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SUPREME COURT ON IMPLEMENTATION OF POSH ACT

A. Introduction

The Supreme Court (“**SC**”), in the *Aureliano Fernandes* case,¹ on May 12, 2023, issued directions to the government and various other private bodies directing that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”) be implemented effectively.

B. Brief Facts

1. Aureliano Fernandes (“**Fernandes**”) was appointed as a temporary lecturer in Goa University (“**GA**”) in 1996. He was promoted as head of department in 2003.
2. Two female students complained against Fernandes in 2009 to GA alleging physical harassment. GA appointed the Standing Committee for Prevention of Sexual Harassment at Work Place (“**Committee**”)² to investigate into the complaints.
3. Fernandes responded to the complaints, alleging conspiracy, and denying the allegations.
4. The Committee conducted hearings and recorded statements, while Fernandes objected to the procedure and sought more time and permission to engage a lawyer. He also objected to a complaint from an ex-student and requested additional information.
5. Witnesses and evidence were presented by both sides. Fernandes’ requests for postponements of proceedings due to health issues, were denied.
6. The Committee proceeded with the inquiry and submitted an *ex-parte* report recommending his termination, citing established actions of sexual harassment and grave misconduct.
7. The Executive Council (“**EC**”) of GA held a meeting and accepted the report submitted by the Committee. Fernandes was immediately suspended. The EC informed him about the inquiry against him and gave him ten days to submit written statement of defence. He replied to the EC’s memorandum, demanding documents and information relating to the sexual harassment complaints against him. The request was denied, and he was given twenty days to respond.
8. GA’s Registrar informed Fernandes that the disciplinary proceedings had been terminated based on an SC judgement holding that no further inquiry is required when a committee investigating into a complaint of sexual harassment issues a report on the matter.
9. GA’s Vice Chancellor subsequently informed Fernandes that the EC had accepted the report of the Committee and concluded in 2010 that he was unfit to be retained in service in view of the gravity of the charges levelled against him. It also proposed imposing a significant penalty and disqualifying him from future employment with GA. Although he appealed to the appellate authority, it was rejected.
10. He then challenged before the Bombay High Court (“**HC**”). The HC observed that the Committee:
 - a. had given ample opportunities to Fernandes to cross-examine complainants and witnesses, but he deliberately chose not to appear.
 - b. was justified in proceeding *ex-parte* due to his absence holding that his excuses for not attending were ‘flimsy’.The HC dismissed the petition holding that there was no breach of natural justice and rejected his claims that the Committee was improperly constituted and that it conducted the inquiry hastily.
11. Aggrieved by the order of the HC, Fernandes filed an appeal before the SC.

¹*Aureliano Fernandes vs. State of Goa and Ors.* (12.05.2023 - SC) : MANU/SC/0572/2023. A copy of the judgement is available [here](#).

²This Committee was formed prior to enactment of the POSH Act.

C. Parties' Contention

1. Fernandes contended that the dismissal order was based solely on a fact-finding report by the Committee, which hurriedly concluded the proceedings without giving him a fair chance to defend himself and this is a violation of principles of natural justice.
2. GA submitted that no prejudice was caused to Fernandes and the Committee had observed the principles of natural justice 'as far as was practical'.

D. SC's Judgment & Reasoning

1. The SC allowed the appeal after thoroughly discussing and analysing:
 - a. The jurisprudence with respect to the principles of natural justice including opportunity of fair hearing.
 - b. The pragmatic application of the 'as far as is practicable' rule.
 - c. The evolution of the POSH Act.
2. It opined that, "...[P]roceedings conducted by the Committee with effect from the month of May, 2009, fell short of the "as far as practicable" norm prescribed in the relevant Rules. The discretion vested in the Committee for conducting the inquiry has been exercised improperly, defying the principles of natural justice."³ It ordered:
 - a. Fresh inquiry by the Internal Committee ("IC")⁴ to be completed in three months and submit a report to the disciplinary committee after following principles of natural justice.
 - b. During the inquiry, Fernandes must be given a hearing with a fair chance of defending himself but he cannot seek adjournment.
 - c. The decision taken by the IC and the disciplinary authority shall be purely on merits and in accordance with the POSH Act.
 - d. Fernandes will not be entitled to claim immediate reinstatement or back wages till the inquiry is completed and a decision is taken.
3. It also issued the following directions to all institutions, organisations, employers including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals:
 - a. Employers shall ensure that necessary information regarding the constitution and composition of the IC, e-mail addresses and contact numbers of the designated persons, the procedure prescribed for submitting online complaint, as also the relevant rules, regulations and internal policies are made readily available on their website and must be updated regularly.
 - b. Immediate and effective steps must be taken to familiarize members of the IC with their duties and the manner in which inquiry ought to be conducted on receiving a complaint- from receipt of complaint to submission of report.
 - c. Regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the IC and to educate women employees and women groups about the provisions of the POSH Act and the rules.

E. Comment

The importance of constituting ICs by employers of establishments having 10 or more employees,⁵ as well as complying with other provisions of the POSH Act cannot be understated. Non-compliance will be visited with penalty. The POSH Act also prescribes that repeat non-compliance by an employer could result in cancellation of license or withdrawal, non-renewal or cancellation of registration required for carrying on its business activity.⁶

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³ Paragraph 75 of the Judgement.

⁴ Under the POSH Act.

⁵ Section 6 of the POSH Act.

⁶ Sec. 26(2) of the POSH Act.