



**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 404 OF 2024**

**DR. SOHAIL MALIK**

**APPELLANT(S)**

**VERSUS**

**UNION OF INDIA & ANR.**

**RESPONDENT(S)**

**J U D G M E N T**

**J.K. Maheshwari J.**

1. Assailing the final judgment dated 30.06.2023 passed by the High Court of Delhi at New Delhi (hereinafter referred to as “**High Court**”) in WP (C) 8624/2023 confirming the judgment dated 23.06.2023 of the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as “**CAT**”) in OA No. 1838/2023, the instant appeal has been preferred.

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NIDHI AHUJA  
Date: 2025.02.10  
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Reason:

The jurisdictional challenge by the Appellant in the present case, *inter alia* relates to whether the Internal Complaints

Committee (hereinafter referred to as **“ICC”**) constituted at a certain Department of the Government of India can entertain a complaint under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as **“POSH Act”**) against the Appellant who was working at a different Department of the Government of India at the relevant time.

### **FACTS**

3. The Appellant is a 2010 batch officer of the Indian Revenue Service (hereinafter referred to as **“IRS”**) who, at the relevant point of time, was posted as OSD, Investigation, Central Board of Direct Taxes, Delhi. A 2004 batch Indian Administrative Service (hereinafter referred to as **“IAS”**) officer (hereinafter referred to as **“aggrieved woman”**) who was, at the relevant time, posted as Joint Secretary, Department of Food and Public Distribution alleged that on 15.05.2023, the Appellant sexually harassed her at her workplace, which was at Krishi Bhawan, New Delhi.

4. An FIR bearing No. 53/2023 was registered by the aggrieved woman against the Appellant on 16.05.2023 under Sections 354, 354D, 506, 509 of the Indian Penal Code, 1860 (hereinafter

referred to as “**IPC**”). As stated across the Bar, chargesheet has been filed in the said case on 09.03.2024 under Sections 354, 354-D, 506, 509, 201 and 204 of IPC and Section 67 of the Information Technology Act, 2000 and the criminal case is pending.

5. Subsequently, a complaint under the POSH Act was presented before the ICC constituted under Section 9 of the POSH Act at the aggrieved woman’s department / workplace, i.e., the Department of Food and Public Distribution on 24.05.2023.

6. Since the present appeal arises out of the challenge to the jurisdiction of the ICC, we are not concerned with the fate of the criminal case ensuing out of the incident and are not delving into the particular facts and details as contained in the complaint.

7. Pursuant to the complaint by the aggrieved woman, the ICC through its Member Secretary issued a meeting notice/order bearing F No. 01/01/2023-ICC dated 13.06.2023 to the Appellant, scheduling a hearing for the complaint, for him to appear on 22.06.2023 along with a response to the complaint.

8. It was at this stage, the Appellant filed OA No. 1838/2023 before the CAT seeking direction to set aside the order/notice dated 13.06.2023 and all consequential proceedings arising

therefrom. The CAT dismissed the OA filed by the Appellant, which has been upheld by the High Court *vide* the impugned order. Upon preferring the present appeal before this Court, *vide* order dated 18.07.2023 it was directed that the inquiry may go on, but the final outcome of the inquiry shall be kept in a sealed cover.

9. We have been informed across the Bar that the inquiry has since concluded and we have also been supplied a copy of the inquiry report and proceedings in sealed cover, which is awaiting subsequent action, subject to outcome of the present appeal.

### **SCHEME OF THE POSH ACT**

10. The scheme of the POSH Act itself is drawn from the monumental judgment of this Court in ***Vishaka v. State of Rajasthan***<sup>1</sup> in a writ petition under Article 32 of the Constitution of India filed by social activists, NGOs and public-spirited persons, where this Court came up with various guidelines to enforce the fundamental right of ‘gender equality’ and ‘right to life and liberty’ under Articles 14, 15, 19(1)(g) and 21 of the Constitution of India. While coming up with the guidelines, the Court interpreted Article 14, 42 and 52(A) of the Constitution of India and also drew

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<sup>1</sup> (1997) 6 SCC 241.

inspiration from recommendations of the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter referred to as “**CEDAW**”).

11. This Court, even prior to the POSH Act being legislated, through an interim order dated 26.04.2004 in **Medha Kotwal Lele v. Union of India**<sup>2</sup> clarified that the Complaints Committee envisaged by the Court in **Vishaka** (Supra) shall be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 (hereinafter referred to as “**CCS (Conduct) Rules**”).

*“2. Notice had been issued to several parties including the Governments concerned and on getting appropriate responses from them and now after hearing the learned Attorney General for UOI and the learned counsel, we direct as follows:*

*“Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka case [(1997) 6 SCC 241 : 1997 SCC (Cri) 932] , SCC at p. 253, will be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 (hereinafter called the CCS Rules) and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the Rules.”*”

12. The POSH Act itself was notified on 09.12.2013. Along with the said Act came to be enacted The Sexual Harassment of Women

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<sup>2</sup> (2013) 1 SCC 311.

at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (hereinafter referred to as “**POSH Rules**”).

13. Section 2(a) of the POSH Act defines the term ‘aggrieved woman’:

*“(a) “aggrieved woman” means -*

*(i) 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;*

*(ii) in relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house;”*

14. The term ‘employee’ has been defined in Section 2(f) of the POSH Act as:

*“(f) “employee” means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;”*

15. The term ‘employer’ has been defined in Section 2(g) of the POSH Act as:

*“(g) “employer’ means –*

*(i) in relation to any department, organisation, undertaking, establishment, enterprise, Institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case maybe, may by an order specify in this behalf;*

*(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.*

*Explanation. —For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organisation;*

*(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;*

*(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;”*

16. The word ‘respondent’ has been defined in Section 2(m) of the POSH Act as “a person against whom the aggrieved woman has made a complaint under section 9”.

17. Most importantly, the word ‘workplace’ has been defined in Section 2(o) of the POSH Act as follows:

*“(o) “workplace” includes –*

*(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;*

*(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;*

*(iii) hospitals or nursing homes;*

*(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;*

*(v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;*

*(vi) a dwelling place or a house;*

18. Section 2(h) of the POSH Act defines 'Internal Committee' as an Internal Complaints Committee constituted under Section 4 of the POSH Act, which, in turn, provides for constitution of the Internal Complaints Committee, its composition, membership and manner of removal of members.

19. The definition of the term 'sexual harassment' itself has been laid down in Section 2(n) of the POSH Act, while Section 3(2) of the

Act further explains ‘acts’ or ‘circumstances’ which may amount to sexual harassment. Section 3(1) of the POSH Act provides that ‘*No woman shall be subjected to sexual harassment at any workplace*’.

20. A complaint of sexual harassment may be made by an aggrieved woman under Section 9 of the POSH Act, as quoted below:

**“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.”*

21. The ICC or the Local Committee, upon receiving a complaint, may, at the request of the aggrieved woman, take steps to settle

the matter between the aggrieved woman and the respondent through 'conciliation' under Section 10 of the POSH Act.

22. In case an inquiry is to be made into the complaint filed by an aggrieved woman, Section 11 of the POSH Act lays down the provision for inquiry into the complaint. It is a major bone of contention in the present case and is relevant, hence quoted as follows:

***“11. Inquiry into complaint.– (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:***

*Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:*

*Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.*

*(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the*

*respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.*

*(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—*

*(a) summoning and enforcing the attendance of any person and examining him on oath;*

*(b) requiring the discovery and production of documents; and*

*(c) any other matter which may be prescribed.*

*(d) The inquiry under sub-section (1) shall be completed within a period of ninety days.”*

23. Thereafter, Section 13 of the POSH Act lays down the procedure which is to be followed upon completion of an inquiry.

The said provision is also relevant and is therefore quoted herein:

**“13. Inquiry report.—** *(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.*

*(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.*

*(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall*

*recommend to the employer or the District Officer, as the case may be—*

*(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;*

*(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:*

*Provide that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:*

*Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or as, the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.*

*(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.”*

24. The POSH Act, in Section 19, also imposes an active duty on the ‘employer’ to prohibit and prevent sexual harassment at the workplace and to co-operate with the working of the ICC. The said provision is relevant, and is therefore reproduced as under:

**“19. Duties of employer.**— *Every employer shall –*

*(a) provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace;*

*(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;*

*(c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;*

*(d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;*

*(e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;*

*(f) make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made under sub-section (1) of section 9;*

*(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;*

*(h) cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;*

*(i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;*

*(j) monitor the timely submission of reports by the Internal Committee.”*

## **PROCEEDINGS BEFORE THE CAT AND HIGH COURT**

25. The thrust of the challenge as presented by the Appellant before the CAT and the High Court, in short, was that since the Department of Revenue was the controlling authority of the

Appellant, the ICC constituted under the Department of Food and Public Distribution did not have the jurisdiction to entertain the complaint filed by the aggrieved woman under Section 9 of the POSH Act. As such, the Appellant contended that it was only the ICC constituted under his own Department which can institute ICC proceedings against him. To buttress this argument, much emphasis was laid by the Appellant on Section 11 of the POSH Act. The Appellant urged that use of the words 'where the respondent is an employee' in Section 11 implies that the inquiry into a complaint for sexual harassment must be done by the ICC constituted at the workplace where the Appellant is employed. Consequently, he argued that the workplace of the aggrieved woman and the 'respondent' alleged of the act of sexual harassment have to be the same, for the POSH Act to apply.

26. The CAT dismissed the challenge laid out by the Appellant and held that the word 'where' used in Section 11 of the POSH Act relates to difference in procedure to be followed by both types of committees (ICC or Local Committee) when the 'respondent' is an employee and when he is a domestic worker. The CAT also observed that the word 'workplace' has been defined in the POSH Act in relation to the aggrieved woman and the complaint under

Section 9 of the POSH Act may be enquired upon even when the 'respondent' has no relation whatsoever with the workplace of the aggrieved woman.

27. The High Court, in the impugned order, engaged in purposive interpretation of the POSH Act and held that if the provisions of the POSH Act are interpreted in the manner as suggested by the Appellant, it shall be contrary to the intent and purpose behind enacting the POSH Act. The Court agreed with the interpretation of Section 11 of the POSH Act by the CAT and held that Section 11(1) does not require that the aggrieved woman and the 'respondent' must be working in the same Department. The High Court also interpreted the phrase 'service rules applicable to the respondent' as mentioned in Section 11 to hold that this phrase itself shows that the 'respondent' need not be an employee of the same workplace. The High Court also interpreted Section 13 of the POSH Act and held that the ICC, on finding that sexual harassment has been proved, may recommend to the employer or District Officer of the 'respondent' to take action in accordance with services rules applicable to them.

## **ARGUMENTS ADVANCED**

28. Learned Senior Counsel Mr. Vipin Sanghi appearing for the Appellant has argued with vehemence that for civil servants, the CCS (Conduct) Rules are a complete code on sexual harassment and the correct recourse against a civil servant, therefore, is institution of disciplinary proceedings in accordance with Rule 3C of the CCS (Conduct) Rules. It is urged that such a disciplinary proceeding can only be handled by the ICC constituted in his department, since his controlling authority is different from the controlling authority of the aggrieved woman where ICC proceedings have been instituted. Placing heavy reliance on Section 13 of the POSH Act, he argues that the ICC constituted where the appellant is an employee, solely has jurisdiction to entertain complaints of sexual harassment, since it is only his employer which may take action based on the findings of the ICC. Learned Senior Counsel also urged that the use of the phrase 'where the respondent is an employee' in Section 11 necessarily requires that the ICC proceedings must be instituted at the workplace of the Appellant. It has been argued that as per Section 19(h) of the POSH Act, the only remedy available to the aggrieved woman when the perpetrator of an act of sexual harassment is not

an employee of the same department, is to initiate action under the IPC or any other law.

29. *Per contra*, learned Assistant Solicitor General, Ms. Aishwarya Bhati has argued that such an interpretation of Section 11 and other provisions of the POSH Act would cause violence to the general ethos of the POSH Act and defeat its very purpose. She has urged that the POSH Act was legislated as a special law for women in order to prevent the hardship faced by women at their workplace and any interpretation of the Act must be done keeping this object in mind. The wide ambit given to the word 'workplace' in Section 2(o) of the POSH Act and the word 'employer' in Section 2(g) of the POSH Act shows the legislative intent to ensure sexual harassment complaints by all women are duly addressed and enquired into. There is no vacuum in the POSH Act for dealing with inter-departmental enquiries of sexual harassment complaints. Under Section 13(3), upon allegations of sexual harassment being proved, it has been said that the employer or the district officer shall take necessary action, which duly addresses the present situation. She argued that the option to initiate criminal proceedings under Section 19(h) cannot be read to be in derogation or exclusion of the proceedings under the POSH Act.

## **ISSUES FOR CONSIDERATION**

30. After hearing learned counsel for the parties at length and on perusal of the facts and material placed on record, the following issues arise for consideration:

- (i) Whether the ICC constituted in one department of the Central Government has the jurisdiction to entertain a complaint of sexual harassment under the POSH Act against an employee of a different department of the Central Government?
- (ii) Whether the use of the words 'where the respondent is an employee' as contained in Section 11 of the POSH Act would mandate that ICC proceedings must be instituted and carried out at the workplace of the 'respondent' instead of the workplace of the aggrieved woman where incident occurred and complaint was made?
- (iii) If the answer to Issue No. 2 is in the negative, under the scheme of Section 13, how is action supposed to be taken by the department of the 'respondent' in

pursuance of the findings of the ICC constituted at the aggrieved woman's department?

- (iv) Whether the proceedings of the ICC constituted at the workplace of the aggrieved woman, in the present case, have caused any prejudice to the Appellant, warranting interference by this Court?

### **ANALYSIS OF ISSUES I and II**

Since both issues are intertwined, we are appreciating and answering contentions in respect of these issues collectively:

31. The dispute in the present case is confined to the jurisdictional challenge made by the Appellant herein to the institution of ICC proceedings against him by the ICC constituted at the workplace of the aggrieved woman. We have gone through the documents on record and heard the learned counsel for the parties at length. In order to resolve the present case, we must engage in interpretation of various provisions contained in the POSH Act.

## Principles of Statutory Interpretation

32. Language employed in a statute is the best aid for statutory interpretation. The first and primary rule of construction is the intention of the Legislature and the same must be found in the words used by the Legislature itself, as held in **Kanai Lal Sur v. Paramnidhi Sadhukhan**.<sup>3</sup> However, where there is doubt or ambiguity about the meaning of the words used, interpretation must be made keeping in mind the object and purpose of the statute. Therefore, both text and context of a statute have their own relevance while interpreting provisions of a statute. This Court, in **RBI v. Peerless General Finance & Investment Co. Ltd.**<sup>4</sup> observed as thus:

*“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these*

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<sup>3</sup> *Kanai Lal Sur v. Paramnidhi Sadhukhan*, 1957 SCC OnLine SC 8.

<sup>4</sup> (1987) 1 SCC 424.

*glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression “Prize Chit” in Srinivasa [(1980) 4 SCC 507 : (1981) 1 SCR 801 : 51 Com Cas 464] and we find no reason to depart from the Court's construction.”*

33. More recently, in ***Eera v. State (NCT of Delhi)***,<sup>5</sup> Dipak Misra, J. in his separate concurring opinion, interpreted various judgments, both domestic and international, and held that along with textual interpretation, purpose, intent and context must also be seen, especially when interpreting a social welfare legislation:

*“64. I have referred to the aforesaid authorities to highlight that legislative intention and the purpose of the legislation regard being had to the fact that context has to be appositely appreciated. It is the foremost duty of the Court while construing a provision to ascertain the intention of the legislature, for it is an accepted principle that the legislature expresses itself with use of correct words and in the absence of any ambiguity or the resultant consequence does not lead to any absurdity, there is no room to look for any other aid in the name of creativity. There is no quarrel over the proposition that the method of purposive construction has been adopted keeping in view the text and the context of the legislation, the mischief it intends to obliterate and the fundamental intention of the legislature when it comes to social welfare legislations. If the purpose is defeated, absurd result is arrived at. The Court need not be miserly and should have the broad attitude to take recourse to in*

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<sup>5</sup> (2017) 15 SCC 133.

*supplying a word wherever necessary. Authorities referred to hereinabove encompass various legislations wherein the legislature intended to cover various fields and address the issues. While interpreting a social welfare or beneficent legislation one has to be guided by the “colour”, “content” and the “context of statutes” and if it involves human rights, the conceptions of Procrustean justice and Lilliputian hollowness approach should be abandoned. The Judge has to release himself from the chains of strict linguistic interpretation and pave the path that serves the soul of the legislative intention and in that event, he becomes a real creative constructionist Judge.*

**65.** *I have perceived the approach in Hindustan Lever Ltd. [Hindustan Lever Ltd. v. Ashok Vishnu Kate, (1995) 6 SCC 326 : 1995 SCC (L&S) 1385] and Deepak Mahajan [Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440 : 1994 SCC (Cri) 785] , Pratap Singh [Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551 : 2005 SCC (Cri) 742] and many others. I have also analysed where the Court has declined to follow the said approach as in R.M.D. Chamarbaugwalla [R.M.D. Chamarbaugwalla v. Union of India, AIR 1957 SC 628] and other decisions. The Court has evolved the principle that the legislative intention must be gatherable from the text, content and context of the statute and the purposive approach should help and enhance the functional principle of the enactment. That apart, if an interpretation is likely to cause inconvenience, it should be avoided, and further personal notion or belief of the Judge as regards the intention of the makers of the statute should not be thought of. And, needless to say, for adopting the purposive approach there must exist the necessity. The Judge, assuming the role of creatively constructionist personality, should not wear any hat of any colour to suit his thought and idea and drive his thinking process to wrestle with words stretching beyond a permissible or acceptable limit. That has the potentiality to cause violence to the language used by the legislature. Quite apart from, the Court can take aid of casus omissus, only in a case of clear necessity and further it should be discerned from the four corners of the statute. If the meaning is intelligible, the said principle has*

*no entry. It cannot be a ready tool in the hands of a Judge to introduce as and what he desires.”*

34. R.F. Nariman, J. in his separate concurring opinion in ***Eera*** (Supra), agreed with adopting principles of interpretation which duly address both text and context of a statute. Relevant paragraphs of the said judgment are quoted herein for ready reference:

*“124. Indeed, the modern trend in other Commonwealth countries, including UK and Australia, is to examine text as well as context, and object or purpose as well as literal meaning. Thus, in *Oliver Ashworth (Holdings) Ltd. v. Ballard (Kent) Ltd.* [*Oliver Ashworth (Holdings) Ltd. v. Ballard (Kent) Ltd.*, 2000 Ch 12 : (1999) 3 WLR 57 : (1999) 2 All ER 791 (CA)] , Laws, L.J. stated the modern rule as follows : (Ch p. 34)*

*“By way of introduction to the issue of statutory construction I should say that in my judgment it is nowadays misleading — and perhaps it always was — to seek to draw a rigid distinction between literal and purposive approaches to the interpretation of Acts of Parliament. The difference between purposive and literal construction is in truth one of degree only. On received doctrine we spend our professional lives construing legislation purposively, inasmuch as we are enjoined at every turn to ascertain the intention of Parliament. The real distinction lies in the balance to be struck, in the particular case, between the literal meaning of the words on the one hand and the context and purpose of the measure in which they appear on the other. Frequently there will be no opposition between the two, and then no difficulty arises. Where there is a potential clash, the conventional English approach has been to give at least very great and often decisive weight to the literal meaning of the enacting words. This is a tradition which I think is weakening, in face of the more purposive approach enjoined for the interpretation of legislative*

*measures of the European Union and in light of the House of Lords' decision in Pepper (Inspector of Taxes) v. Hart [Pepper (Inspector of Taxes) v. Hart, 1993 AC 593 : (1992) 3 WLR 1032 : (1993) 1 All ER 42 : 1992 UKHL 3 (HL)] . I will not here go into the details or merits of this shift of emphasis; save broadly to recognise its virtue and its vice. Its virtue is that the legislator's true purpose may be more accurately ascertained. Its vice is that the certainty and accessibility of the law may be reduced or compromised. The common law, which regulates the interpretation of legislation, has to balance these considerations.”*

**127.** *It is thus clear on a reading of English, US, Australian and our own Supreme Court judgments that the “Lakshman Rekha” has in fact been extended to move away from the strictly literal rule of interpretation back to the rule of the old English case of Heydon [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637] , where the Court must have recourse to the purpose, object, text and context of a particular provision before arriving at a judicial result. In fact, the wheel has turned full circle. It started out by the rule as stated in 1584 in Heydon case [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637] , which was then waylaid by the literal interpretation rule laid down by the Privy Council and the House of Lords in the mid-1800s, and has come back to restate the rule somewhat in terms of what was most felicitously put over 400 years ago in Heydon case [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637] .”*

35. Another important principle which we must bear in mind is that a part of a section cannot be read in isolation, the construction of the entire section must be made as a sum of its parts and no word or phrase thereof can be picked out in isolation to give a certain meaning to the section as a whole. This Court, in

## ***Balasinor Nagrik Coop. Bank Ltd. v. Babubhai Shankerlal***

***Pandya***<sup>6</sup> held:

*“...It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section.....”*

### Textual Interpretation of Section 11 of the POSH Act

36. Although we have quoted the entire provision of Section 11 of the POSH Act above, in the interest of lucidity and easy comprehension, Section 11(1) is reproduced as follows:

*“(1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:*

*Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the*

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<sup>6</sup> (1987) 1 SCC 606.

*complaint or, as the case may be, forward the complaint to the police:*

*Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.”*

37. The Appellant’s primary argument is that ‘where the respondent is an employee’ as mentioned in Section 11 of the POSH Act must be read to mean that the ICC constituted at the workplace of the ‘respondent’ alone has jurisdiction to entertain a sexual harassment complaint against him by the aggrieved woman and not the ICC constituted at the workplace of the aggrieved woman under the provisions of the POSH Act.

38. To examine the said contention, the meaning of the word ‘where’ as used in the context of Section 11 becomes significant. If the expression ‘where’ were to denote a certain place / location, only then the argument of the Appellant would hold ground. On examination of the colloquial meaning of the word ‘where’ as it is used in common parlance, the *Concise Oxford English Dictionary*,<sup>7</sup> defines the word ‘where’ as ‘*in or to what place or position*’ or ‘*in what direction or respect*’.

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<sup>7</sup> 10<sup>th</sup> Edition, 2002, Pg. 1629.

39. Coming to the legal definition, however, the *Stroud's Judicial Dictionary of Words and Phrases*,<sup>8</sup> refers to the judgement of the House of Lords in ***Davies Jenkins & Co. Ltd. and Davies (Inspector of Taxes)***<sup>9</sup> in which case a section reading 'Subject to the provisions of this section, where a company has a deficit for tax purposes during any accounting period of the company, and receives a subvention payment in respect of that period from an associated company having a surplus for tax purposes in the corresponding period, then ...' was being interpreted by the House of Lords, and the expression 'where' was interpreted in the following manner:

*"The word "where" clearly does not refer to a place. It is used in the sense of "if" or "whenever."*

40. *P. Ramanatha Aiyar's Advanced Law Lexicon*,<sup>10</sup> and Justice C.K. Thakker's *Encyclopaedic Law Lexicon*,<sup>11</sup> while defining the word 'where', both refer to the judgement of this Court in ***S.G. Glass Works (P) Ltd. v. CCE***,<sup>12</sup> in which this Court was interpreting an Excise notification which read as under –

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<sup>8</sup> South Asian Edition, 2008, Volume 3 at Pg. 3009.

<sup>9</sup> [1968] AC 1097.

<sup>10</sup> 7<sup>th</sup> Edition, Volume 4, at Pg. 6754.

<sup>11</sup> 2008/2009 Edition, Volume 4 at Pg. 5030.

<sup>12</sup> (1995) 1 SCC 680.

*“Glassware including tableware produced by semi-automatic process, that is to say, **where** molten glass is taken to the first mould manually and **where** either compressed air or mechanically operated press is used. ...”*

In respect to use of the expression ‘where’, this Court interpreted the notification as thus:

*“ The use of the word ‘where’ before ‘molten glass’ and ‘compressed air’ is significant. According to dictionary the word ‘where’ may mean ‘place or situation’. In the context it has been used it is not descriptive of any place but has been used in the sense of relation or situation. In other words what the notification contemplates is that if the glassware is manufactured by taking the molten glass manually to the first mould and then the compressed air or mechanically operated press is applied to it either in the first or second mould then it would be covered in the notification. If the intention would have been to confine it to first mould then it was not necessary to use ‘where’ a second time. It is disjunctive and has been used to denote the same meaning, namely, if in processing of it compressed air is used then it is deemed to be a production by semi-automatic process. The Tribunal in reading the words ‘where either compressed air or mechanically operated press’ along with the earlier expression ‘first mould’ committed an error of law.”*

41. Keeping in view the aforementioned judicial pronouncements and the legal definition, when we look at the construction of Section 11(1) of the POSH Act, the word ‘where’ is quite clearly used in the context of a situation, rather than a place. In our interpretation, Section 11(1) envisages three distinct situations or contingencies, followed by how inquiry into a complaint is to be carried out by the ICC or Local Committee (as the case may be):

- (i) 'Where' (In case) the 'respondent' is an 'employee', the ICC shall proceed to make inquiry into the complaint, in accordance with the provisions of the service rules applicable to the 'respondent';
- (ii) 'Where' (In case) no such rules exist, ICC shall proceed to make inquiry into the complaint, in such manner as may be prescribed;
- (iii) 'Or' (in case) of a domestic worker, the Local Committee shall, if *prima facie* case exists, forward the complaint to the police, within a period of seven days for registering the case under Section 509 of the IPC and any other relevant provisions of the said Code where applicable.

42. In our view, the use of the word 'where' as it occurs in the contingency (i) and (ii) as denoted above, clearly refers to two different conditions precedent / situations, where contingency (i) relates to a situation in case the 'respondent' is an 'employee' under the meaning as prescribed under the POSH Act, inquiry must be made by the ICC in accordance with the service rules applicable to him, and contingency (ii) relates to a situation in case no such rules exist, it shall be inquired into by the ICC in such

manner as prescribed. The contingency (iii) is a different situation altogether – in case the ‘respondent’ is a domestic worker, the Local Committee shall, on taking a *prima facie* view about the existence of a case against the ‘respondent’, forward the complaint to the police.

43. It is pertinent to note that contingency (i) and contingency (iii) as denoted above, operate in the form of ‘either-or’. If the ‘respondent’ is an employee, the inquiry shall be conducted by the ICC either in accordance with the respondent’s service rules, or in case there are no applicable service rules, in the manner as prescribed. Thereafter, the word ‘or’ has been used, to lay down what must be the procedure when the ‘respondent’ is a domestic worker. The grammatical function of the word ‘where’ as appearing in Section 11 of the POSH Act is that of a ‘conditional conjunction’ (similar to ‘in that case’ or ‘if’). It introduces a scenario, contingency or condition and lays down the action which follows.

44. Section 11(1) essentially lays down what the ICC or the Local Committee is supposed to do upon receiving a complaint from the aggrieved woman. Use of the phrase ‘where the respondent is an employee’ is essentially a procedural trigger, directing the ICC to apply the service rules which are applicable to the ‘respondent’, it

is not a jurisdictional constraint limiting a particular ICC to hear the complaint.

45. This interpretation of Section 11(1) is borne out of a plain reading of the words used by the legislature in the said section. It is pertinent to state that the principle as laid down in ***Balasinor Nagrik Coop. Bank Ltd.*** (Supra) is squarely applicable to the present case and the entire section has to be read as a whole. When the section is read as a whole, it has been constructed in the form of ‘where....and where....or....’, detailing three different contingencies and the procedure to be followed in each contingency. Merely the phrase ‘where the respondent is an employee’ cannot be read in isolation without taking into view the entire section, and all parts of the section must be read together to find out a workable conclusion.

46. In view of the above, the inescapable conclusion, upon plain reading of the text of Section 11(1) of the POSH Act is that the argument advanced by the Appellant is liable to be rejected. As discussed above, in case the ‘respondent’ is an ‘employee’, the ICC is obligated to apply the service rules applicable to him, but the use of the phrase ‘where the respondent is an employee’ does not mean that the ICC constituted at the workplace of the aggrieved

woman cannot exercise jurisdiction. As such, the construction of Section 11 is in the nature of a procedural section rather than one that lays down jurisdictional restraints.

Whether the ‘respondent’ must be an employee of the same workplace as the ‘aggrieved woman’?

47. That being said, the requirement of Section 11(1) as we have concluded above, is that in case the ‘respondent’ is an ‘employee’, the inquiry by the ICC must be in accordance with the service rules applicable to him, if service rules do not exist, it shall be conducted as may be prescribed, or if he is a domestic worker, the Local Committee must forward the complaint to the police. The definitions of the word ‘employee’ and ‘workplace’ as quoted above in this judgement at their respective places are completely neutral, in the sense that they do not suggest that the ‘respondent’ must necessarily be an employee of the workplace where the aggrieved woman works.

48. The word ‘respondent’ has been defined in Section 2(m) of the POSH Act as ‘a person against whom the aggrieved woman has made a complaint under Section 9’. It does not require the ‘respondent’ to be someone working at the same workplace as the

aggrieved woman, rather the exact words used are ‘a person’ which can be any person against whom complaint has been made. The word ‘employee’ as defined in Section 2(f) of the POSH Act – further provides that it means a ‘person employed at a workplace...’. The word ‘workplace’ itself which is defined in Section 2(o) of the POSH Act, has been given a wide meaning, particularly in clause (v) of Section 2(o), which posits that the word ‘workplace’ also includes ‘any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey’.

49. The expansive definitions of these words enable the ICC constituted at the aggrieved woman’s workplace to exercise jurisdiction over an employee of a different workplace. None of these definitions provide that the ‘respondent’ must necessarily be an employee of the same workplace where the aggrieved woman works. Any person against whom a complaint is filed by the aggrieved woman before the ICC constituted at her workplace under Section 9, is a ‘respondent’ under the POSH Act and as per the scheme of Section 11(1), if the ‘respondent’ is an ‘employee’, his service rules shall apply and in the absence of service rules,

inquiry shall be conducted as prescribed, but the ‘respondent’ need not necessarily be an employee of the same ‘workplace’.

50. In this context, it was argued by the appellant that in view of Section 19(h) of the POSH Act, the only remedy available to the aggrieved woman when the perpetrator of sexual harassment is an outsider (employee of a different workplace) is to register a complaint under the IPC through the employer. We are unable to agree with this contention, since Section 19(h) makes it a duty of the employer to facilitate the initiation of action under the IPC if the aggrieved woman so desires, it is not in derogation or exclusion of the power to initiate proceedings under the POSH Act. Even where the ‘respondent’ is not an employee anywhere, criminal proceedings may be initiated and such initiation of criminal proceedings must be facilitated by the employer.

#### Contextual Interpretation of provisions of the POSH Act

51. Even though we have held above that a plain textual reading of Section 11(1) of the POSH Act conveys the clear meaning that it creates no bar on the jurisdiction of ICC constituted at the workplace of the aggrieved woman to inquire into a complaint against a ‘respondent’ who is an employee of a different

‘workplace’, we also propose to discuss the interpretation of the provisions of the POSH Act in light of its intent, purpose and context, in line with the pronouncement of this Court in **Eera** (Supra).

52. The long title of the POSH Act and its ‘Preamble’ are relevant internal aid for the purpose of interpretation and are therefore quoted herein:

*“An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.*

*WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business with includes a right to a safe environment free from sexual harassment;*

*AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;*

*AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.”*

53. The POSH Act was enacted by the legislature, recognizing the legislative void which was highlighted by this Court in its seminal

judgment in ***Vishaka*** (Supra). Its intent is to uphold women's right to equality under Articles 14 and 15 and right to a dignified life under Article 21 of the Constitution of India. The POSH Act does not merely punish acts of sexual harassment, but actively imposes a legal duty on employers to prohibit and prevent harassment, it ensures that the women in each workplace have open access to a mechanism for redressal of complaints of sexual harassment in the form of ICC. It aims to bring about safety and accountability in the workplace in order to enable women to pursue their career without the fear of a hostile environment. It is thus seen that the POSH Act is a social welfare legislation and it must be interpreted as thus.

54. Keeping in mind the object behind the enactment of the POSH Act, if the aggrieved woman had to approach the ICC constituted at the workplace of the 'respondent' for every third-party incident, it would fall short of the aforesaid object. The ICC at the workplace of the 'respondent' would be tasked with inquiring into an incident that may or may not have occurred on their employer's premises or in relation to their employer's work environment. A narrow interpretation of provisions of the POSH Act, in order to hold that only the ICC of the workplace of the 'respondent' has jurisdiction

to inquire into complaints against him, irrespective of where the workplace of the aggrieved woman is or where the alleged act of sexual harassment took place, would undermine the POSH Act's remedial social welfare intent since it would create significant practical hurdles for the aggrieved woman.

55. Such an interpretation would beget several procedural and psychological barriers for the aggrieved woman. The aggrieved woman, who has allegedly suffered an act of sexual harassment, would be compelled to file a complaint before the ICC constituted at the workplace of the 'respondent'. It would create a situation where the aggrieved woman would have to appear before the ICC at an alien workplace in order to pursue her remedy in law.

56. Even more importantly, the POSH Act, by introducing Section 2(o)(v) which enlarged the scope of 'workplace' to include any place visited by the employee during the course of employment, including during transportation, has expanded the scope of 'workplace' manifold. In such a case, the intent of the legislature was clearly to prohibit acts of sexual harassment at any place incidental to work and employment, at any place visited by the employees during the course of employment. If we were to interpret the provisions of the POSH Act to hold that only the ICC

constituted at the workplace of the 'respondent' has the jurisdiction to entertain complaints and not the ICC constituted at the aggrieved woman's workplace, it would defeat the purpose of such an expanded scope. It will also lead to an absurd situation where it would be incumbent upon the aggrieved woman to pursue her remedies, not at her own workplace, but at some other workplace, irrespective of the distance. It would create a further barrier preventing the aggrieved woman from seeking her remedies in law.

57. The taboo around sexual harassment at the workplace and the fear of stigma which may be attached to the aggrieved woman as a consequence of a complaint regarding sexual harassment already poses a massive psychological barrier for the aggrieved women which actively dissuades them from pursuing their remedy in law. In such view of the matter also, the intent of the legislature behind giving such a wide meaning to the word 'workplace' to go beyond the bounds of the traditional meaning implying location of the office, cannot be brushed aside by narrow construction of other provisions of the POSH Act. It is for the aforementioned reasons that we are constrained to reject the argument of the Appellant and answer Issues 1 and 2 in the above terms.

### **ANALYSIS OF ISSUE III**

58. It has been vehemently urged before us by the Appellant that another reason why only the ICC of the Appellant's department has jurisdiction to entertain a complaint under Section 9 of the POSH Act is that it is only his department which can take disciplinary action against him, and so for the inquiry carried out by the ICC and its outcome to have any sanctity, the inquiry must be conducted by the ICC constituted under the aegis of the Appellant's employer.

59. While at first blush the argument might seem persuasive, but we are not impressed, since it is not in line with the scheme of the POSH Act. The core issue with this argument is that it fails to differentiate the authority to inquire into the facts and the authority to enforce or act on the findings. While the ICC constituted at the workplace of the aggrieved woman or the employer may not have the authority to impose a penalty / punishment on the 'respondent' as a consequence of the proceedings under the POSH Act, its findings can certainly be acted upon by the employer of the 'respondent'. Such is the construction and scheme of Section 13 of the POSH Act as quoted above. Under Section 13, the inquiry report of the ICC along with

its recommendations must be sent to the 'employer' and it is obligated to act upon the recommendations within sixty days. It is merely the factual inquiry which is to be conducted by the ICC constituted at the workplace of the aggrieved woman. It cannot be said, by any stretch of imagination, that the ICC itself is to take disciplinary action against the 'respondent' in case the report suggests that the allegation has been proved. As intended, the ICC constituted at the aggrieved woman's workplace shall send its recommendations to the 'employer' of the 'respondent' for further necessary action, i.e., initiation of disciplinary proceedings as per service rules, or to take action as prescribed. Section 13 does not state therein that the employer of the aggrieved woman and the 'respondent' must be one and the same. If a factual conclusion is reached by the ICC constituted at one department, it can very well be acted on by the employer of the 'respondent', even if it is a different department. It goes without saying that the sanctity of the report of the ICC is statutorily mandated and all employers are required to act upon the said report. Even though the ICC is constituted under a different department, it has a statutory backing in its constitution and functioning. It is also pertinent to mention here that if the recommendations of the ICC are brushed

aside and not acted on by the employer, a right to appeal has been provided under Section 18 of the POSH Act.

60. In the present case, the Appellant, who is the 'respondent' under the meaning as prescribed in the POSH Act and the aggrieved woman are both Central Government employees, belonging to different departments. As discussed above, during the operation of the guidelines as laid down by this Court in **Visakha** (Supra) and prior to the enactment of the POSH Act, this Court had directed in **Medha Kotwal Lele** (Supra) that the Complaints Committee under the guidelines shall be deemed to be an inquiry authority for the purposes of the CCS Conduct Rules, 1964. In pursuance of the same, the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as "**CCS CCA Rules, 1965**") also came to be amended by inserting a proviso below sub-rule 2 of Rule 14 relating to treatment of the Complaint Committee as Inquiring Authority. This was notified *vide* Notification No. 11012/5/2001-Estt.A dated 01.07.2004 published in Gazette of India *vide* G.S.R. No. 225 dated 10.07.2004.

61. Sub-rule 2 of Rule 14 of the CCS CCA Rules, 1965 and the proviso thereto is relevant and is therefore quoted as under:

*“(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants(Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.*

*Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules.”*

62. In order to further clarify the role of the ICC in conducting inquiry, the Government of India’s Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training issued Office Memorandum being F No. 11013/2/2014-Estt (A-III) dated 16.07.2015 (hereinafter referred to as **“OM dated 16.07.2015”**), after the POSH Act had come into force, with the subject ‘Steps for conducting inquiry in case of allegation of Sexual Harassment’, which is also of much relevance. The said OM lays down the dual role of the ICC / Complaints Committee and envisages a two-step inquiry into an allegation of sexual

harassment. Paragraphs 7 and 8 of the OM dated 16.07.2015 provide for the investigative role played by the ICC as follows:

**“Need for investigation**

*7. The Complaints Committees may act on complaints of sexual harassment when they receive them directly or through administrative authorities etc, or when they take cognizance of the same suo-moto. As per Section 9(1) of the Act, the aggrieved woman or complainant is required to make a complaint within three months of the incident and in case there has been a series of incidents, three months of the last incident. The Complaints Committee may however extend the time limit for reasons to be recorded in writing, if it is satisfied that the circumstances were such which prevented the complainant from filing a complaint within the stipulated period.*

*8. As mentioned above, the complaints of sexual harassment are required to be handled by Complaints Committee. On receipt of a complaint, facts of the allegation are required to be verified. This is called **preliminary enquiry/fact finding enquiry** or investigation. The Complaints Committee conducts the investigation. They may then try to ascertain the truth of the allegations by collecting the documentary evidence as well as recording statements of any possible witnesses including the complainant. If it becomes necessary to issue a Charge Sheet, disciplinary authority relies on the investigation for drafting the imputations, as well as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation.”*

63. Paragraphs 9, 10 and 11 of the OM dated 16.07.2015 clarify the dual role of the ICC as follows:

**“Dual Role**

9. In the light of the Proviso to the Rule 14 (2) mentioned above, the Complaints Committee would normally be involved at two stages. The first stage is investigation already discussed in the preceding para. The second stage is when they act as Inquiring Authority. It is necessary that the two roles are clearly understood and the inquiry is conducted as far as practicable as per Rule 14 of CCS (CCA) Rules, 1965. Failure to observe the procedure may result in the inquiry getting vitiated.

10. As the Complaints Committees also act as Inquiring Authority in terms of Rule 14(2) mentioned above, care has to be taken that at the investigation stage that impartiality is maintained. Any failure on this account may invite allegations of bias when conducting the inquiry and may result in the inquiry getting vitiated. As per the instructions, when allegations of bias are received against an Inquiring Authority, such Inquiring Authority is required to stay the inquiry till the Disciplinary Authority takes a decision on the allegations of bias. Further, if allegations of bias are established against one member of the Committee on this basis, that Committee may not be allowed to conduct the inquiry.

11. In view of the above, the Complaints Committee when investigating the allegations should make recommendations on whether there is a prima facie substance in the allegations which calls for conducting a formal inquiry. They should avoid making any judgmental recommendations or expressing views which may be construed to have prejudiced their views while conducting such inquiry.”

64. After the fact-finding inquiry is conducted by the ICC, paragraphs 12, 13 and 14 of the OM dated 16.07.2015 provide for the power of the Disciplinary Authority to examine the report and decide as to whether formal charge sheet needs to be issued or not,

and at which stage an inquiry is to be conducted. The said paragraphs of the OM are quoted herein:

**“Decision to issue Charge sheet, and conducting Inquiry**

*12. On receipt of the Investigation Report, the Disciplinary Authority should examine the report with a view to see as to whether a formal Charge Sheet needs to be issued to the Charged Officer. As per Rule 14(3), Charge Sheet is to be drawn by or on behalf of the Disciplinary Authority. In case the Disciplinary Authority decides on that course, the Charged Officer should be given an opportunity of replying to the Charge sheet. As per Rule 14(5), a decision on conducting the inquiry has to be taken after consideration of the reply of the charged officer.*

*13. If the Charged Officer admits the charges clearly and unconditionally, there will be no need for a formal inquiry against him and further action may be taken as per Rule 15 of the CCS(CCA) Rules.*

**The Inquiry-stages**

*14. In case the Charged Officer denies the charges and his reply is not convincing, the Charge sheet along with his reply may be sent to the Complaints Committee for formal inquiry, and documents mentioned in Rule 14 (6) will be forwarded to the Complaints Committee. As per Section 11(3) of the Act, for the purpose of making an inquiry, the Complaints Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—*

*(a) summoning and enforcing the attendance of any person and examining him on oath;*

*(b) requiring the discovery and production of documents;  
and*

*(c) any other matter which may be prescribed.”*

65. It is clear from OM dated 16.07.2015 of the Central Government that in respect of Central Government employees, inquiry into a complaint of sexual harassment is to be conducted in two distinct stages. Firstly, the ICC is to conduct a fact-finding inquiry or preliminary inquiry, investigating the veracity of the complaint under the POSH Act. Thereafter, the report or recommendation of the ICC is to be sent to the Disciplinary Authority, which shall examine the report and decide as to whether a formal chargesheet must be issued to 'respondent' / employee. Upon issuance of such a formal chargesheet by the Disciplinary Authority against the employee, comes the second stage, where the ICC is required to act as the inquiring authority in the formal disciplinary inquiry under the CCS CCA Rules, 1965 in order to decide the disciplinary action which may or may not be imposed upon the employee.

66. It goes without saying that the OM dated 16.07.2015 does not specifically address the situation which has arisen in the present case. However, under the scheme of the POSH Act and particularly looking to Section 13 of the POSH Act, nothing prevents the ICC constituted at the workplace of the aggrieved woman from carrying out the preliminary / fact-finding inquiry at

the first stage. After completion of the fact-finding inquiry, the ICC constituted at the workplace of the aggrieved woman can send its recommendation and report to the employer of the 'respondent'. Upon receiving the findings and recommendations of the ICC constituted at the aggrieved woman's workplace, the employer of the 'respondent' and the Disciplinary Authority, upon making a decision that disciplinary proceedings are warranted, can then issue a chargesheet to the 'respondent' and initiate disciplinary proceedings against him. In this inquiry, the ICC constituted at the workplace of the 'respondent' may conduct the second stage formal inquiry, acting as the inquiring authority for the purpose of the disciplinary proceedings. As such, the OM dated 16.07.2015, in respect of employees of the Government of India treats inquiry into complaints of sexual harassment as a two-stage process where there is a preliminary / fact-finding inquiry at first and then a disciplinary proceedings based on the findings of the preliminary / fact-finding inquiry.

67. Much emphasis has been laid by the learned Senior Counsel appearing for the appellant on the fact that disciplinary action cannot be taken against him on the basis of the recommendations of an inquiry authority who is not from the same department.

However, any punishment which is to be imposed upon the errant employee after completion of the disciplinary proceedings is to be imposed by the 'employer' or disciplinary authority of the 'respondent', based upon the findings which come through in the second-stage disciplinary proceedings. The fact that ultimately disciplinary action against the 'respondent' has to be taken by his employer and his department cannot be an impediment for the ICC constituted at the workplace of the aggrieved woman to take up the fact-finding inquiry under Section 11 of the POSH Act when read with the OM dated 16.07.2015. In this context, particular reference must be made to Section 13(3)(i) of the POSH Act quoted above, which lays down that the ICC, upon reaching the conclusion that the allegations against the 'respondent' are proved, shall recommend to the employer to take disciplinary action for sexual harassment as a misconduct in accordance with the provisions of the service rules of the 'respondent'.

68. In view of the findings as recorded above in respect of Issue 3, we find that the ICC proceedings instituted in the aggrieved woman's department can be considered the first-stage of inquiry which carries out a preliminary / fact-finding inquiry, after which the report of the ICC may be sent to the employer / department of

the 'respondent'. Depending on the findings of the ICC (at the aggrieved woman's workplace) as the first stage, the 'employer' may then take a decision to initiate disciplinary proceedings under the applicable service rules and in such disciplinary proceedings, the ICC constituted at the workplace of the 'respondent' shall be the inquiring authority. While conducting the disciplinary proceedings against the 'respondent', the ICC at the workplace of the 'respondent' shall have reference to the report of the fact-finding inquiry by the ICC constituted at the workplace of the aggrieved woman. Issue 3 is answered as such.

#### **ISSUE IV**

69. The present appeal originates out of the notice / order dated 13.06.2023 directing the appellant to appear before the ICC constituted at the workplace of the aggrieved woman after institution of proceedings and filing of complaint by the aggrieved woman under Section 9 of the POSH Act. It is a challenge which was brought by the appellant at a preliminary stage. While issuing notice *vide* order dated 18.07.2023 in the present appeal, it was directed by this Court that inquiry may continue but the final outcome of the inquiry shall be kept in a sealed cover. As mentioned above, we have been supplied with a copy of the report

of the ICC in sealed cover and we have perused the same. We are not divulging any of the findings in the report, since it may form the basis of a disciplinary proceedings against the appellant if the same is initiated by his employer.

70. A concern was raised before us that since the appellant is an employee of a different department, the ICC at the aggrieved woman's workplace will not be privy to details about the employee's scope of duty, work and service records, etc. However, from a bare perusal of the report, we find that the ICC at the aggrieved woman's workplace has communicated with the employer of the 'respondent', i.e., his Department and sought information with respect to the incident and scope of duty of the 'respondent', which the Department has provided. The duty of the employer to co-operate in the ICC proceedings is a statutory duty of the employer, which it has duly complied with. Apart from this, the 'respondent' has not been able to show that any prejudice has been caused to him due to the proceedings being carried out by the ICC constituted at the workplace of the aggrieved woman. In any case, the right and remedy of the aggrieved woman to bring a complaint under the POSH Act must be juxtaposed and balanced with the sacrosanct right of the 'respondent' to be heard and for

application of mind before imposing of any punishment. As we have held above, after the conduct of a fact-finding / preliminary inquiry by the ICC constituted at the workplace of the aggrieved woman under the POSH Act, its recommendations shall be sent to the Department being the 'employer' of the 'respondent', at which stage the employer will take a decision about initiation of disciplinary proceedings under the provisions of the CCS CCA Rules, 1965. We are also cognizant of the fact that there might be administrative lethargy resulting in delay of the ICC proceedings if the workplace of the 'respondent' fails to co-operate with the factual inquiry being conducted by the ICC at the aggrieved woman's workplace, even though in the facts of this case, the employer has duly complied with requests from the aggrieved woman's workplace. However, in that respect, it will suffice to say that cooperating with the ICC in conduct of inquiry is a statutory duty of the employer under Section 19(f) of the POSH Act, which shall be complied with.

71. Since the report of the ICC at the workplace of the aggrieved woman is in the nature of a fact-finding / preliminary inquiry, which may form the basis of a subsequent disciplinary proceedings against the appellant, we are restraining from making any

observations or remarks, so as to permit the appellant to raise all contentions in the disciplinary proceedings except the question of jurisdiction or validity of the proceedings by the ICC constituted at the workplace of the aggrieved woman. As such, the Issue No. IV is answered accordingly.

### **CONCLUSION**

72. In the present case, considering the wide definition of the word 'workplace' under the POSH Act, particularly as contained in Section 2(o)(v), if we were to accept the contentions of the appellant, the said interpretation would run contrary to the object of the POSH Act and its intent as a social welfare legislation. In the interest of clarity and easy comprehension, the following are our conclusions in terms of the above discussion:

- (i) The phrase 'where the respondent is an employee' as contained in Section 11 of the POSH Act, cannot be interpreted to mean that ICC proceedings against a 'respondent' may only be instituted before the ICC constituted at the workplace of the 'respondent';
- (ii) Such a restrictive interpretation of the POSH Act will run contrary to the scheme of the Act, specifically in light of the

all-encompassing and wide definition which has been given to the term 'workplace' in Section 2(o) of the POSH Act, particularly in light of Section 2(o)(v) which expands the scope of 'workplace' to include any place visited by the employee 'arising out of or during the course of employment';

- (iii) Under Section 13 of the POSH Act, the recommendations and report of the ICC are to be sent to the 'employer' which shall then take a decision with respect to initiation of disciplinary action. In light of the OM dated 16.07.2025, the ICC has a dual-role – to conduct the preliminary / fact-finding inquiry under the POSH Act and to act as the inquiry authority in the formal disciplinary proceedings under the CCS CCA Rules, 1965 as discussed, since nothing prevents the ICC constituted at the Department of the aggrieved woman from conducting the preliminary / fact-finding inquiry and upon receiving the report of the said ICC, if the employer initiates disciplinary proceedings, the ICC constituted at the Department of the 'respondent' shall act as the inquiry authority in the disciplinary proceedings.

(iv) In case the ICC constituted at the aggrieved woman's workplace is conducting a fact-finding inquiry under the POSH Act, the employer of the 'respondent', even if it is a different department, must abide its duties under Section 19(f) of the POSH Act to swiftly cooperate and make available information upon a request by the ICC of the aggrieved woman's workplace.

73. In light of the above conclusions and the answers to the issues as framed, the present appeal is dismissed. The report of the ICC constituted at the aggrieved woman's workplace shall be transmitted to the Department of the appellant forthwith, which shall take further action as necessary under the POSH Act following the procedure as prescribed in the relevant service rules.

74. All pending applications shall stand disposed of.

.....**J.**  
**(J.K. MAHESHWARI)**

.....**J.**  
**(VIJAY BISHNOI)**

**New Delhi;**  
**December 10, 2025.**