

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
JUSTICE SUJOY PAUL**

**ON THE 05<sup>th</sup> OF OCTOBER, 2023**

**WRIT PETITION No. 21852 of 2018**

**BETWEEN :-**

**MUKESH KHAMPARIYA**

**.....PETITIONER**

***(BY SHRI SAMRESH KATARE - ADVOCATE )***

**AND**

- 1. THE STATE OF MADHYA PRADESH  
THR. ITS SECRETARY DEPARTMENT  
OF HOME MINISTRY VALLABH  
BHAWAN BHOPAL M.P. (MADHYA  
PRADESH)**
- 2. ADDITIONAL DIRECTOR GENERAL  
OF POLICE (ADMINISTRATION)  
POLICE HEADQUARTERS DISTT-  
BHOPAL (MADHYA PRADESH)**
- 3. ADDITIONAL DIRECTOR GENERAL  
OF POLICE (WOMEN CRIME)  
POLICE HEADQUARTERS DISTT-  
BHOPAL (MADHYA PRADESH)**

4. **INSPECTOR GENERAL OF POLICE  
JABALPUR RAJNGE DISTT-  
JABALPUR (MADHYA PRADESH)**
5. **RICHA CHOUBEY, ASSISTANT**
  
6. **SUPERINTENDENT OF POLICE  
NARSINGHPUR DISTT-  
NARSINGHPUR (MADHYA PRADESH)**
7. **VARSHA SINGH D/O SHRI RANJEET**
  
8. **ADDITIONAL DIRECTOR GENERAL  
OF POLICE (ADMIN.) POLICE  
HEADQUARTERS BHOPAL (MADHYA  
PRADESH)**

**.....RESPONDENTS**

**(SHRI PANKAJ TIWARI – GOVT. ADVOCATE FOR THE RESPONDENTS NO.  
1 TO 6 &8 / STATE)**

**(SHRI DHANESH KANT TIWARI – ADVOCATE FOR THE RESPONDENT  
NO.7)**

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*This petition coming on for hearing this day, the court passed  
the following:*

**ORDER**

This petition filed under Article 226 of the Constitution assails  
the order dated 25.06.2018 (Annexure R-1) and the enquiry report

dated 25.07.2018 (Annexure P-1) whereby the petitioner was held guilty for committing sexual harassment at the workplace.

2. Draped in brevity, the relevant facts are that the petitioner was working as Station House Officer (SHO), in Police Station Gadarwara, District Narsinghpur between 27.08.2016 to 24.03.2017. During that period, respondent No.7 was posted in the said police station as Sub-Inspector.

3. As per the stand of the petitioner, the petitioner was an officer supervising the work and duties of respondent No.7. Since respondent No.7 committed dereliction of duty on more than one occasion, certain orders taking coercive action were passed which are filed cumulatively as Annexure P-2. Respondent No.7 as an after thought preferred a frivolous complaint dated 16.03.2017 alleging that petitioner committed sexual harassment in the workplace. Pursuant to the complaint dated 16.03.2017 (Annexure P-4), an internal complaint committee was constituted as per **the Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal), 2013** (Act of 2013). The internal committee consisting of five members conducted the inquiry, recorded statement of witnesses and prepared the report on 26.05.2017 and opined that the allegations against the petitioner for committing sexual harassment in workplace are not established.

4. The respondent No.7 preferred an application against the aforesaid report of internal complain committee dated 24.05.2017. On 25.12.2017 (Annexure P-10) the departmental authority came to hold

that allegation of sexual harassment could not be established against the petitioner.

5. Shri Samresh Katare, learned counsel for the petitioner drew the attention of this Court to another report dated 25.07.2018 (Annexure P-1) whereby another inquiry report was prepared wherein charges were found to be proved against the petitioner. This report is founded upon the direction issued by the Police Headquarter dated 25.06.2018 (Annexure R-1).

6. Shri Katare, learned counsel for the petitioner advanced four fold submissions to assail the impugned orders. *Firstly*, it is submitted that in the teeth of Section 9 of the Act of 2013, since the alleged incident of sexual harassment had taken place on 12.10.2016 and the complaint was preferred after the statutory period prescribed on 16.03.2017 and there was no conscious decision taken by any authority to condone the delay, complaint itself was not entertainable. It is further submitted that the date of incident can be gathered from the supplementary statement of respondent No.7 (page-136).

7. *Secondly*, as per Section 18 of the Act of 2013, the appeal could have been preferred against the report dated 26.05.2017 to the Tribunal / Court as per the Service Rules. The reliance is placed on the judgment of this Court reported in **2014(2) MPLJ 500 (Ramesh Pal Vs. Union of India and Ors.)** wherein it was held that the appropriate remedy is to approach the Tribunal / Court as per the service matters.

8. *Thirdly*, the Police Headquarter by communication dated 25/06/2018 (Annexure R/1) directed the ADGP (Accounts) to conduct another enquiry. In obedience thereof, the said authority conducted the enquiry and submitted the impugned report dated 25/07/2018. There exists no enabling provision under the Act of 2013 to conduct any further enquiry at the direction of the Police Headquarter. In absence thereof, the enquiry report is bad in law.

9. *Fourthly*, the enquiry report is based on no evidence and it is based on the guess work of the Inquiring Authority. For these cumulative reasons, the impugned orders are liable to be axed.

10. *Per contra*, Shri Pankaj Tiwari, learned Panel Lawyer supported the impugned order and placed reliance on the return. Shri Dhanesh Kant Tiwari, learned counsel for respondent No.7 borrowed the same argument and urged that no fault can be found in the order dated 25/06/2018 (Annexure R/1) and enquiry report dated 25/07/2018.

11. No other point is pressed by learned counsel for the parties.

12. Heard learned counsel for the parties at length and perused the record.

13. Before dealing with the rival contentions, it is apposite to quote relevant portion of Sections 9, 13(2) & 18 of the Act, which reads as under :-

**“9. Complaint of sexual harassment :- (1)**  
Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace

to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, **within a period of three months from the date of incident** and in case of a series of incidents, within a period of three months from the date of last incident :

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing;

Provided further that the Internal Committee or, as the case may be, the Local Committee may, **for the reasons to be recorded in writing, extend the time limit not exceeding three months**, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

**13(2).** Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

**18. Appeal.** - (1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of Section 14 or Section 17 or non-implementation of such recommendations may prefer an appeal to the Court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

**(Emphasis Supplied)**

14. A plain reading of Section 9(1) makes it clear that the complaint can be made in writing within a period of three months from the date of incident. In this case, it is clear that incident had taken place on 12/10/2016 and complaint was preferred on 16/03/2017. The second proviso to Section 9 aforesaid although provides that the local committee for the reasons to be recorded in writing may extend the time limit for another three months but no such decision of the committee is brought to the notice of this Court wherein said limitation period was extended. Thus, I find substance in the argument of Shri Samresh Katare, learned counsel for the petitioner that complaint itself was barred by time.

15. Be that as it may, the complaint was considered by a five members committee which came to hold in the report dated 26/05/2017 that allegation of sexual harassment in work place could

not be established against the petitioner. Respondent No.7 preferred a departmental appeal/representation which was decided by order dated 25/12/2017 (Annexure P/10) and the concern authority came to hold that for want of sufficient evidence, allegation of sexual harassment in workplace could not be established.

16. The Police Headquarter passed the order dated 25/06/2018 (Annexure R/1) and directed ADGP to conduct another enquiry. The impugned enquiry report dated 25/07/2018 (Annexure P/1) is outcome of said order. As noticed above, it was challenged by contending that there exists no enabling provision on the strength of which Police Headquarter could have issued such direction to conduct another enquiry.

17. During the course of hearing, on a specific query from the Bench, learned counsel for the State and respondent No.7 could not point out any source of power on the strength of which Police Headquarter could have passed the order dated 25/06/2018 (Annexure R-1). This Court in **Ramesh Pal (supra)** opined that the report of internal/local committee is a 'service matter' and in that event, anybody aggrieved by the said report can approach the Tribunal/Court. Thus, there exists no provision of preferring appeal under the Act of 2013 to a departmental authority. In absence of showing any enabling provision, this Court is unable to countenance the order of Police Headquarter dated 25/06/2018 (Annexure R/1). This is trite that if a statute, prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden. [See: **Taylor Vs. Taylor [(1876) 1 Ch D 426]**, **Nazir Ahmed V. Emperor**



[ AIR 1936 PC 253], Shiv Bahadur Singh Vs. State of U.P., AIR 1954 SC 322; Deep Chand Vs. State of Rajasthan, AIR 1961 SC 1527; Ramchandra Keshav Adke (dead) by Lrs. Vs. Govind Joti Chavare, (1975) 1 SCC 559; Commissioner of Income Tax, Mumbai Vs. Anjitm M.H. Ghaswala, (2002) 1 SCC 633 and J & K Housing Board Vs. Kunwar Sanjay Krishan Kaul (2011) 10 SCC 714 )]

18. In the instant case, in absence of showing any source of power for issuing direction dated 25/06/2018 (Annexure R/1), the said order and consequential enquiry report dated 25/07/2018 (Annexure P/1) cannot sustain judicial scrutiny. Apart from this, the operative portion of this report dt. 25.07.2018 reads thus :-

“उपरोक्त तथ्यों के विश्लेषण के उपरांत लेख है कि आवेदिका उनि वर्षा सिंह द्वारा की गयी शिकायत का यद्यपि कोई भौतिक साक्ष्य उपलब्ध नहीं है जिसके आधार पर उनि वर्षा सिंह के आरोपों को प्रमाणित किया जा सके, तथापि आवेदिका के द्वारा तात्कालीन निरीक्षक मुकेश खमपरिया के विरुद्ध बार-बार वरिष्ठ कार्यालयों को शिकायत करना इस बात को इंगित करता है कि आवेदिका के साथ हुई घटना व घटना के पश्चातवर्ती प्रभाव के कारण उसके विरुद्ध कार्यवाही किये जाने से वह आहत हुई है। आवेदिका द्वारा अपनी सहकर्मियों एवं परिजानों को घटना बताना एवं आवेदिका के परिजनों पर राजीनामे के लिए दबाव डालने संबंधी तथ्यों को नजरअंदाज नहीं किया जा सकता है जो कहीं न कहीं घटना घटित होने की ओर इंगित करता है। अतः उपरोक्त तथ्यों के विवेचन से स्पष्ट है कि उनि वर्षा सिंह के साथ उपरोक्त घटना घटित हुई है तथा उनि वर्षा सिंह को प्रताड़ित करने के उद्देश्य से गैरहाजिरी डाली गयी व वरिष्ठ कार्यालय को प्रतिवेदन भेजे गये एवं विभिन्न माध्यमों के द्वारा शिकायत वापस लेने हेतु दबाव बनाया गया जांच में आंतरिक परिवाद समिति की कार्यवाही पर प्रश्नचिन्ह लगाते हैं एवं समिति द्वारा एक पक्षीय कार्यवाही किया जाना प्रतीत होता है ।”

**(Emphasis Supplied)**

**19.** Bare perusal of the aforesaid findings makes it clear that there is no material evidence available against the petitioner. Merely because the complainant preferred repeated complains, the petitioner was held to be guilty. Even assuming that this Inquiry Officer had authority to conduct the enquiry and prepare report dated 25.07.2018, her finding is based on surmises and conjecture and not on any evidence on record. Suspicion, however strong it may be, cannot take the place of proof [See: AIR 1964 SC 364 (Union of India v. H.C. Goel)] For this reason also, this enquiry report is liable to be set aside.

**20.** In view of foregoing discussion, the impugned order of Police Headquarter dated 25/06/2018 (Annexure R/1) and enquiry report dated 25/07/2018 (Annexure P/1) are set aside.

**21.** The writ petition is **allowed**.

**(SUJOY PAUL)**  
**JUDGE**