, the anxiety of the Committee of being fair to the victims of sexual harassment, has ended up causing them greater harm.

73. This Court is, therefore, of the opinion that the proceedings conducted by the Committee with effect from the month of May, 2009, fell short of the "*as far as practicable*" norm prescribed in the relevant Rules. The discretion vested in the Committee for conducting the inquiry has been exercised improperly, defying the principles of natural justice. As a consequence thereof, the impugned judgment upholding the decision taken by the EC of terminating the services of the appellant, duly endorsed by the Appellate Authority cannot be sustained and is accordingly quashed and set aside with the following directions:

- (i) The matter is remanded back to the Complaints Committee to take up the inquiry proceeding as they stood on 5th May 2009.
- (ii) The Committee shall afford adequate opportunity to the appellant to defend himself.
- (iii) The appellant shall not seek any adjournment of the proceedings.
- (iv) A Report shall be submitted by the Committee to the Disciplinary Authority for appropriate orders.
- (v) Having regard to the long passage of time, the respondents are directed to complete the entire process within three months from the first date of hearing fixed by the Committee.
- (vi) The procedure to be followed by the Committee and the Disciplinary Authority shall be guided by the principles of natural justice.
- (vii) The Rules applied will be as were applicable at the relevant point of time.
- (viii) The decision taken by the Committee and the Disciplinary Authority shall be purely on merits and in accordance with law.
- (ix) The appellant will not be entitled to claim immediate reinstatement or back wages till the

inquiry is completed and a decision is taken by the Disciplinary Authority.

0. DIRECTIONS

77. To fulfil the promise that the PoSH Act holds out to working women all over the country, it is deemed appropriate to issue the following directions :

(I) The Union of India, all State Governments and Union Territories are directed to undertake a timebound exercise to verify as to whether all the concerned Ministries, Departments, Government organizations, authorities, Public Sector Undertakings, institutions, bodies, etc. have constituted ICCs/LCs/ICs, as the case may be and that the composition of the said Committees are strictly in terms of the provisions of the PoSH Act.

(ii) It shall be ensured that necessary information regarding the constitution and composition of the ICCs/LCs/ICs, details of the e-mail IDs and contact numbers of the designated person(s), the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations and internal policies are made readily available on the website of the concerned Authority/Functionary/Organisation/Institution/Body , as the case may be. The information furnished shall also be updated from time to time.

(iii) A similar exercise shall be undertaken by all the Statutory bodies of professionals at the Apex level and the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres and educational institutions and by government and private hospitals/nursing homes.

(iv) Immediate and effective steps shall be taken by the authorities/ managements/employers to familiarize members of the ICCs/LCs/ICs with their duties and the manner in which an inquiry ought to

be conducted on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the Report submitted.

(v) The authorities/management/employers shall regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the ICCs/LCs/ICs and to educate women employees and women's groups about the provisions of the Act, the Rules and relevant regulations.

(vi) The National Legal Services Authority(NALSA) and the State Legal Services Authorities(SLSAs) shall develop modules to conduct workshops and organize awareness programmes to sensitize authorities/managements/employers, employees and adolescent groups with the provisions of the Act, which shall be included in their annual calendar.

(vii) The National Judicial Academy and the State Judicial Academies shall include in their annual calendars, orientation programmes, seminars and workshops for capacity building of members of the ICCs/LCs/ICs established in the High Courts and District Courts and for drafting Standard Operating Procedures (SOPs) to conduct an inquiry under the Act and Rules.

(viii) A copy of this judgment shall be transmitted to the Secretaries of all the Ministries, Government of India who shall ensure implementation of the directions by all the concerned Departments, Statutory Authorities, Institutions, Organisations etc. under the control of the respective Ministries. A copy of the judgment shall also be transmitted to the Chief Secretaries of all the States and Union Territories who shall ensure strict compliance of these directions by all the concerned Departments. It shall be the responsibility of the Secretaries of the Ministries, Government of India and the Chief Secretaries of every State/Union Territory to ensure implementation of the directions issued.

(ix) The Registry of the Supreme Court of India shall transmit a copy of this judgment to the

Director, National Judicial Academy, Member Secretary, NALSA, Chairperson, Bar Council of India and the Registrar Generals of all the High Courts. The Registry shall also transmit a copy of this judgment to the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and the Engineering Council of India for implementing the directions issued.

(x) Member-Secretary, NALSA is requested to transmit a copy of this judgment to the Member Secretaries of all the State Legal Services Authorities. Similarly, the Registrar Generals of the State High Courts shall transmit a copy of this judgment to the Directors of the State Judicial Academies and the Principal District Judges/District Judges of their respective States.

(xi) The Chairperson, Bar Council of India and the Apex Bodies mentioned in sub-para (ix) above, shall in turn, transmit a copy of this judgment to all the State Bar Councils and the State Level Councils, as the case may be.

78. The Union of India and all States/UTs are directed to file their affidavits within eight weeks for reporting compliances. List after eight weeks."

(NEETU KHAJURIA)
ASTT. REGISTRAR-cum-PS

(R.S. NARAYANAN)
COURT MASTER

(Signed reportable judgment is placed on the file.)

ITEM NO.1501

COURT NO.17

SECTION III

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

Civil Appeal No(s). 2482/2014

AURELIANO FERNANDES

Appellant(s)

VERSUS

STATE OF GOA & ORS.

Respondent(s)

Date : 12-05-2023 This appeal was called on for
pronouncement of judgment today.

For Appellant(s) Mr. Bishwajit Bhattacharyya, Sr. Adv.
 Mr. Arul Jha, Adv.
 Mr. Pragyan Pradip Sharma, Adv.
 Mr. Sandeep Jha, Adv.
 Mr. N. B. V. Srinivasa Reddy, Adv.
 Mr. P. V. Yogeswaran, AOR

For Respondent(s) Ms. Ruchira Gupta, Adv.
 Mr. Shishir Deshpande, AOR
 Ms. Harshita Sharma, Adv.
 Mr. Deep Narayan Sarkar, Adv.

Hon'ble Ms. Justice Hima Kohli pronounced the judgment of the Bench comprising Hon'ble Mr. Justice A.S. Bopanna and Her Ladyship.

The appeal is allowed in terms of the signed reportable judgment. The conclusion (Paragraph Nos.70-73) and directions (Paragraph Nos. 77-78) in the judgment are reproduced hereunder:

"M. CONCLUSION

70 In the instant case, though the Committee appointed by the Disciplinary Authority did not hold an inquiry strictly in terms of the step-by-step procedure laid down in Rule 14 of the CCS (CCA) Rules, nonetheless, we have seen that it did furnish copies of all the complaints, the depositions of the complainants and the relevant

material to the appellant, called upon him to give his reply in defence and directed him to furnish the list of witnesses that he proposed to rely on. Records also reveal that the appellant had furnished a detailed reply in defence. He had also submitted a list of witnesses and depositions. This goes to show that he was well-acquainted with the nature of allegations levelled against him and knew what he had to state in his defence. Given the above position, non-framing of the articles of charge cannot be said to be detrimental to the interest of the appellant.

71. In fact, the glaring defects and the procedural lapses in the inquiry proceedings took place only thereafter, in the month of May, 2009, when 12 hearings, most of them back-to-back, were conducted by the Committee at a lightning speed. On the one hand, the Committee kept on forwarding to the appellant, depositions of some more complainants received later on and those of other witnesses and called upon him to furnish his reply and on the other hand, it directed him to come prepared to cross-examine the said complainants and witnesses as also record his further deposition, all in a span of one week. Even if the medical grounds taken by the appellant seemed suspect, the Committee ought to have given him reasonable time to prepare his defence, more so when his request for being represented through a lawyer had already been declined. It was all this undue anxiety that had led to short-circuiting the inquiry proceedings conducted by the Committee and damaging the very fairness of the process.

72. For the above reasons, the appellant cannot be faulted for questioning the process and its outcome. There is no doubt that matters of this nature are sensitive and have to be handled with care. The respondents had received as many as seventeen complaints from students levelling serious allegations of sexual harassment against the appellant. But that would not be a ground to give a complete go by to the procedural fairness of the inquiry required to be conducted, more so when the inquiry could lead to imposition of major penalty proceedings. When the legitimacy of the decision taken is dependent on the fairness of the

process and the process adopted itself became questionable, then the decision arrived at cannot withstand judicial scrutiny and is wide open to interference. It is not without reason that it is said that a fair procedure alone can guarantee a fair outcome. In this case, the anxiety of the Committee of being fair to the victims of sexual harassment, has ended up causing them greater harm.

73. This Court is, therefore, of the opinion that the proceedings conducted by the Committee with effect from the month of May, 2009, fell short of the "*as far as practicable*" norm prescribed in the relevant Rules. The discretion vested in the Committee for conducting the inquiry has been exercised improperly, defying the principles of natural justice. As a consequence thereof, the impugned judgment upholding the decision taken by the EC of terminating the services of the appellant, duly endorsed by the Appellate Authority cannot be sustained and is accordingly quashed and set aside with the following directions:

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(iii) The appellant shall not seek any adjournment of the proceedings.

(iv) A Report shall be submitted by the Committee to the Disciplinary Authority for appropriate orders.

(v) Having regard to the long passage of time, the respondents are directed to complete the entire process within three months from the first date of hearing fixed by the Committee.

(vi) The procedure to be followed by the Committee and the Disciplinary Authority shall be guided by the principles of natural justice.

(vii) The Rules applied will be as were applicable at the relevant point of time.

(viii) The decision taken by the Committee and the Disciplinary Authority shall be purely on merits and in accordance with law.

(ix) The appellant will not be entitled to claim immediate reinstatement or back wages till the inquiry is completed and a decision is taken by the

Disciplinary Authority.**0. DIRECTIONS**

77. To fulfil the promise that the PoSH Act holds out to working women all over the country, it is deemed appropriate to issue the following directions :

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(iii) A similar exercise shall be undertaken by all the Statutory bodies of professionals at the Apex level and the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres and educational institutions and by government and private hospitals/nursing homes.

(iv) Immediate and effective steps shall be taken by the authorities/ managements/employers to familiarize members of the ICCs/LCs/ICs with their duties and the manner in which an inquiry ought to be conducted on receiving a complaint of sexual

harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the Report submitted.

(v) The authorities/management/employers shall regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the ICCs/LCs/ICs and to educate women employees and women's groups about the provisions of the Act, the Rules and relevant regulations.

(vi) The National Legal Services Authority(NALSA) and the State Legal Services Authorities(SLSAs) shall develop modules to conduct workshops and organize awareness programmes to sensitize authorities/managements/employers, employees and adolescent groups with the provisions of the Act, which shall be included in their annual calendar.

(vii) The National Judicial Academy and the State Judicial Academies shall include in their annual calendars, orientation programmes, seminars and workshops for capacity building of members of the ICCs/LCs/ICs established in the High Courts and District Courts and for drafting Standard Operating Procedures (SOPs) to conduct an inquiry under the Act and Rules.

(viii) A copy of this judgment shall be transmitted to the Secretaries of all the Ministries, Government of India who shall ensure implementation of the directions by all the concerned Departments, Statutory Authorities, Institutions, Organisations etc. under the control of the respective Ministries. A copy of the judgment shall also be transmitted to the Chief Secretaries of all the States and Union Territories who shall ensure strict compliance of these directions by all the concerned Departments. It shall be the responsibility of the Secretaries of the Ministries, Government of India and the Chief Secretaries of every State/Union Territory to ensure implementation of the directions issued.

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Secretary, NALSA, Chairperson, Bar Council of India and the Registrar Generals of all the High Courts. The Registry shall also transmit a copy of this judgment to the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and the Engineering Council of India for implementing the directions issued.

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(NEETU KHAJURIA)
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(R.S. NARAYANAN)
COURT MASTER

(Signed reportable judgment is placed on the file.)