

MANU/SC/8503/2008

**Equivalent Citation:** (2009)2SCC210

**IN THE SUPREME COURT OF INDIA**

Civil Appeal No. 7355 of 2008 (Arising out of SLP (C) No. 10044 of 2006)

Decided On: 17.12.2008

Appellants: **D.S. Grewal**

**Vs.**

Respondent: **Vimmi Joshi and Ors.**

[Alongwith Civil Appeal No. 7356 of 2008 (Arising out of SLP (C) No. 10046 of 2006) and Civil Appeal No. 7357 of 2008 (Arising out of SLP (C) No. 10143 of 2006)]

**Hon'ble Judges/Coram:**

S.B. Sinha and Cyriac Joseph, JJ.

**Counsels:**

For Appellant/Petitioner/Plaintiff: K.K. Rai, Sr. Adv., Manish Kumar, Nitin Bhatia, Shekhar Kumar, S. K. Pandey, Rekha Palli, Advs. in SLP (C) No. 10143 of 2006 and Chetan Sharma, Sr. Adv., K. Singhal, Vineet Malhotra, Rekha Palli, Advs. in SLP (C) Nos. 10044 and 10046 of 200

For Respondents/Defendant: S. Janani and Deepak Goel, Advs.

**Subject: Service**

**Acts/Rules/Orders:**

AWES Rules ;Constitution of India - Article 144

**Cases Referred:**

Vishakha and Ors. v. State of Rajasthan MANU/SC/0786/1997; Apparel Export Promotion Council v. A.K. Chopra MANU/SC/0014/1999

**Prior History:**

From the Judgment and final Order dated 03.05.2006 of the High Court of Uttarakhand at Nainital in Writ Petition No. 398 of 2004

**Case Note:**

**Criminal - Sexual harassment - High Court held that it was case of sexual harassment of Petitioner-Respondent No. 1 and directed initiation of disciplinary action - Hence, this Appeal - Whether, decision of High Court was just and proper - Held, prima facie**

**finding had to be arrived at regarding role of delinquent, before disciplinary proceeding were initiated in case of said nature - However, complaint committee was constituted for other teachers and staff, but no complaint committee was constituted for entertaining complaint of said nature - Even purported disciplinary action initiated by Appellants did not provide complete picture and submitted report did not mention about further action - Thus, High Court had not enquired into matter - Appeal disposed of.**

**Ratio Decidendi:**

*"Authorities shall take proper care to avoid discrepancy in prescribed rules and procedure."*

**Subject Category :**

SERVICE MATTERS - REMOVAL/DISMISSAL/TERMINATION  
FROM SERVICE OR OTHER MAJOR PENALTIES

**JUDGMENT**

**S.B. Sinha, J.**

1. Leave granted.
2. These three appeals arise out of a common judgment and order dated 3<sup>rd</sup> May, 2006 passed by a Division Bench of the High Court of Uttaranchal at Nainital in Writ Petition No. 398 (S/B) of 2004.
3. In Pithoragarh where an army unit is situated, an Army Public School known as Gen. B.C. Joshi Army Public School is being run by a society known as Army Welfare Education Society.
4. Appellant (Brig. D.S. Grewal, hereinafter referred to as 'Grewal') in Civil appeal arising out of SLP (C) No. 10044 of 2006 is the Chairman of the School Managing Committee while Col. Hitendra Bahadur appellant in Civil Appeal arising out of SLP (C) No. 10143 of 2006 is the Vice Chairman thereof. Chairman, School Managing Committee and others are the appellants in Civil Appeal arising out of SLP (C) No. 10046 of 2006.
5. First respondent Vimmi Joshi applied for and was appointed as a Trained Graduate Teacher in Gen. B.C. Joshi Army Public School. She was later on appointed as Post Graduate Teacher (Mathematics). She was confirmed in the said post. She worked as an officiating Principal from 10.2.2003 to 10.8.2003. She was appointed as the Principal of the school from 10.2.2004.

6. Appellant Hitendra Bahadur was a Deputy Commander, 69 Mountain Brigade. He, at the relevant time, was posted at Pithoragarh. While he was stationed at Sonamarg in connection with providing security cover to pilgrims of `Amarnath Yatra', he wrote a letter to the first respondent, the contents whereof read as under:

My dearest Vimmi,

Allow me to confess to you that I have fallen in love with you. What a man needs in a woman ? Love, trust and faith, when I look deep into your eyes I find there in abundance. No where in my life I have ever come across a woman where intelligence, appearance, maturity and beauty is so well awarded in one single person as in you. You are no doubt, a very charming and gorgeous woman, beautiful and attractive. You are very magnetic. Always elegantly dressed-up, you look very stylish and fashionable with slim and slender body. You appear absolutely fit, intelligent, witty, confident, compassionate and very much in control, you are truly a role model for all young people at your place and most darling friend to me. I adore you from the core of my heart and always value our friendship. You are precious and priceless. May I extend my hands towards you and hold your hands tightly and ask you to lean on my shoulder when ever you need me. It will be a great pleasure.

With lots of love.

Your  
Sd/-  
"H"

7. Allegedly Hitendra Bahadur used to make advances towards respondent No. 1. She reported the matter to Grewal. Her father also met him. Allegedly he was abused by Grewal.

8. On or about 12<sup>th</sup> October, 2004 Grewal addressed a letter to respondent No. 1 with respect to her allegations against Hitendra Bahadur. She was allegedly asked to give her complaint in writing stating:

1. I am writing to you regarding the allegation made by you against Colonel Hitendra Bahadur, SM, the Deputy Commander of 69 Mountain Brigade.

2. On 27<sup>th</sup> Sep 04, during the interaction with me in my office at your request, you apprised me that the Deputy Commander has written a letter to you. The letter was shown to me and I observed that the portion at the

bottom was torn and there was no name or signature. I asked you as to why the portion was torn but no answer was given.

3. On 09 Oct 04, your father came to my office to meet me. He also made an allegation against the Deputy Commander. You were then asked by Maj Pankaj Bhola, the BM of 69, Mountain Brigade to meet me in my office. The matter was discussed and I directed you to forward the allegation in writing to me by 09 Oct. 04.

4. Till date, the allegation has not been received by me. Hence, I will not take cognizance of the matter.

9. On or about 25<sup>th</sup> October, 2004 two anonymous complaints were received by the Managing Committee from the Head Quarters as against respondent No. 1. By a memorandum dated 25<sup>th</sup> October, 2004 she was asked to give her comments on the said allegations. She made her comments by her letter dated 27<sup>th</sup> October, 2004. However, her services were terminated by an order dated 4<sup>th</sup> December, 2004 stating:

1. Refer to this Headquarters letter number 620401/1/APS/Sigs-4 dated 30<sup>th</sup> Sep 2004 and Article 186(f) of AWES Rules and Regulations Vol.-I, for Army Schools/Army Public School (Oct 2003 Edition).

2. SMC regrets to inform you that your services are no more required, hence your services are terminated forthwith.

3. A cheque bearing machine number 176096 dated 04<sup>th</sup> Dec 04 for Rs. 14,200.00 (Rupees fourteen thousand two hundred only) towards one month salary is enclosed as per the agreement.

4. Handing/Taking over all documents and other important correspondence held on your charge will be carried out with Mr. Kunwar Pratap Singh (Senior most PCT) of Gen BC Joshi APS, Pithoragarh.

Sd/-  
( D.S. Grewal )  
Brig.  
Chairman

10. A writ petition was filed by her questioning the legality of the said order of termination alleging sexual harassment by Hitendra Bahadur as one of the grounds, wherein an interim order was passed on 3.5.2006. The said interim order is impugned in these appeals.

11. In the meanwhile a purported enquiry was conducted. Respondent No. 1 allegedly participated therein. By a report dated 20<sup>th</sup> January, 2005 it was found to be not a case of sexual harassment. Hitendra Bahadur was directed to be counseled.

12. Before the High Court appellants filed their counter-affidavits inter alia contending:

(i) That the order of termination has nothing to do with the alleged sexual harassment.

(ii) Writing a letter was merely appreciable in nature and by reason thereof no sexual harassment was caused by Hitendra Bahadur.

(iii) Hitendra Bahadur has nothing to do with the Management of the School and that the letter having been sent from Sonamarg cannot be said to have any sexual harassment at the work place of the first respondent.

13. By reason of the impugned order, however, the Division Bench found that it was a clear cut case of sexual harassment of the writ petitioner-respondent No. 1 herein. It was, therefore, directed:

Therefore, the Secretary, Ministry of Defence, Government of India and the Chief of the Army Staff are directed to take disciplinary action against these two officers, as the case of sexual harassment is evident from the contents of the letter and the admission by both the officers followed by the termination of the petitioner.

7. We are passing this order in view of the law laid down by the Hon'ble Apex Court in the case of "Vishakha and Ors. v. State of Rajasthan reported in MANU/SC/0786/1997 : AIR1997SC3011 .

8. The progress of the disciplinary action so taken in such a serious manner which may even warrant the court martial proceedings of these two officers shall be submitted before this Court within a period of two months from the date of production of the certified copy of this order.

14. Before, however, we embark upon the respective contentions of the parties we may notice that a review application was filed before the High Court which was also dismissed by order dated 18<sup>th</sup> May, 2006. The said order of the High Court refusing to review its earlier order dated 3<sup>rd</sup> May, 2006 is not in question in these appeals.

15. We may furthermore place on record that a first information report was also lodged against respondent No. 1 by the school management alleging financial irregularities. After investigation carried out in this behalf a final report was submitted exonerating her and the report has been accepted by the Chief Judicial Magistrate, Pithoragarh by an order dated 13<sup>th</sup> February, 2006.

16. Mr. K.K. Rai and Mr. Chetan Sharma, learned senior counsel appearing on behalf of the appellants would submit:

(1) That the High Court should not have arrived at its finding that Col Hitendra Bahadur had caused sexual harassment to respondent No. 1, so as to pass a final judgment on the subject despite directing initiation of a disciplinary proceeding against them.

(2) As first respondent was appointed only on probation for one year and during the probation period her services could be terminated by giving one month's notice or salary in lieu thereof without assigning any reason by the appointing authority, no case has been made out to pass an interim order of the nature as has been done by the High Court.

(3) As despite opportunities given she did not make any complaint in writing, cognizance of the said letter dated 22<sup>nd</sup> July, 2004 of Col Hitendra Bahadur was rightly not taken by Grewal.

(4) As Hitendra Bahadur had already undergone an enquiry, a direction for second enquiry was wholly misconceived.

17. Ms. S. Janani, learned Counsel appearing on behalf of the writ petitioner-respondent No. 1 on the other hand would contend:

(1) That admittedly the letter was written by the Vice Chairman of the School Managing Committee to respondent No. 1, Vimi Joshi who was his subordinate ;

(2) As the Vice Chairman of the Managing Committee of the School, he was in a commanding position ;

(3) As the matter was brought to the notice of the Chairman of the School Managing Committee, no further complaint in writing was required to be made.

(4) The circumstances attending to the case clearly show that the termination of respondent No. 1's services was mala fide and/or otherwise bad in law.

18. Indisputably the writ petition was filed by respondent No. 1 which is still pending. In our opinion, it would, thus, be not proper for us to enter into merit of the matter.

19. However, indisputably, in terms of the judgment of this Court in Vishakha and others (supra) certain guidelines have been laid down by this Court till an appropriate legislation is made in this behalf, some of them being, - disciplinary action, complaint mechanism and complaints committee. These are as under:

*6. Disciplinary action:*

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

*6. Complaint mechanism:*

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

*7. Complaints Committee:*

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.

The Court furthermore defined 'sexual harassment' to include:

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.

The Legislature too have keeping in mind the abovenoted guidelines from Vishakha (supra) recently drafted the Protection of Women against Sexual Harassment at Workplace Bill, 2007. The Bill is to provide 'for the prevention and redressal of sexual harassment of women at workplace and for matters connected therewith or incidental thereto'. The draft law provides for consideration of a mandatory committee to hear complaints of sexual harassment. It also stipulates the procedures for setting up of these committees. If the complaint is found to be true, the draft law provides for monetary compensation. It also stipulates a time period for completing the enquiry and for employers to take action against the accused. We are aware that the Bill has not till yet been enacted by the Parliament. We cite the Bill only to show that the law makers too have accepted the directions and guidelines which had been laid down by this Court.

20. Respondent No. 1 was a working lady. She was working as the Principal of the School. She was drawing a salary. It is a public enterprise. She felt humiliated not only by reason of the said letter; according to her, Hitendra Bahadur also made advances towards her. She had, therefore, a reasonable ground to believe that her objection, thus, would cause disadvantage to her in connection with her employment or work including her recruitment or promotion or creating a hostile working environment. According to her, adverse consequences visited as her services have been terminated.



21. Vishakha (supra) has been followed in Apparel Export Promotion Council v. A.K. Chopra MANU/SC/0014/1999 : (1999)ILLJ962SC wherein a Division Bench of this Court inter alia held that in a case 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.

22. Before, however, a disciplinary proceeding is initiated in a case of this nature, a prima facie finding has to be arrived at as regards the role of the delinquent. It has been stated before us that the job of Col Hitendra Bahadur was merely to function as the Chairman in the absence of the regular Chairman.

23. It is not in dispute that no Complaint Committee has been constituted; no mechanism has been put in place for redressal of the complaint made by the victim. For one reason or the other Grewal failed and/or neglected to take appropriate action.

24. It is a matter of great regret that the army which is a disciplined organization failed to provide a complaint mechanism and ignored the decision of this Court which was bound to be given effect to in terms of Article 144 of the Constitution of India. A complaint committee as per 'Vishakha' was constituted for the other teachers and the staff but evidently no complaint committee was constituted for entertaining a complaint of this nature. Even the purported disciplinary action initiated by the appellants does not provide a complete picture. A report was submitted but whether any further action has been taken or not is not known.

25. The High Court, in our opinion, without getting the matter enquired into could not have opined that it was a clear cut case of sexual harassment of the writ petitioner and on that basis directed initiation of a disciplinary action in the manner as has been done in paragraph 8 noticed (supra).

26. We, in modification, of the order passed by the High Court direct that as no complaint committee has been constituted, which was imperative in character, the High Court may appoint a Three Members Committee headed by a Lady and in the event it is found that the writ petitioner was subjected to sexual harassment, the report thereof may be sent to the army authorities for initiation of a disciplinary action against the appellants herein on the basis thereof. All the expenditures which may be incurred in this behalf may be borne by the Army Authorities. .

27. We would request the High Court also to consider the desirability of disposing of the writ petition as expeditiously as possible.

28. The appeals are disposed of accordingly. As the Management of the school is guilty of violating the guidelines issued by this Court in Vishakha and others (supra), we direct that the Management to pay and bear all the cost of the first respondent. Counsel fee is assessed at Rs. 50,000/-.