

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

Writ Petition No.22317 of 2017

Global Health Private Limited
Vs.
Local Complaints Committee, District Indore and others

Shri Amit Agrawal, Sr. Advocate assisted by Ms. Neha Vijavargiya, Advocate for the petitioner.

Shri Vivek Patwa, Advocate for the respondents No.1, 2 & 4.

Shri Rahul Sethi, Advocate for the respondent No.3.

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Writ Petition No.22314 of 2017

Mrs. Arvinder Bagga
Vs.
Local Complaints Committee, District Indore and others

S/Shri Ajay Bagadia, Amit Pal and Ms. Neha Vijavargiya, Advocate for the petitioners.

Shri Vivek Patwa, Advocate for the respondent No.1.

Shri Rahul Sethi, Advocate for the respondent No.2.

WHETHER APPROVED FOR REPORTING: YES

SEXUAL HARASSMENT AT WORK PLACE:

The word "sexual harassment" must not receive narrow and pedantic meaning instead on the anvil of the concept as perceived at international platforms including the United Nations resolutions under CEDAW Convention & Beijing Declaration and the Beijing Platform For Action to which India is a signatory "where the 'sexual harassment at workplace' is held to be an act of violation of human rights; women right to live with dignity and protection against all types of discrimination because substantive equality of women in the employment context cannot be achieved without elimination of sexual harassment as this represent a barrier to their ability to seek safe and healthy working environment, and achieve advancement through promotions, etc., at workplace as evident from the international stands in relation to sexual harassment formulated in CEDAW Convention.

The issue of sexual harassment has a variety of fine connotations. Its evaluation may sometimes depend upon the sensitivity of the person concerned. And also whether, the perception of the harassed individual was known to the one against whom the accusing finger is pointed.

Sexual Harassment of Women At Workplace (Prevention, Prohibition and Redressal) Act, 2013 is essentially and predominantly a social welfare legislation.

The provisions contained thereunder must receive contextual meaning and required to be interpreted broadly and liberally regard being had to the aims and objects of the Act as observed by the Hon'ble Supreme Court [**Workmen Vs. American Express International Banking Corporation, AIR 1986 SC 458, N.K.Jain Vs. C.K.Shah, AIR 1991 SC 1289 & B.Shah Vs. Presiding Officer, Labour Court, AIR 1978 SC 12**, referred to].

Section 2(n) defines “**sexual harassment**” and the definition is inclusive in nature providing any one or more of the unwelcome acts or behaviour provided thereunder whether directly or by implication shall constitute sexual harassment. Further, widening the scope of definition, section 3(2) contemplates the circumstances which may also amount to sexual harassment if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment.

Meanings of the expression; 'means', 'includes' and 'means and includes' have been reiterated in the case of **Bharat Cooperative Bank (Mumbai) Ltd., vs. Employees Union (2007) 4 SCC 685 & N.D.P. Namboodripad Vs. Union of India (2007) 4 SCC 502**. The same principles of interpretation have been further reiterate by the Hon'ble Supreme Court in the case of **Delhi Development Authority Vs. Bhola Nath Sharma (Dead) By LRs., and others, (2011) 2 SCC 54**.When the word 'includes' is used in the definition, the legislature does not intend to restrict the definition; it makes a definition of enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but, its scope would be extended to bring within it matters, which in its ordinary meaning may or may not compromise.

The Constitutional Courts; one of the important limbs of the Union of India must endeavour to foster respect for international treaties as contemplated under Article 51(c) of the Constitution of India, particularly; in the context of 'sexual harassment' at workplace as an act of violation of human rights not restricted to governmental organizations but also, for private acts if they fail to act with due diligence to prevent violation of such rights.

Criminal liability is strict and personal to the person accused. Hence, before acquisition of offence against the person/persons; proper notice and opportunity of hearing before the Local is imperative.

Writ Petitions disposed of.

Significant Paragraphs: 2, 4, 5, 9 to 24

Reserved on: 01/08/2019

ORDER
(16/09/2019)

Rohit Arya, J

This order shall govern disposal of aforesaid two writ petitions. Regard being had to the similitude of the controversy involved in the aforesaid cases, both writ petitions have been heard analogously and disposed of by this singular order.

For the sake of convenience, facts in W.P.No.22317 of

2017 have been considered.

Petitioner – Global Health Private Limited; a registered company under the Companies Act, 1956 with the brand name of 'Medanta' and 'Medanta Super Specialty Hospital, Indore (for short, 'the Hospital') seeks to challenge the legality, validity and propriety of the impugned order dated 20/09/2017 (Annexure P/1) on the anvil of provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 addressed to its Managing Director passed by the respondent No.1 based on the basis of report dated 18/08/2017 (Annexure P/2) submitted by Local Complaints Committee, District Indore respondent No.2 (for short, 'the Local Committee') upon enquiry of a complaint made by respondent No.3, Ms. Anjali Singh Thakur, Senior Manager Marketing at Medanta Indore (for short, 'the complainant') alleging interference with her work, creation of an intimidating and hostile environment by the acts, misdemeanour and conduct attributed to the immediate superior officer Dr. Gowrinath Mandiga, Medical Superintendent / Manager (for short, 'the Medical Superintendent'). Her repeated requests for protection and support sought from the superior authorities including the Managing Director, fell on deaf ears and was shown cold shoulders. She found herself singled out, harassed and humiliated affecting her health and safety besides, potential threat to her future employment status.

The enquiry report dated 18/08/2017 (Annexure P/2) is also under challenge questioning its sustainability as according to the petitioner, the subject matter of enquiry did not amount to sexual harassment as defined under section 2(n) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short, 'the Act, 2013'). The individuals named and castigated with default were neither noticed nor afforded opportunity (petitioners in W.P.No.22314 of 2017), therefore, no further action under the said Act could have been taken.

The impugned order, Annexure P/1 contains the following directions:

- (I) cancellation of the termination letter dated 19/04/2016 issued to complainant / respondent No.3 during pendency of the

enquiry before the Local Committee;

(II) issue the character and experience certificate with apology letter to the complainant/respondent No.3 for unwarranted and unjustified termination and also pay compensation as well as damages to compensate the financial loss, social and mental set backs caused to her due to termination resulting into deprivation of means of livelihood for eighteen months;

(III) initiate disciplinary proceedings against Dr.Gowrinath Mandiga under the appropriate rules;

(IV) imposed penalty of Rs.50,000/- under section 26 of the Act, 2013 due to failure to constitute the internal complains committee under sub-section (1) of section 4 of the Act, 2013 by the Hospital.

2 (A). It is submitted by the Hospital that none of the communications made by the complainant prior to or post the date of complaint contained any allegations of sexual harassment, particularly; emails dated 19/12/2015 & 18/02/2016 to Hospital Personnel vide Annexure P/5 and P/6 respectively or in the civil suit No.60A of 2016 by the Court of 17th Civil Judge, Class-I, Indore dismissed on 19/05/2017 (Annexure P/8). Even the communication dated 31/08/2016 (Annexure P/11) by the Joint Director, Directorate of Women Empowerment, State of Madhya Pradesh whereunder the complaint dated 18/03/2016 was made over to the Chief Executive Officer, District Panchayat, Indore (respondent No.1) did not contain any mention of sexual harassment, however, it is directed that the complaint be investigated to find out the intention behind the alleged acts committed by the Medical Superintendent, in the matter of aforesaid complaint.

(B) The Local Committee did not adhere to the principles of natural justice while conducting the enquiry. Besides, the alleged enquiry so held instead of ascertaining whether the allegations in

the complaint are referable to the sexual harassment as defined under section 2(n) of the Act, 2013 / intention of the Medical Superintendent, the Local Committee has jumped to the conclusion that the complainant was subjected to sexual harassment and recommended the consequential prejudicial action against the Hospital and its personnel as reflected in the report impugned (Annexure P/2). Hence, the enquiry report and the recommendations made thereunder suffer from patent perversity. Conclusions drawn are *de hors* the material on record and the same are based on lopsided findings. It is further submitted that:

- (C)**
- (i)** Hospital was never supplied with the supporting documents or evidence;
 - (a) before the Local Committee relied upon to arrive at its findings;
 - (b) the rejoinder referred to in the report allegedly supplied by the complainant on 31/07/2017 was not supplied.
 - (ii)** neither Hospital nor any of its senior officers were afforded opportunity to cross-examine the complainant;
 - (iii)** as required under section 13(1) of the Act, 2013, the Committee did not make available copy of report to all concerned;
 - (iv)** the impugned recommendations in the report are without considering the pleadings presented by Hospital as the additional reply dated 10/08/2017 submitted by it (Annexure P/16) as well as the email of Hospital have not been referred to and discussed in the report;
 - (v)** the Local Committee wrongly reached the conclusion that internal complaints committee has not been constituted at Indore. In fact, Hospital has submitted annual report to the Collector, District

Indore for the period ending December, 2015 on 22/01/2016 (Annexure P/20).

The notice displayed at the entrance gate of the Hospital as regards existence of the internal complaints committee since its constitution (Annexure P/19.);

(vi) the allegations with shades of sexual harassment made during enquiry by the complainant was an afterthought as in none of her communications dated 19/12/2015 or 18/02/2016 or in the online complaint dated 18/03/2016 or in the civil suit, there is whisper of such allegations;

(vii) the Local Committee did not either consider or refer the order of the trial Court [17th Civil Judge, Class-I, Indore] dated 19/05/2017 in civil suit No.60A of 2016 (Annexure P/8) whereunder the prayer of the Complainant for reinstatement was declined.

With the aforesaid submissions, prayer for quashment of Annexure P/1 and P/2 is made.

3. *Per contra*, the learned State's counsel / respondent No.1,2 & 4 supports the order impugned (Annexure P/1) with the submission that respondent No.1 has passed the order under section 13(3) of the Act, 2013 based on the enquiry conducted and the report dated 18/08/2017 (Annexure P/2) submitted by respondent No.2, therefore, the directions contained thereunder are within jurisdiction of respondent No.1. Hence, no exception thereto can be taken.

4. The respondent No.2 has submitted that upon receipt of complaint dated 18/03/2016 from the Directorate of Women Empowerment, State of Madhya Pradesh under the covering letter dated 31/08/2016 (Annexure P/11), the same was made over to the Local Committee by the respondent No.1. Thereafter,

notices were issued and sufficient opportunity was afforded to the Hospital and the Medical Superintendent'; perpetrator repeatedly. Due to hostile and non-cooperative attitude of the Medical Superintendent and also representative of the Hospital as detailed in the enquiry proceedings, the enquiry was prolonged. The Hospital though submitted two replies' one on **21/11/2016** whereunder it expressed ignorance about the complaint and prayed for supply of a copy of the same. The same was supplied on **03/07/2017**. Thereafter, in the second reply dated **20/07/2017** denied the allegations as misconceived and an after thought. However, assurance was given to the Local Committee that an enquiry shall be held by the Hospital on the complaint through the internal complaints committee and/or employees grievance committee. However, neither any enquiry was conducted nor the report was submitted before the Local Committee.

The details of notices issued and dates of hearings are well evident in original record. A perusal thereof reveals that the replies submitted by the Hospital and Medical Superintendent were taken into consideration by the Local Committee. Hence, it is incorrect to say that principles of natural justice were not followed. As the Hospital and the Medical Superintendent themselves were responsible for non-cooperation in the enquiry, not appearing in spite of repeated opportunities to appear, the statement of the complainant was recorded. Therefore, it is palpably wrong to say that opportunity to cross-examine the complainant was not accorded to the Hospital and the Medical Superintendent at any time.

Allegations made in the complaint, replies of the Hospital and Medical Superintendent referred above as well as the statements made by the complainant referred above during enquiry were duly considered and thereafter, the Committee reached conclusion that the complainant was subjected to sexual harassment as defined under section 2(n) read with section 3(2) the Act, 2013.

In fact, the Local Committee had sent its representative to the Hospital to verify existence of the internal complaint committee in the Hospital before conducting enquiry into the complaint. Upon enquiry, it was found by the authorized

representative that the internal complaints committee was not in existence at the Hospital.

Adequate opportunity was afforded to all the parties before conclusions were drawn in the enquiry report.

The Local Committee upon due consideration of the entire material placed on record had submitted the enquiry report on 18/08/2017 (Annexure P/2) which is self-contained and self-explanatory and within the scope of its jurisdiction under the Act, 2013. Hence, no interference is warranted in the report submitted and the action taken thereon.

The copy of enquiry report was sent to all concerned including the Hospital as required under section 13(1) of the Act, 2013.

5. Shri Sethi, learned counsel appearing for respondent No.3 adopts the reply submitted by learned counsel for the respondents No.1, 2 & 4 with further submissions that **(i)** the Complainant is highly educated with rich corporate experience in the field of marketing;

(ii) she was appointed and serving with the Hospital as Senior Manager (Marketing) vide appointment letter dated 15/07/2015;

(iii) the terms and conditions shown to be on probation for a period of six months and the appointment could be confirmed subject to satisfactory completion of the probation period;

(iv) she has performed the duties to the best of her ability;

(v) in fact, the appraisal report (Annexure P/5) ***suggests that she has performed the duties assigned tasks accurately and on time; keen to learn new things and take on more responsibilities; communicates well and is co-operative with other team members. Her conduct indicates that she arrives for work on time, disciplined, polite in behaviour, adheres to organization policies pertaining to attendance, dress code, etc.*** though improvement areas; indicated as: IPR / Target Marketing / Activity – Description – distribution;

(vi) however, unfortunately, the Medical Superintendent; perpetrator and others in the hierarchy named in the complaint instead of motivating and encouraging have **(a)** demoralized her

with unwarranted interference and intimidating attitude culminating into hostile work environment, **(b)** created obstruction in successful completion of projects in her hand **(c)** threat perception about her future employment status; **(d)** despite email to the Managing Director for protection and redressal of grievances, no action whatsoever was taken against the perpetrator and others; **(e)** her complaint dated 18/03/2016 contains details of incidences of harassment and intimidation notified to Managing Director through email dated 18/12/2016;

(vii) true it is that in the complaint, the complainant did not specifically mention the mischievous acts of Medical Superintendent behind such hostility and contemptuous treatment meted out to her for obvious reasons she suffered from fear psychosis apprehending extreme action by the Medical Superintendent and others during currency of employment.

However, as a sequel to the complaint dated 18/03/2016 since the Hospital was hellbent upon it found excuses to terminate her employment camouflaged as if after appraisal. In fact it is an arbitrary termination of employment. There was no appraisal, no counselling and no notice issued to the complainant.

It is unfortunate that while the complainant in emails (placed on record) has expressed her anguish, helplessness and insecured work environment and looked upto the superiors for protection and safety but, the emails were treated as personal affront to get rid of the complainant from the employment;

(viii) the Local Committee upon due consideration of the entire material on record has reached conclusion as reflected from the report itself;

(ix) no exception can be taken to the detailed reasons given by the complainant in her statements before the Local Committee in conjunction with her emails which comes within the jurisdiction of section 13(3) of the Act, 2013. Further, Hospital representative and the Medical Superintendent neither did extend cooperation and effective participation in the enquiry nor ever sought opportunity for cross-examination of the complainant whereas her statement was recorded on 03/07/2016 when Hospital representative received copy of complaint before the

Local Committee. Hence, the Local Committee was fully justified upon consideration of the statement of the complainant and recorded its satisfaction and made recommendations;

Accordingly, the impugned order (Annexure P/1) based on the enquiry report (Annexure P/2) of the respondent No.2 is well within the scope of jurisdiction of respondent No.1. Hence, no interference is warranted. Accordingly, prayed for dismissal of the writ petitions.

6. This Court made an attempt for conciliatory process invoking the provision under section 10 of the Act,2013 and passed the following order on 18/07/2019:

“Shri Ajay Bagadia, Shri Abhinav Malhotra, Shri Rakesh Pal and Ms. Neha Vijayvargiya, learned counsel for the petitioners.

Shri Vivek Patwa, learned counsel for the respondents No.1 and 3.

Shri Rahul Sethi, learned counsel for the respondent No.2.

Shri Ajay Bagadia has concluded. Shri Rahul Sethi has also concluded. However, Shri Vivek Patwa, though argued at length, but is at loss to state the original record is not available to substantiate the findings of the internal committee, hence prays for short time to produce the same.

Upon hearing counsel for the parties at this stage, *prima facie* the genesis of the controversy involved appears to have picked up cue from the complaint made by respondent No.2 dated 18/03/2016 (Annexure P/8) taking exception to the manner and demeanor of the immediate superior, Dr. Gouri Nath in the course of interactions, directions, assignments, etc., in day to day working allegedly causing harassment, embarrassment and tensions to her at the work place which further aggravated due to 'cold shoulders' shown by top management officers.

It appears that sensitivity of her feelings and sense of insecurity escaped notice of the concerned authorities and that probably led to making a complaint, etc., by respondent No.2.

It further appears that neither the management through its internal committee nor the local committee made an attempt for resolution though conciliation statutorily required under section 10 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 before proceeding with the enquiry under section 11 of the said Act.

In the fitness of things it is considered expedient to afford an opportunity to either party to make all possible attempts for resolution of the controversy on a positive note in a friendly manner.

Hence, it is directed that the

petitioner/management shall show its magnanimity affording audience to respondent No.2 and hear her grievances patiently. Thereafter, by a conciliatory process make best efforts to resolve the issue regard being had to the norms prevailing in the establishment of the petitioner.

This Court hopes and trusts that the out come of the resolution of the conciliation process shall be on the happy note.

The observations made in the order shall in no way be considered as an opinion of this Court and the order passed today shall be subject to further hearing of the writ petition.

Call out on **1.8.2019**.

Till then interim order to continue”

7. However, the hope expressed by this Court in the order dated 18/07/2019 (supra) in fact is watered down by inelastic and relentless conduct of the Hospital representative who stuck over the offer for Rs.5.00 lacs as full and final settlement against the justifiable demand of complainant at least, 50% of the salary of eighteen months, she has been kept out of employment. This Court records displeasure and dissatisfaction.

Now, under the circumstances, this Court proceeds to decide the *lis* on merits as the appellate forum is not in existence as reflected in the order dated 28/06/2019.

8. **Heard.**

(A) SEXUAL HARASSMENT AT WORKPLACE:

9. Before adverting to rival contentions, it is considered apposite to glance through the scope and dimensions of “sexual harassment at workplace” as perceived and crystalized in the shape of resolutions, sanctions and treaties at international platforms.

'Sexual harassment' is a cause of concern due to its universalization and outcome of unfavourable condition at workplace. It is one of the most venomous problems that the society is facing today. In the fast developing world, there is increased participation of women in almost each and every walk of life and the profession. The statistics reveal that there has been tremendous hike in sexual harassment cases all over the world. Sexual harassment at workplace is an unscrupulous

behaviour of sexual instinct which is inhuman. Modesty, dignity, ability, self esteem and respect are invaded shattering confidence of women at workplace.

Right to work with dignity and safeguard against the sexual harassment for women in fact is an essential component of the gender discrimination universally recognized basic human right. International community has expressed its serious concern about the challenge.

The United Nations has also reaffirmed its faith in securing and preserving the equal human rights of men and women to have better standards of life with freedom and dignity.

The Convention of the Elimination of all Forms of Discrimination against Women (CEDAW); one of the most comprehensive and dedicated initiative of the UN towards protection and empowerment of women came into force on 3rd September 1981. India has also signed the convention on 3rd July, 1980 and ratified it on 25th June, 1993 with a declaration to eliminate violation of women's rights whether by private persons, groups or organizations.

CEDAW Convention has adopted intentional standards in relation to sexual harassment at workplace under various Articles with hallmark of basic human rights:

- (a) the right to work is an inalienable right of all human beings;
- (b) the right to protection of health and to safety in working conditions;
- (c) the Convention committee recognized:

sexual harassment as 'unwelcome sexually determined behaviour [such] as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands whether by words or actions. It further elaborates that "such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment."

The Fourth UN World Conference on Women in the year 1995 has prepared two important documents: Beijing Declaration

and the Beijing Platform For Action professing to take all possible steps for elimination of all forms of discrimination against women and remove all obstacles to gender equality and advancement of women empowerment to prevent and eliminate all forms of violence against women and girls.

The declaration included in its list of critical areas of concern “violence against women” and “inequality in economic” structures and policies, in all forms of productive activities. It also outlines specific measures that States should undertake to achieve the objectives set forth in the Beijing Declaration. The BPFA includes Sexual Harassment and intimidation in its definition of violence against women. It further states that “the experience of sexual harassment is an affront to a worker’s dignity and prevents women from making a contribution commensurate with their abilities.” Accordingly, the BPFA recommends that states “enact and enforce laws and develop workplace policies against gender discrimination in the labour market, especially, regarding discriminatory working conditions and sexual harassment.”

The Indian judicial experience with sexual harassment started with the case of ***Vishaka and others v. State of Rajasthan and others, (1997) 6 SCC 241***. The case dealt with the brutal gangrape of Bhanwari Devi, a social worker involved in the activity of spreading awareness to end child marriage in the State of Rajasthan.

The Hon'ble Supreme Court decided to use this opportunity to provide a protective umbrella to women exposed to hazardous social environment and sexual harassment/exploitation at workplace at the hands of male workers, defying gender equality with masculine power and influence rendering women at workplace a vulnerable class of victim. Through the judgment for want of codified law in the field, the Hon'ble Supreme Court has adopted the general recommendations of CEDAW and the Beijing Declaration and the Beijing Platform For Action professing elimination of all forms of discrimination against women, removal of all obstacles to gender equality, the advancement and empowerment of women to prevent and eliminate all forms of violence against women and to

ensure women's equal access to economic resources.

The Hon'ble Supreme Court in the case of **Apparel Export Promotion Council v. A.K.Chopra, AIR 1999 SC 625**, emphasized and reinforced that sexual harassment is gender based discrimination. The sexual harassment at the place of work is incompatible with the dignity and honour of women and needs to be eliminated with no exception or debate. International treaties, instruments and conventions should be given full force in evolving ways and methods for elimination of violation of human rights and in particular gender equality. Of course, with a note of caution that there is no conflict between the international norms and the municipal laws. The Court also laid emphasis that in a holistic manner each case must be examined on its own facts regard being had to the concept, meaning, scope, extent and dimensions of 'unwelcomed sexual harassment of women at workplace'. In paragraph 27, it has been held as under:

“27. 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 woman at the work place was a form of gender discrimination against woman. 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....”

In one of the latest pronouncements, Hon'ble Supreme Court in the case of **Additional District and Sessions Judge 'X'**

Vs. Registrar General, High Court of Madhya Pradesh and others (2015) 4 SCC 91, it has been held as under:

“25.....The issue of sexual harassment has a variety of fine connotations. Its evaluation may sometimes depend upon the sensitivity of the person concerned. And also whether, the perception of the harassed individual was known to the one against whom the accusing finger is pointed...”

(B) Facts of the case:

10. Local Complaints Committee is constituted under section 6 of the Act, 2013 for three years under the orders of the Chief Executive Officer, District Panchayat, District Indore dated 23/09/2017 consisting of the following persons as members:

- (a) Smt. Vinita Tiwari
(Non-Governmental organization)
- (b) Ms. Sangeeta Rahoriya
(Advocate, Member of OBC)
- (c) Smt. Rutumbara Dwivedi
(District Registrar, Working Government Member)
- (d) Posted Member – Nodal Officer, District Women Empowerment Officer, District Indore.

11. The complaint of Complainant dated 18/03/2016 alleging harassment at workplace was submitted in the Women Welfare Section of Ministry of Women & Child Development, Government of India and the same was forwarded under covering letter dated 04/11/2016 to the Principal Secretary, Department of Women and Child Development Government of Madhya Pradesh. In turn, the complaint was forwarded to the Chief Executive Officer, District Indore, Indore under the covering letter dated 31/08/2016 and the same was made over to the Local Committee for enquiry.

12. On perusal of the original file submitted by the counsel for the Local Committee (respondent No.2) under cover suggests that the complaint of the Complainant was processed. On 06/10/2016, it was considered apposite to ascertain the existence of internal complaints committee (to be constituted under section

4 of the Act, 2013) at the workplace of the complainant, i.e., in the establishment of Hospital and if the said committee existed, let the complaint be examined and enquired.

The report suggests that upon visit of the representative of the Local Committee to the Hospital and enquiry made from employees available, it was found that no such internal complaints committee is in existence. There was no notice board to that effect as well.

Therefore, from the office of District Women Empowerment, Indore, a notice dated 17/10/2016 was issued to Dr. (Ms.) Priti P. Sainy, Senior Manager (HR) & Admn., of the Hospital appraising her the complaint forwarded to it by the office of Directorate of Women Empowerment, State of Madhya Pradesh, Bhopal under letter dated 31/08/2016.

The representative of the Hospital has submitted first reply dated 21/11/2016 (Annexure P/13) reiterating existence of the internal complaints committee. However, denied to have received any complaint from the complainant and, therefore, the internal complaints committee had no occasion to look into the complaint.

Thereafter, notice was issued on 28/06/2017 addressed to the Managing Director of the Hospital fixing date of appearance as 03/07/2017.

On 03/07/2017, the Hospital representative, Dr. (Ms.) Priti P. Sainy appeared and demanded copy of the complaint and the same was supplied to her. Time upto 20/07/2017 was granted to file the reply.

The second reply dated 20/07/2017 was submitted by the Hospital upon receipt of complaint dated 18/03/2016 denying the allegations contained in the complaint. In the penultimate paragraph it was mentioned as under:

“..... Since we have only received the Complaint dated 18.03.2016 of Ms. Anjali Thakur now, and since we as an institution refer all such complaints to the Employees Grievance Committee, as per our standard practice, *we intend to refer the complaint to the Employees Grievance Committee for an inquiry in any event. While both concerned parties are no longer employed by Medanta Indore, we do hope that they will extend all cooperation to the Committee.*

Once the inquiry is concluded, we shall file a detailed report before your good office.”

(Emphasis supplied)

However, neither there is any material on record that enquiry was conducted and report submitted before the Local Committee or before this Court. To the same effect is the finding of the Committee in its report. It shows that the Hospital did only lip service and was never interested in resolving grievance of the complainant.

On 04/08/2017, the Medical Superintendent was granted time to file reply and fixed for the case for 10/08/2017.

On 10/08/2017, the Medical Superintendent submitted written reply in the presence of Dr. Priti P. Sainy representative of Hospital and Shri Amit Pal, Advocate from Indore. Shri Aditya Mathur, Advocate from Medanta Gurgaon was also present. **The committee has observed misdemeanour of the Medical Superintendent to the following effect:**

सुश्री अंजलि ठाकुर प्रकरण के संबंध में आज दिनांक 10.08.2017 को बैठक आयोजित की गई। बैठक में अध्यक्ष महोदया श्रीमती अंजलि खत्री, सदस्य सुश्री संगीता राधैरिया एवं श्रीमती विनिता तिवारी बैठक में उपस्थित थी। उक्त बैठक में बादी डॉ. गौरीनाथ भी उपस्थित थे। बैठक में डॉ. में गौरीनाथ ने अपना लिखित पक्ष समिति के समक्ष प्रस्तुत किया। बैठक में यह निर्णय किया गया कि दिनांक 14.08.2017 को समय 10:30am बजे दोनो पक्ष को उपस्थित होने के आदेश जारी किया गया। बैठक में मेदान्ता अस्पताल इंदौर से श्रीमती प्रीति सैनी एवं अमित पाल, मेदान्ता गुडगांव से एडवोकेट आदित्य माथुर भी उपस्थित थे। बैठक की कार्यवाही इस प्रकार है:-

1. बैठक में डॉ. गौरीनाथ द्वारा बैठक की शुरुआत में सामान्य तरीके से व्यवहार किया किंतु बाद में वह भड़कते हुए यह कहा कि:
 - मैं वहां जॉब कर रहा था, मेरी उसकी बर्खास्तगी में कोई जिम्मेदारी नहीं है।
 - जो भी किया गया मेदान्ता अस्पताल गुडगांव द्वारा किया गया है। जो कि मेरी रिपोर्ट द्वारा किया गया है।
 - मैं अंजलि से बात नहीं कर सकता क्योंकि मैं एक reputed व्यक्ति हूँ मेरी सैलरी 31 लाख है। यह व्यथित व्यक्ति का अपमान है।
 - एक international meeting का बहाना कर चलती बैठक से चले गये और ऑफिस के नीचे लगभग 50 मिनट खड़े रहे।

अग्रिम कार्यवाही करने हेतु दोनों पक्ष को दिनांक 14.08.2017 समय 10:30am बजे बुलाया गया।

calling upon him to appear positively failing which *ex parte* proceedings shall be drawn against him and the next meeting was called on 14/08/2017.

On 14/08/2017, the Medical Superintendent did not appear on an excuse of pre-occupations though the complainant

appeared. **The Committee observed as under:**

इस बैठक में डॉ. गौरीनाथ उपस्थित नहीं हुए। जब उन्हें फोन किया, तब उनका जवाब था, मैं इंटरनेशनल मीटिंग में हूँ, नहीं आ सकता हूँ। आपको जो करना है कर लीजिए। उनका फोन पर व्यवहार अच्छा नहीं था आप मेरे हिसाब से तारीख दिया करिये आग भी मुझे जमेगा तो ही आउंगा। कुछ भी दस्तावेज तो कहता है मौखिक कहा था डा. गौरीनाथ ने दिनांक 10.08.2017 को उसके एडवोकेट अमित पाल द्वारा जा जवाब दिया गया वह गलत है अंजलि द्वारा लैंगिक उत्पीड़न का समर्थ जवाब दिया है। जबकि अंजलि ठाकुर द्वारा क्षतिपूर्ति, अभी तक का वेतन, दुर्व्यवहार गलत रिपोर्टिंग, मानसिक प्रताड़ना के बाद हॉस्पिटल से निष्कासित करने के विरुद्ध आवेदन किया है।

On the next date, i.e., 16/08/2017, the Medical Superintendent again did not appear, however, his counsel Shri Amit Pal was present and the next fixed, i.e., 17/08/2017 was duly informed to the counsel.

On 17/08/2017, the Medical Superintendent was present alongwith counsel. The Medical Superintendent was called upon to record his statement but, he refused to do so on one pretext or the other. **The observations of the Local Committee are as under:**

आज दिनांक 17.08.2017 को सशिक्षण कार्यालय में बैठक आयोजित की गई। इसमें अध्यक्ष श्रीमती अंजलि खत्री, सदस्य विनीता तिवारी, सदस्य संगीता राहोरिया उपस्थित थी। इस मौके पर प्रार्थिनी अंजलि ठाकुर व प्रतिप्रार्थी डॉ. श्री गौरीनाथ उपस्थित थे। उनके साथ उनका वकील अमित पाल उपस्थित थे। समिति ने गौरीनाथ को बयान लेने के लिए बुलाया था, पर गौरीनाथ बयान देने के लिए तैयार नहीं थे। जो भी बोलेगा उनका वकील बोलेगा वह अड़े हुए थे। हमारे बयान लेने की प्रक्रिया में वकील द्वारा अवरोध उत्पन्न तथा शासक्य कार्य में बाधा डाली। गौरीनाथ को समिति ने 3 बार बयान के लिए बुलाया गया, कभी उपस्थित थे तो क्या नहीं दिया या अनुपस्थित रहे। डॉ. गौरीनाथ, अमित पाल एवं प्रीति सेन द्वारा लगातार समिति को गुमराह किया जा रहा है। डॉ. गौरीनाथ कभी भी समिति के समक्ष अकेले नहीं आये हैं, और समिति के अध्यक्ष एवं सदस्यों के साथ अभद्रतापूर्ण व्यवहार किया है।

वकील अमित पाल के साथ आवेदन देने श्री गौरीनाथ भी अंदर आये एवं समिति के साथ पुनः दुर्व्यवहार किया तथा उन्होंने स्वीकार किया कि इसकी जिन्दगी मैंने बर्बाद की है और मैं अब कुछ नहीं कर सकता।

जो भी दस्तावेज गौरीनाथ द्वारा प्रेषित किये गये हैं, उसमें कहीं भी प्रार्थिनी सुश्रह अंजलि ठाकुर के हस्ताक्षर नहीं हैं।

Despite three opportunities, the Medical Superintendent did not turn up to record his statement.

Therefore, the Local Committee proceeded with the

enquiry. The relevant incidences of harassment taken note of and findings are quoted below:

“ आवेदिका सुश्री ठाकुर की परीक्षा अवधि के पूर्व ही उनका जॉब परफॉरमेंस अप्रैसल रिपोर्ट तैयार की गयी जिसमें आवेदिका का सहकर्मियों एवं सीनियर के संग इंटर पर्सनल इश्यूज एवं नॉन परफॉरमेंस बताते हुए सुश्री ठाकुर की परीक्षा अवधि को 03 माह के लिए बढ़ाये जाने का उल्लेख किया गया। उक्त रिपोर्ट की प्रति सुश्री ठाकुर को न तो उपलब्ध कराई गयी और न ही उनसे प्राप्ति ली गई जिससे यह रिपोर्ट फर्जी प्रतीत होती है एवं उक्त रिपोर्ट के आधार पर उनका कार्य मूल्यांकन कर उन्हें पद से निष्कासित किया जाना अनैतिक एवं अवैधानिक प्रतीत होता है।

सुश्री ठाकुर की मेदांता अस्पताल इंदौर में डायरेक्ट रिपोर्टिंग डॉ. गोरीनाथ मंडीगा को होती थी एवं कुछ मामलों में सुश्री ठाकुर की डायरेक्ट रिपोर्टिंग मेदांता अस्पताल गुड़गाँव के श्री राजीव मिश्रा वाईस प्रेसिडेंट मार्केटिंग को होती थी। आवेदिका को कैंप के संबंधित अप्रूवल श्री राजीव मिश्रा वाईस प्रेसिडेंट मार्केटिंग से लेना होती थी किन्तु टेक्निकल सपोर्ट डॉ. गोरीनाथ मंडीगा से मिलती थी। डॉ. गोरीनाथ मंडीगा द्वारा आवेदिका से चाहा गया कि आवेदिका अपनी संपूर्ण रिपोर्टिंग उन्हें करें। इसके बाद डॉ. गोरीनाथ मंडीगा द्वारा आवेदिका के पेमेंट वाउचर पर हस्ताक्षर करने से मना कर दिया और वाउचर के पेपर आवेदिका के मुँह पर फेंक दिया। उक्त कृत्य **“कार्यस्थल पर महिलाओं का लैंगिक उत्पीड़न (निवारण, प्रतिषेध एवं प्रतितोषण) अधिनियम 2013 धारा 13(3)(ii)** के उपबंधों के अंतर्गत आते हैं।

उक्त घटना के उपरांत से डॉ. गोरीनाथ मंडीगा का व्यवहार सुश्री ठाकुर के साथ बहुत बुरा हो गया जिसमें **“आवेदिका के ड्रेस में कमेंट्स करना किसी फाइल में होने वाले सिंगल सिग्नेचर करवाने के लिए अकेले घंटों केबिन में बैठने के लिए विवश करना, सैलरी समय पर न देना, सैलरी रोक देना, टेक्निकल ऑपरेशनल सपोर्ट न करना, अस्पताल के वाहन से आवागमन न करते हुए डॉ. गोरीनाथ मंडीगा के वाहन से आने जाने के लिए विवश करना, आवेदिका के रंग पर फब्तियां कसना, कार्यालय परिसर में भेदभावपूर्ण व्यवहार किया जाता था”**। उक्त सभी कृत्य कार्यस्थल पर महिलाओं का लैंगिक उत्पीड़न (निवारण, प्रतिषेध एवं प्रतितोषण) अधिनियम 2013 अंतर्गत आते हैं एवं यह किसी भी महिला के आत्मसम्मान, प्रतिष्ठा एवं कार्यस्थल पर किया गया अनैतिक आचरण की श्रेणी में आता है।

उक्त घटना की शिकायत आवेदिका द्वारा मेदांता अस्पताल गुड़गाँव के मैनेजिंग डायरेक्टर डॉ. नरेश त्रेहान, सी.ई.ओ. श्री

पंकज साहनी, वाईस प्रेसिडेंट मार्केटिंग श्री राजीव मिश्रा, डायरेक्टर एच.आर. अरविंदर बग्गा, मेडिकल डायरेक्टर इंदौर डॉ. संदीप श्रीवास्तव को ई-मेल के माध्यम से की गयी किन्तु हायर अथॉरिटी द्वारा कोई भी उचित कार्यवाही नहीं की गयी एवं न ही आवेदिका से कोई भी पूछताछ की गई। इतने बड़े मेडिकल आर्गनाइजेशन द्वारा कोई भी उचित कार्यवाही नहीं की गयी एवं न ही आवेदिका से कोई भी पूछताछ की गई। इतने बड़े मेडिकल आर्गनाइजेशन द्वारा अपने कर्मचारी के साथ ऐसा करना गलत प्रतीत होता है एवं ऐसा होना आर्गनाइजेशन के मैनेजमेंट फेलियर की श्रेणी में आता है।

साक्ष्य के आधार पर पाया गया कि अरविंदर बग्गा, डायरेक्टर एच.आर.मेदांता अस्पताल गुडगाँव द्वारा आवेदिका पर लगाये गये आरोपों को स्वीकार कर स्वयं इस्तीफा देने के लिए दबाव डाला गया एवं ऐसा न करने पर उन्हें टर्मिनेट करने की धमकी दी गयी। आवेदिका को टर्मिनेट करने के एक माह पूर्व किसी कर्मचारी को उनके पद से इस प्रकार दबाव डालकर उन्हें स्वयं इस्तीफा देने या टर्मिनेट करने की धमकी देना गलत कृत्य है।

समिति द्वारा की गयी जांच निष्कर्ष:-

उक्त समस्त बिन्दुओं पर जाँच करने पर समिति इस निष्कर्ष पर पहुंची है कि:-

आवेदिका सुश्री अंजलि सिंह ठाकुर एक अनुभवी, बहुत योग्य एवं उनकी कार्यकुशलता को देखते हुए उन्हें मेदांता अस्पताल गुडगाँव द्वारा उन्हें सीनियर मेनेजर मार्केटिंग के पद पर 15 लाख रुपये के वार्षिक पैकेज का ऑफर दिया गया था। मेदांता अस्पताल संगठन गुडगाँव एवं डॉ. गोरीनाथ मंडीगा, मेडिकल सुप्रीटेंडेंट मेदांता अस्पताल इंदौर द्वारा आवेदिका सुश्री अंजलि सिंह ठाकुर के साथ किये गये ईर्ष्या एवं द्वेष के साथ दुर्व्यवहार करना एवं उन्हें षड्यंत्रपूर्वक गलत तरीके से निष्काषित करना उनकी कार्यकुशलता को प्रभावित करता है एवं उनका यह कृत्य **“कार्यस्थल पर महिलाओं का लैंगिक उत्पीडन (निवारण, प्रतिषेध एवं प्रतितोषण) अधिनियम 2013 की धारा 13(3)(ii)”** के उपबंधों की श्रेणी में दंडनीय है एवं उक्त अधिनियम के प्रावधानों की अवहेलना की गयी है। अतः स्थानीय परिवाद समिति जिला इंदौर द्वारा सुश्री अंजलि सिंह ठाकुर के प्रकरण पर इस निर्णय पर आई है कि आवेदिका को उनकी रोकੀ गई वेतन, ई.पी.एफ., गलत तरीके से उन्हें निष्कासित करने के कारण उनके करियर के 18 माह तक कोई भी नौकरी न पा पाने के कारण उनकी आर्थिक, सामाजिक एवं मानसिक क्षति की पूर्ति की जावे, उनके टर्मिनेशन लेटर को निरस्त कर उनके लिए मेदांता अस्पताल संगठन गुडगाँव की ओर से आवेदिका के लिए चरित्र एवं अनुभव

प्रमाण-पत्र जारी करें। इसके अतिरिक्त आवेदिका को उनके आत्मसम्मान, सामाजिक सम्मान एवं प्रतिष्ठा पर ठेस पहुँचाने हेतु मेदांता अस्पताल संगठन गुड़गाँव एवं डॉ. गोरीनाथ मंडीगा से आवेदिका को माफीनामा प्रदान किया जावे एवं नुकसान की भरपाई करवाई जावे एवं उन्हें पुनः उनके पद पर ससम्मान रखा जावे। “

Thereafter, the Committee submitted the report on 18/08/2017.

13. The Act, 2013 is essentially and predominantly a social welfare legislation. The provisions contained thereunder must receive contextual meaning and required to be interpreted broadly and liberally regard being had to the aims and objects of the Act. The Hon'ble Supreme Court in this context has observed as under:

“In the field of labour and welfare legislation which have to be broadly and liberally construed the court ought to be more concerned with the colour the content and the context of the statute rather than with its liberal import and it must have due regard to the Directive Principles of State Policy (Part IV of the Constitution) and any international convention on the subject and a teleological approach and social perspective must play upon the interpretative process [**Workmen Vs. American Express International Banking Corporation, AIR 1986 SC 458, N.K.Jain Vs. C.K.Shah, AIR 1991 SC 1289 & B.Shah Vs. Presiding Officer, Labour Court, AIR 1978 SC 12, referred to**].

Section 2(n) defines “**sexual harassment**” and the definition is inclusive in nature providing any one or more of the unwelcome acts or behaviour provided thereunder whether directly or by implication shall constitute sexual harassment.

Further, widening the scope of definition, section 3(2) contemplates the circumstances which may also amount to sexual harassment if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment.

14. Meanings of the expression; 'means', 'includes' and 'means and includes' have been reiterated in the case of **Bharat Cooperative Bank (Mumbai) Ltd., vs. Employees Union (2007) 4 SCC 685** observed as under:

"23....When in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the word "means" is used in the definition it is a "hard-and-fast" definition and no meaning other than that which is put in the definition can be assigned to the same. On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in [the definition of "banking company" in] Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other."

The Hon'ble Supreme Court in the case of **N.D.P. Namboodripad Vs. Union of India (2007) 4 SCC 502**, observed:

"18. The word "includes" has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word "include". Webster's Dictionary defines the word "include" as synonymous with "comprise" or "contain". Illustrated Oxford Dictionary defines the word "include" as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word "includes" as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word "include" is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word "includes" is also used to connote a specific meaning, that is, as "means and includes" or "comprises" or "consists of"."

and the same principles of interpretation have been further reiterate by the Hon'ble Supreme Court in the case of **Delhi Development Authority Vs. Bhol Nath Sharma (Dead) By LRs., and others, (2011) 2 SCC 54.**

15. Therefore, the word “sexual harassment” must not receive narrow and pedantic meaning instead on the anvil of the concept as perceived at international platforms including the United Nations resolutions under CEDAW Convention & Beijing Declaration and the Beijing Platform For Action to which India is a signatory “where the 'sexual harassment at workplace' is held to be an act of violation of human rights; women right to live with dignity and protection against all types of discrimination because substantive equality of women in the employment context cannot be achieved without elimination of sexual harassment as this represent a barrier to their ability to seek safe and healthy working environment, and achieve advancement through promotions, etc., at workplace as evident from the international stands in relation to sexual harassment formulated in CEDAW Convention.

16. Moreso, the Constitutional Courts; one of the important limbs of the Union of India must endeavour to foster respect for international treaties as contemplated under Article 51(c) of the Constitution of India, particularly; in the context of 'sexual harassment' at workplace as an act of violation of human rights not restricted to governmental organizations but also, for private acts if they fail to act with due diligence to prevent violation of such rights.

17. To avoid prolixity, it is expedient to refer to email dated 18/02/2016 Thursday 12.46 PM instead of referring to series of email exchanges written by the complainant requesting for relocation of the workplace addressed to Dr. Naresh Trehan, Managing Director, Pankaj Sahni; N.T.Gmail; Rajiv Misra, Dr. Sandeep Shrivastava, Arvinder Bagga to appreciate her predicament and genesis of the complaint dated 18/03/2016.

18. The complainant was a Senior Manager (Marketing) at the Hospital. Amongst others, her job profile required organizing and launching campaigns in various therapies, viz., cardiac, neuro, gynaec, walkathon, press meets, screening camps, medical conferences. Her vision was to attract more number of patients

for the benefit of Hospital.

From the email dated 19/12/2015 addressed and copy to the same persons referred above, she was required to report the Vice President Marketing and for Operations to Centre Head; dual reporting.

It appears that the Medical Superintendent initially took strong exception to such reporting by the complainant and thereafter, started harassing her.

Upon perusal of the original record of the enquiry, it appears that no sooner the complainant took charge, the Medical Superintendent gave her a passive unwelcome verbal note having trapping male gender mischief of sexual colour; if she wanted to continue in Medant she should be good to him or else he will make her work difficult. He also used to comment upon her dress and outfits. Further, he took strong exception to the dual reporting and avoiding the approval and signature on the bills for reimbursement submitted by her, hours together making her to sit in his cabin, creating obstruction and causing harassment in technical and operational support. Talking with her in high pitch voice with contempt and offending her dignity and chastity. Her activities were squeezed and stagnated. She was not allowed to participate in the marketing. He was surpassing her and directly assigning tasks to executives in her team. She was marginalized and embarrassed. She was subjected to typical hostile work environment intimidating with her future employment. Under such insecure and helpless situation, she looked upon superiors to come to her rescue but all turned deaf ears and shown cold shoulders. She in fact pleaded clemency before Dr. Naresh Trehan, Managing Director to intervene and protect her bringing to his notice that the Medical Superintendent and Dr. (Ms.) Priti P. Sainy have communicated that she will have to part with organization. She further stated that she worked one hundred per cent to keep high flag of the organization/Hospital. She do not want to leave the job. For the last six months after her joining, she has launched successfully various campaigns for the benefit of the Hospital. She therefore, requested for relocation of the work place.

It is really unfortunate that the Managing Director did not care for the seriousness and sensitivity of the situation under

which the complainant was subjected to the hostile work environment, humiliating and threat to her future employment affecting her health and safety, etc., instead asked her to 'bridge the gap' with the Medical Superintendent. Such indifferent and insensitive 'don't care' attitude of the Managing Director is deplorable and taken exception thereto. In full fairness with maturity as captain of the Hospital, he should have given audience to the complainant and addressed issues raised by her as she was an vulnerable victim at the hands of the Medical Superintendent; perpetrator who made her life hell and spoiled her career tantamount to sexual harassment at workplace. Left with no other alternate, she filed the complaint on 18/03/2016.

Under the circumstances, it is imperative to strike a note of caution for the Managing Director of the Hospital to be sensitive and extra careful in dealing with pains and sufferings of the women employees at the workplace to avoid recurrence of such unfortunate incidences.

19. Another aspect which requires consideration is the factum of termination.

The complainant was appointed and joined on 15th July, 2015 as Senior Manager (Marketing). In the Employee Confirmation Appraisal Form (Annexure P/5) her job performance; indicators: reveal that the complainant performs assigned tasks accurately and on time; express keenness to learn new things and shoulders more responsibilities; besides, communicates well and was co-operative with other team members. Conduct, indicators: Arrives for work on time, disciplined and polite in behaviour, adheres to organizational policies pertaining to attendance, dress code, etc., Improvement Areas: IPR/Target Marketing/Activity – Discipline Distribution. However, her probation was extended for three months on 11/12/2015.

There is no appraisal on record after 11/12/2015 extending the period of probation for three months (Annexure P/5). **The extended period was over in the month of March, 2016.** This act itself demonstrates that there was no notice or counselling or opportunity to the complainant. There was no material on record

to show that the complainant was lacking in indicators of (i) job performance (ii) conduct, (iii) inter personal relationship, (iv) IPR (v) target marketing / activity – description – distribution.

The termination order dated 19/04/2016 (Annexure P/7) as such is stigmatic termination and not discharge simplicitor as is well apparent that the termination order is camouflaged order with oblique motive to terminate her employment as a measure of punishment to achieve the collateral purpose of get rid of her by hook or crook removing from the Hospital. The termination *ex facie* is as a sequel to her complaint against the Medical Superintendent factually investigated by the Local Committee.

20. From the deliberations recorded in the course of enquiry before the Local Committee, it is clear that the Medical Superintendent did not cooperate in the enquiry and the representative of the Hospital after filing the aforesaid referred scanty replies dated 21/11/2016 whereunder it is mentioned that internal complaints committee ('ICC') is in existence in the Hospital (Annexure P/13) and 20/07/2017 (Annexure P/15) whereunder it is mentioned that the complaint dated 18/03/2016 was received, however, the complainant did not approach the Employee Grievance Committee but, the Hospital intended to refer the complaint to the said Committee for an enquiry and once the enquiry was conducted, the detailed report should be submitted before the Local Committee. No enquiry report is submitted. No other material was placed on record before the Local Committee. They did not cooperate or sought permission for cross-examination of the complainant at any point of time. No evidence was led in the context of emails on record, particularly email dated 18/02/2016 (Annexure P/6) referred above. Under the circumstances, no complaint of violation of principles of natural justice at the instance of Hospital and/or Medical Superintendent can be entertained. Moreover, curiously enough, the petitioners have not impleaded as party/respondent the Medical Superintendent in two writ petitions. That also reinforce the adverse inference drawn by the Local Committee against the Hospital.

21. That apart the additional reply filed by the petitioners on

10/08/2017 (Annexure P/16) did not touch merits of the complaint or denial thereof instead complaining that the complainant has not returned laptop, and ID card, etc., in her possession. Hence, the same was of no consequence.

22. As regards constitution and existence of internal complaints committee referable to Annexure P/13 and annual reports dated 22/01/2016 & 18/01/2017 (Annexure P/20) for the years 2015 and 2016; suffice it to say during the visit of representative of the Local Committee noted that no such information was supplied; quoted below:

“स्थानीय परिवाद समिति द्वारा उक्त प्रकरण पर की गयी जांच में पाया गया कि—

मेदाता अस्पताल इंदौर के परिसर में कहीं भी आंतरिक परिवाद समिति का सूचना पटल नहीं लगा था एवं न ही अंजलि ठाकुर को जॉब में जोड़ने के समय समिति के संबंध में कोई भी जानकारी नहीं दी गयी। आवेदिका की शिकायत की जांच करने के लिए मौका स्थल पर जाया गया एवं वहां समिति के गठन का कोई भी सूचना पटल नहीं पाया गया। अस्पताल के स्टाफ से समिति के बारे में जानकारी चाही तो स्टाफ के किसी भी व्यक्ति को इसकी जानकारी नहीं थी। उक्त प्रकरण के उपरांत ही अस्पताल द्वारा समिति की वार्षिक रिपोर्ट समिति को प्रेषित की जाने लगी।”

As such, the existence of the internal complaints committee itself is doubtful at the Hospital. Even otherwise, if the complainant was referred, the same would be of no use since the person against whom acquisitions have been made, i.e., Medical Superintendent was allegedly a member of such committee. Under the circumstances, Annexure P/20 (pages 111 & 113) appears to be a paper formality not in existence at the Hospital. In the obtaining facts and circumstance, no exception to the conclusion of the Local Committee in that behalf is warranted.

23. The contention that the relief of reinstatement sought by the complainant was subject matter of civil suit No.60A of 2016 by the Court of 17th Civil Judge, Class-I, Indore dismissed on 19/05/2017 (Annexure P/8) and the appeal pending before the appellate Court, in the opinion of this Court, is of no relevance to the subject matter of this writ petition as this Court has addressed issues related to sexual harassment, firstly; the subject matter of these writ petitions is with reference to and in the context of Act,

2013 amenable to action thereunder and secondly; the trial Court declined the relief of reinstatement is not maintainable for want of jurisdiction.

24. **CONCLUSIONS:**

(i) In the obtaining facts and circumstances, the complainant / respondent No.3 is held to have been subjected to unwelcome sexual harassment at workplace within the meaning of section 2(n) read with section 3(2)(ii), (iii), (iv) & (v) of the Act, 2013;

(ii) the petitioners in W.P.No.22314/2017 (Mrs. Arvinder Bagga and others Vs. Local Complaints Committee, District Indore and others) since were not noticed by the Local Committee and no opportunity was afforded to participate in the enquiry, the direction for institution of criminal proceedings against them under sections 499 and 500 IPC is not warranted as criminal liability is strict liability personal to the person accused of.

25. W.P.No.22314/2017 and W.P.No.22317/2017 are disposed of with the following directions:

(i) the respondent No.3/ complainant is held entitled for compensation to the tune of **Rs.25,00,000/- (Rupees twenty five lakhs only)** for the pain & suffering, loss of reputation, emotional distress and loss of salary of eighteen months for no fault on her part resulting into deprivation of right to live with dignity;

(ii) she is entitled for EPF and other monetary dues (if still not paid);

(iii) the respondent No.3/complainant be issued character and experience certificate

during the period she was in employment without attaching any stigma by the competent authority of Hospital;

(iv) the respondent No.3 / complainant is directed to furnish the details of savings bank account to the Hospital within two weeks from today for necessary compliance (if not already with the Hospital);

(v) the Hospital is directed to deposit the amount in the savings bank account of respondent No.3 / complainant within eight weeks positively; failing which the same shall attract interest at the rate of 09% (nine) per annum from today.

(vi) the Hospital is directed to pay penalty of Rs.50,000/- (Rupees fifty thousand only) (if not already paid) in terms of section 26 of the Act, 2013 due to non-existence of internal complaints committee at the relevant point of time; within a period of four weeks from today failing which the proceedings in accordance with law be initiated by the respondent No.1 against the Hospital;

(vii) the proposed action under sections 499 and 500 IPC against the petitioners in W.P.No.22314/2017 is quashed.

With the aforesaid, order impugned dated 20/09/2017 (Annexure P/1) is modified.

26. Accordingly, both the writ petitions stand disposed of. No order as to cost.

A copy of order be placed in the connected writ petition.

b/-

(Rohit Arya)
Judge
16-09-2019