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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of Decision: 1<sup>st</sup> February, 2023*

+ **W.P.(C) 14403/2022 and CM APPL. 43979/2022**

P ..... Petitioner  
 Through: Ms. Dr. Swati Jindal Garg, Ms. Arushi  
 Kulshrestha, Mr. Sowmya China &  
 Mr. Arjun, Advs. (M-9911232024)

versus

UNION OF INDIA AND ORS ..... Respondents  
 Through: Ms. Pratima N. Lakra, CGSC, Mr.  
 Apoorv Sharma & Mr. Chandan  
 Prajapati, Advs. & Ms. Aishwarya  
 Dobhal, G.P. for UOI. (M:  
 9968324260)  
 Mr. Amish Tandon, Advocate for R-2.  
 Mr. Ankur Chhibber & Mr. Nikunj  
 Arora, Advs. for R-4 (M-9810082847)

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J.(Oral)**

1. This hearing has been done through hybrid mode.
2. The Petitioner had filed a complaint dated 5th July, 2019 to the Head of HR- IFCI Factors Ltd. alleging Sexual Harassment by a senior functionary of IFCI Factors Ltd. (*hereinafter 'IFL'*). Thereafter, the complaint was placed before the Managing Director-IFL who in turn forwarded the complaint with his remarks to IFCI-HR & CVO, IFCI Group to take up the matter in their Internal Complaints Committee (ICC) as the accused personnel was an employee of IFCI. However, on 10<sup>th</sup> July, 2019, the General Manager, IFCI Ltd. marked the complaint back to IFL with the following noting:

*“The complaint is from IFC/ Factors Ltd (/FL) and relates to Sexual Harassment at Workplace, hence, it is*

*submitted that IFL may be directed to redress as per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.”*

3. The ICC of IFL was formed on 30<sup>th</sup> July, 2019 and proceedings were initiated under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (*hereinafter as ‘POSH Act’*) against the Respondent No.4. The ICC of IFL was reconstituted on 19<sup>th</sup> August 2019 and then again reconstituted on 23<sup>rd</sup> August, 2019 and 24<sup>th</sup> February, 2020.

4. The said ICC submitted a report on 11th March, 2020 directing Respondent No.4 to give a written apology. The recommendations of the said report read as:

*“It has been unanimously recommended by the ICC, IFL that -*

*The respondent is found guilty on the basis of facts and witnesses so far as stated above, thus:*

***A written apology must be given by the respondent in the name of complainant** to the appointing authority of ICC, IFL and to restore the modesty of the complainant, there should not be any proximity between the complainant and respondent, in order to avoid any situation causing hostile environment or confrontation between both the parties as they work in same tower.*

*It is also should be ensured that any such action should not appear to penalize the complainant.*

*Management is free to take any other measure in addition to above recommendations as per service rules and policies.”*

Thus, the ICC was of the view that some reparation was required for the Complainant, owing to the conduct of the Respondent no.4.

5. Vide letter dated 19<sup>th</sup> October, 2020, the ICC was informed by the Chief General Manager of IFCI Ltd. that the recommendations of the ICC were

accepted by the Disciplinary Authority of IFCI and necessary orders were also issued vide letter dated 12<sup>th</sup> October, 2020. The said order reads as:

*“This is with reference to Report of Internal Committee of Complaints dated March 11, 2020 in respect of a complaint received under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The said report was forwarded by MD, IFL to IFCI vide letter dated March 12, 2020. This is to inform that the recommendations of the Internal Committee of Complaints as mentioned in the aforesaid report have been accepted by the Disciplinary Authority of IFCI and necessary Orders in this regard have been communicated vide IFCI letter dated October 12, 2020. This is for the information of the Committee please.”*

6. The Respondent No.4, however, filed an appeal to the Appellate Authority of IFCI Ltd., i.e., the Board of Directors and in the said appeal, a re-examination was directed, by the ICC of IFCI. The said order dated 11<sup>th</sup> July, 2022 reads as under:

*“With reference to the aforementioned subject, it is submitted that IFL- HR is in receipt of letter Ref no. IFCI/HR/2022-110704 dated July 11, 2022, where in it has been informed that your complaint dated 05/07/2019 under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, is to be re - examined by the ICC of IFCI Ltd. A copy of the letter ref no. IFCI/HR/2022-110704 dated July 11, 2022, annexed herewith for your perusal and reference. Request you to acknowledge receipt of this letter along with the annexure.”*

7. This letter has been challenged by the Petitioner, in this petition, on the ground that since the re-examination has been directed by the ICC of IFCI

Ltd, she no longer wishes to participate in the said enquiry as the complaint dates back to 2019 and she cannot be subjected to a second round of proceedings before the ICC, as the same is extremely frustrating and torturous. It was due to certain language being used by the Respondent No.4 and actions against her that she had filed the complaint initially with Head of HR, IFL and thereafter to the ICC. The Petitioner is present in person. Ld. Counsel for the Petitioner submits that she has moved on in life and does not wish to be subjected to a second round before the ICC.

8. Respondent No.4, on the other hand, contends that the recommendations of the ICC report, directing the said Respondent to give a written apology has been issued and his statutory remedy of appeal under Section 18 of POSH cannot be taken away.

9. Ld. Counsel for the ICFI Ltd. submits that there was a technical error in the constitution of the ICC because of which the IFCI has taken a decision to get the matter re-examined.

10. Vide letter dated 11<sup>th</sup> July, 2022, the directions issued by IFCI Ltd. for the re-examination of the complaint by the ICC of IFCI Ltd. read as:

*“Accordingly, for examination of the complaint by ICC of IFCI, you are requested to kindly take the following action at the earliest:*

- i) ICC of IFL may be informed that the said complaint will be re-examined by the ICC of IFCI and its consent in this regard may be obtained. Accordingly, complaint dated 05/07/2019 in original may be submitted to IFCI for consideration by its ICC.*
- ii) The complainant may also be informed about re-examination of the complaint by the ICC of IFCI Ltd.”*

11. Heard. In POSH related complaints and matters, the constitution of the ICC is of utmost importance and the same has to be in accordance with the provisions of the Act. The management and authorities of the organisations have to behave in a responsible manner and on the mere ground that the constitution was incorrect, a re-examination of the whole proceedings cannot be directed under the present facts and circumstances.

12. As can be seen in the facts of this case, the Board of Directors of IFCI has merely directed re-examination by the ICC of IFCI, when admittedly the Petitioner was working in IFL. Moreover, the Respondent no.4, was at the relevant point in time deputed to IFL as Managing Director. The constitution of the ICC was being repeatedly changed for some reason or the other.

13. Considerable time which has elapsed cannot be wasted both in respect of the complainant/Petitioner as also in respect of the person against whom the complaint is made. As is evident from the present case, the complaint dates back to 2019 and in view of the recent action of IFCI Ltd. the matter has come back to square one. The complainant cannot be harassed and put to inconvenience to appear again and again before the ICC, even of a connected organisation and be expected to produce witnesses to support her case, all over again. Even the said witnesses may not be available now in the organisation.

14. In the same vein, even the Respondent No. 4 against whom the enquiry is to be conducted would also be subjected to harassment and frustration to participate in a second enquiry. Under these circumstances, it is directed that the order for re-enquiry shall not be pursued by IFCI Ltd. The Petitioner no longer insists on the apology and, therefore, no apology needs to be given by Respondent No.4. The matter deserves to be given a closure, considering the sentiment expressed in the Court today.

15. Adjudication of complaints relating to sexual harassment need to be dealt with utmost care. The inquiry needs to be by a duly constituted ICC and the same needs to be complete in all aspects. Institutions cannot escape liability for dragging on these sensitive complaints. A Id. Single Judge of this Court in, *U.S. Verma and Ors. v. National Commission for Women and Ors.*, (2009) 163 DLT 557 had also fixed the responsibility of the institution and ordered the payment of costs to the complainants. The relevant portion of the judgement reads as:

*“81. Some of these writ petitions originally were filed before the Supreme Court; the Society appears to have approached this Court simultaneously and later all these matters came to be taken up by this Court in 2001. Eight long years have passed; Verma has since retired. Some of the teachers who complained have taken up alternative employments. Yet this Court is of the opinion that with the findings recorded above, that the Commission's report cannot be deemed an adjudication and at the same time holding that Sharda Nayak Committee was not constituted and did not conduct its proceedings in accordance with law; the conclusions can only provide cold comfort to the complainants. In the normal circumstances a finding that the disciplinary or enquiry proceedings were vitiated would have lead to the Court remitting the matter to the employer to take suitable steps for Constituting another Committee in accordance with law. That course too however, is inappropriate having regard to the length of time and the situation of the parties now. The teacher-complainants' concerns therefore would have to go unredressed, with no further scope of enquiry into the truth or otherwise of their allegations. DPS society - which is known for the quality of education it imparts through its several schools, in the country, unfortunately, in this instance, does not emerge with a*

*role that a model employer should have displayed, and was expected of it. The Vishakha guidelines are to be taken seriously, and not followed in a ritualistic manner. Had that been the position, the teachers' could not have complained - regardless of whether their allegations were justified, or not borne out. The DPS Society's initial reluctance, and later faulty compliance has led to this sorry state of affairs, due to which the Court is constrained to enjoin an entirely unsatisfactory closure to the matter.*

*82. Having regard to the overall conspectus of the facts of this case, the Court deems it appropriate in the circumstances that the DPS Society should pay a sum of Rs. 2.5 lakhs to each of the petitioners namely Ms. Jayshri Kannan, Ms. Shayista Jabeen Raza and Ms. Shrini Kaul in WP(C) No. 1731/2001 (they were also impleaded as respondents in the matter filed by DPS society). It should also pay a sum of Rs. 1 lakh to the fourth employee/teacher impleaded by it i.e. Ms. Anju Gupta.*

16. Keeping in mind the fact that the alleged error was by IFCI Ltd. due to which the re-examination has been directed, it is directed that the Petitioner shall be paid Rs.1,00,000/- as costs by IFCI Ltd. The costs shall be paid within four weeks by the Respondent No.2.

17. With these observations, the present petition, along with all pending applications, is disposed of.

**PRATHIBA M. SINGH  
JUDGE**

**FEBRUARY 1, 2023/dj/am**