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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 16th December, 2020
+ **W.P.(C) 3249/2017 & CM APPL. 14126/2017**
BIBHA PANDEY Petitioner

Through: Ms. Vrinda Grover, Senior Advocate
with Mr. Ankur Sood, Advocates.
(M:7828421815).

versus

PUNJAB NATIONAL BANK & ORS Respondents
Through: Mr. Rajesh Kr. Gautam, Mr. Anant
Gautam and Mr. Nipun Sharma,
Advocates for R-1,2, and 4
(M:9811252434).
Mr. Varun Mishra, Advocate for R-3.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done by video conferencing.
2. The Petitioner has filed the instant petition challenging the recommendations of the Internal Complaints Committee (*hereinafter as "ICC"*), as given in the report dated 15th March 2017, as well as further action which has been taken by the Punjab National Bank (*hereinafter as "Bank"*) on the basis of ICC's report.
3. The brief background is that a complaint under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (*hereinafter as "Act"*) was filed by the Petitioner against Respondent No.3, who was working as the General Manager of the Respondent No. 1 Bank, in Mumbai. The said complaint was referred to the ICC, which was constituted by the Bank, consisting of four members.

4. The constituted ICC, upon analysing the complaint, came to the conclusion that the relationship between the Petitioner and Respondent No.3 were based on personal grounds with mutual consent, and that the allegations of sexual, emotional and mental harassment were not substantiated by the Petitioner. Thus, the complaint against the Respondent No. 3, was rejected. However, the ICC did not stop there. The ICC went on to make an observation that the behaviour of the parties had been inappropriate and unbecoming of Officers/Employees of the Bank, and accordingly the ICC recommended the Competent Authority to take suitable action against the Petitioner and the Respondent No. 3, as deemed fit.

5. This report, thereafter, resulted in a charge-sheet being issued on 15th April, 2017, against the Petitioner, under Regulation 6 of the Punjab National Bank Officer Employees' (Discipline & Appeal) Regulations, 1977. The foundation of the said chargesheet was the ICC's report and certain other facts, which the Bank had ascertained out of the various communications between the Respondent No. 3 and the Petitioner. The said chargesheet was served upon the Petitioner, and at that stage, the Petitioner has preferred the present writ petition.

6. Vide order dated 19th April, 2017, the Id. Single Judge, while entertaining the present petition, had stayed the ICC's recommendation and the consequent charge-sheet. The relevant portion of the said order reads as under:

“9. Till the next date of hearing, operation of report of the Internal Complaints Committee (ICC) dated 15.03.2017, insofar as it recommends an action to be taken against the petitioner and the consequent charge sheet issued to the petitioner, shall remain stayed.”

7. Thereafter, pleadings were being completed in the matter and at some point during the pendency of the petition, the Petitioner also became eligible to be considered for promotion. At that stage, the Petitioner, as recorded in the order dated 1st October, 2019, submitted that her promotion is being held up in view of the pendency of the present petition. On the said date, the following order was passed:

“Matter is to be heard. Ld. counsel for the Petitioner submits that her promotion is being held up in view of the pendency of the present petition. Ld. counsel for Punjab National Bank to take instructions as to whether the Petitioner is entitled to promotion, keeping aside, the recommendation of the Internal Complaints Committee (‘ICC’) and charge sheet arising therefrom as the same are subject matter of the present petition and an interim order has already been passed in favour of the Petitioner. Let instructions be sought before the next date.

List on 3rd December 2019.”

8. Thereafter, vide order dated 3rd December, 2019, the Bank was directed to independently consider the Petitioner’s candidature for promotion. However, it was directed that the same would not be given effect to and shall be kept in a sealed cover. Due to the lockdown, the matter could not be heard thereafter.

9. In the meantime, the Bank has also placed on record, in a sealed cover, the relative performance of the Petitioner and her prospects for promotion, independent of the charge-sheet against her. The affidavit in compliance of the orders passed by this Court has been placed on record by Bank.

10. Mr. Rajesh Kr. Gautam, ld. counsel appearing for the Bank, submits that as per the affidavit placed on record, the performance of the Petitioner was also evaluated in the merit list and the Petitioner has become eligible for consideration for promotion. It is further submitted that there is no doubt that the ICC concluded that the Petitioner was in a consensual relationship. However, in terms of the rules of the Bank, whenever there are any disciplinary proceedings which are pending, the Bank is bound to keep the promotion in a sealed cover in view of Paragraph 20(1) and Paragraph 20(2.5) of the Promotion policy of the Bank. It is in view of the said policies that the Petitioner's result has been kept in a sealed cover.

11. Ms. Vrinda Grover, ld. counsel appearing for the Petitioner, submits that upon the sexual harassment complaint filed by the Petitioner under the Act being rejected, the ICC can merely, close the enquiry for the case not having been made out against Respondent No.3. However, the recommendation made for taking action due to the alleged "unbecoming" conduct is contrary to Section 13(2) of the Act. She, further, submits that insofar as the conclusions of the ICC are concerned, for personal reasons, the Petitioner does not wish to press any challenge in respect of the conclusion, so long as the recommendation made by the ICC is set aside by this Court.

12. Heard ld. counsels for the parties. The first and foremost question that arises is as to whether the ICC could have, in the first place, made a recommendation directing the competent authority to take action. A perusal of the ICC's report shows that the recommendations of the ICC are as under:

“After detailed deliberations, the committee observed that both the complainant Ms. Bibha Pandey as well as the respondent Shri Ashwini Kumar Vats have entered into a relationship with each other on personal basis, with mutual consent. The allegations of sexual, mental and emotional harassment is not substantiated as the actions on the part of the Respondent and the allegations cannot be termed as sexual harassment at workplace as defined under Sexual Harassment of Women at Workplace (Prevention Prohibition and Redressal) Act 2013. Therefore, the present complaint is rejected being non maintainable as per the provisions of the Act of 2013.”

The Committee observes from the records available that the Complainant as well as the Respondent, have acted in a manner which is unbecoming of an Officer employee of the Bank as they have indulged in inappropriate acts, not maintaining good conduct and discipline expected of them. The Respondent, being at a very senior position, failed to maintain the dignity and decorum of his position. No case under Sexual Harassment of Women at Workplace (Prevention Prohibition and Redressal) Act 2013 is made out. Both the Complainant as well as the Respondent have behaved and acted in a manner which is not befitting to the post held by them. On the contrary, it is detrimental to the organization and has vitiated the atmosphere of the Bank. The competent authority may take suitable action against them as deemed fit.”

13. The above conclusions of the ICC are in two parts. In the first part, the ICC concludes that the allegations are not substantiated and the complaint is not made out. In the second part, the ICC goes further and comments on the conduct of the Petitioner and the Respondent. It also recommends that the Bank ‘may take suitable action’. Section 13 of the Act,

contemplates various situations relevant to the inquiry report. Insofar as the ICC is concerned, there are two situations contemplated under Section 13(2) and 13(3), which are set out below for ready reference:

“13(2): Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter:

13(3): Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local

Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District officer.”

14. As per the above provisions, if the allegations of sexual harassment or any other form of harassment, as contemplated under the Act, are not proved before the ICC, the ICC can only recommend the employer to not take any action in the particular matter. However, the ICC, in the present case, has gone beyond its statutory mandate, as recognised under Section 13(2) of the Act. It has, in fact, given observations stating that both the parties i.e., the Petitioner and the Respondent No.3 have indulged in inappropriate/unbecoming conduct and indiscipline, and has recommended the competent authority to take suitable action against them. Giving such a recommendation is clearly beyond the jurisdiction of the ICC.

15. Complaints of sexual harassment are initially filed with enormous reluctance. The power of the ICC to hold the enquiry and give a report ought to be within the scheme and the four corners of the statute itself. If a case of sexual harassment is not made out, the ICC can only conclude that no action is required to be taken. On the other hand, if a case of sexual harassment is made out, then the recommendation of the ICC can only be for taking appropriate action for misconduct, in accordance with the provisions of the service rules as contained within Section 13(2) and 13(4) of the Act.

16. It is not contemplated within the provisions of the Act that while holding that no action is to be taken and the complaint is to be rejected, the ICC can direct for suitable action on the ground that the parties have indulged in an inappropriate conduct. Such a determination and consequential recommendation is beyond the jurisdiction of the ICC.

17. 'Moral Policing' is not the job of the Management or of the ICC. Any consensual relationship among adults would not be the concern of the Management or of the ICC, so long as the said relationship does not affect the working and the discipline of the organisation and is not contrary to the Rules or code of conduct binding on the said employees. It is only if a complaint is made of sexual harassment under the Act that the Management can constitute the ICC to enquire into the same. The ICC cannot make comments on the personal conduct of the parties and the ICC's jurisdiction would be restricted to the allegations of sexual harassment and whether a complaint is made out or not, to that effect. Under these circumstances, this Court has no hesitation in holding that the last paragraph of the recommendation of the ICC, which comments on the conduct of the parties and recommends to the competent authority to take action against the Petitioner and Respondent No. 3, for their inappropriate disciplinary conduct, is not tenable and is liable to be set aside.

18. Further, in view of the fact that one of the factors leading to the chargesheet dated 15th April, 2017, was the recommendation of the ICC, the chargesheet which seeks to take disciplinary action against the Petitioner is liable to be quashed and is ordered accordingly.

19. In view of the above position, the fact that the Petitioner has become eligible for promotion means that the Bank would accordingly offer her promotion in accordance with her seniority, performance and merit, as per the applicable service rules. The chargesheet would no longer be an obstacle in the Petitioner's promotion and no disciplinary enquiry would now be held against the Petitioner pursuant to the said chargesheet.

20. The affidavits filed by the Bank in a sealed cover shall be scanned and

be retained on record.

21. With these observations, the present petition and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 16, 2020

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