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CALCUTTA HIGH COURT ON SEXUAL HARASSMENT AT WORKPLACE

A. Introduction

Calcutta High Court (**HC**), in *Pawan Kumar* case,¹ held that any inquiry into a case of sexual harassment at workplace without following due process is not sustainable. It ordered reinstatement and back wages to the respondent.

B. Brief Facts

1. Pawan Kumar Niroula (**Niroula**) was appointed in 1997 as a teacher by the Central Government's Navodaya Vidyalaya Samiti (**NVS**).
2. In 2020, the principal of NVS filed a written complaint in Ravangla Police Station that he had received complaints from 67 students against Niroula alleging sexual harassment.
3. In February 2020, an internal committee (**IC**) was set up to inquire into the complaints.
4. Based on the principal's complaint, a case was registered under Section 10 of the Protection of Children from Sexual Offences Act, 2012 against Niroula. He was arrested and later released on bail.
5. Niroula ascertained from unofficial sources that he was suspended from NVS but was officially informed of the suspension via. email on February 16, 2020.
6. On June 16, 2020, NVS ordered that the IC would conduct a summary trial for inquiring into the allegations against Niroula (**Order**).
7. He appealed to the Chairman of NVS under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on July 10, 2020, but did not receive any response.
8. Niroula approached the Central Administrative Tribunal, Kolkata Bench (**CAT**).
9. CAT ordered NVS to proceed with the Order and directed Niroula to co-operate with the authorities.
10. Aggrieved by CAT's order, Niroula appealed before the HC.

C. Main Contentions

1. Niroula contented that:
 - a. The Order of suspension was not sustainable under law; and
 - b. The IC constituted for the summary trial did not have statutory force post enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (**POSH Act**).
2. NVS contented that the Order was legal in terms of Supreme Court's (**SC**) case of *Avinash Nagra*.²

¹*Pawan Kumar Niroula Vs. Union of India and Ors*: MANU/WB/0446/2022.

²*Avinash Nagra Vs. Navodaya Vidyalaya Samiti*: MANU/SC/1058/1997.

D. HC's Judgment & Reasoning

HC allowed the petition and held that CAT's observations are not sustainable in law. It also set aside the Order, and directed NVS to allow Niroula to re-join within one month with back wages based on the following:

- a. The 67 students fall under the definition of 'aggrieved woman' under the POSH Act.³ The HC observed: "*In this context, the definition of 'aggrieved woman' as defined under Section 2(a) of the Act may be referred. As per Section 2(a) an aggrieved woman means in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent. That being so, the provisions of the Act squarely apply to the students of the school.*"⁴
- b. In the *Vishaka* case,⁵ the SC directed that every public or private organisation must constitute a committee (later 'internal complaints committee' as per Section 4 of the POSH Act) to enquire into any complaint of sexual harassment made by any aggrieved woman.
- c. Since the IC constituted not as per the POSH Act, it is illegal.
- d. It observed that: "*...the committee constituted for summary trial without adhering to the mandatory requirements of the law and the rules as quoted above loses its legal force.*"⁶

E. Comment

Although the HC held that constituting the IC was not as per the POSH Act, it is silent as to whether an internal committee (formerly ICC) must be constituted under the POSH Act by NVS to investigate into the many complaints of sexual harassment against Niroula. Failing this, there would be no redress for the complainants.

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³ Section 2(a) of the POSH Act.

⁴ Paragraph 23 of the Judgment.

⁵ *Vishaka Vs. State of Rajasthan*: MANU/SC/0786/1997.

⁶ Paragraph 27 of the Judgement.

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