



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Pronounced on: 28th August, 2025

+ **W.P.(C) 1103/2020, CM APPL. 11695/2023, CM APPL. 21955/2023, CM APPL. 36663/2023, CM APPL. 44573/2023, CM APPL. 47022/2023**

XPetitioner

Through: Mr. Ritin Rai, Senior Advocate with
 Ms. Shreya Munoth, Ms. Sitamsini
 Cherukumalli and Mr. Khush Aalam
 Singh, Advocates.

versus

AKADEMI AND ORS.Respondents

Through: Ms. Geeta Luthra, Senior Advocate
 with Mr. Abhishek Aggarwal, Ms.
 Prashansika Thakur and Ms. Ishita
 Agarwal Advocates for R-1.
 Mr. Ashish K. Dixit, Mr. Shivam
 Tiwari, Ms. Urmila Sharma and Ms.
 Deepika Kalra, Advocates for R-4.
 Mr. Tushar Sannu and Mr. Pravin Kr.
 Bansal, Advocates for GNCTD.

+ **W.P.(C) 2546/2021**

AKADEMI THROUGH ITS AUTHORISED REPRESENTATIVE

.....Petitioner

Through: Ms. Geeta Luthra, Senior Advocate
 with Mr. Abhishek Aggarwal, Ms.
 Prashansika Thakur and Ms. Spriha
 Jha, Advocates.

versus

GNCTD AND ORS.Respondents

Through: Ms. Shreya Munoth, Ms. Sitamsini
 Cherukumalli and Mr. Khush Aalam
 Singh, Advocates for R-3.
 Mr. Ashish Dixit, Mr. Shivam Tiwari,

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA
JUDGMENT

1. This case traces the ordeal of a woman employed on probation at the ██████████ Akademi, ██████████. She alleges that she was subjected to sexual harassment at the hands of its Secretary. Taking the view that the Akademi's Internal Complaints Committee¹ lacked jurisdiction, she approached the Local Complaints Committee.² Soon thereafter, while her grievance was pending consideration, her services were abruptly terminated. The Akademi, for its part, contends that her probation ended upon an assessment of her suitability and that the discharge was in accordance with the terms of contract of employment. The present proceedings, therefore, turn on two interlinked questions: whether the LCC had exclusive jurisdiction to examine the complaint, and whether the Petitioner's discharge can withstand judicial scrutiny in light of her status as a probationer. More than a service dispute, the case speaks to wider concerns of workplace dignity for women and the responsibility of institutions in addressing allegations of sexual harassment.

2. For ease of reference, the Complainant will hereinafter be referred to as the “Petitioner”, while the individual against whom the allegations have

² “LCC”



been levelled will be referred to as the “Secretary”. [REDACTED] shall be referred to as the “Akademi”.

FACTUAL AND PROCEDURAL BACKGROUND

3. The Petitioner, a native of Assam, was appointed on probation as Editor (English) in the Akademi on 15th February, 2018. She states that, from the outset, her professional journey was marred by persistent sexual harassment at the hands of the Secretary. She alleges that the harassment took multiple forms, including unwelcome physical and sexual contact, sexually explicit remarks, and acts amounting to sexual assault. She further states that these advances were accompanied by threats of adverse consequences if she resisted demands for sexual favours. In addition, she contends that she was singled out and harassed on account of her ethnicity, being an Assamese woman.

4. The Petitioner lodged a complaint before the LCC constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.³ The LCC, by its orders dated 16th December, 2019 and 16th January, 2020, found a *prima facie* case to proceed, holding that the post of ‘Secretary’ fell within the definition of “employer” under Section 2(g) of the POSH Act. Consequently, it recommended interim relief to the Petitioner in the form of three months’ paid leave.

5. The Petitioner thereafter approached this Court by way of W.P.(C) No. 1103/2020, alleging non-compliance with the LCC’s directions and seeking enforcement of its recommendations. By interim orders dated 29th January, 2020 and 05th March, 2021, this Court stayed the inquiry pending before the LCC. At the same time, on multiple occasions, including on 13th

³ “the POSH Act”



February, 2020; 26th February, 2020 and 16th March, 2020, the Court directed the Akademi to pay the Petitioner her salary and deemed her status to be on paid leave. These interim directions were intended to ensure that, pending adjudication, the Petitioner was not left without subsistence or financial protection.

6. During the pendency of the writ proceedings, the Akademi issued an Office Memorandum dated 14th February, 2020⁴ terminating the Petitioner's services and, shortly thereafter, discontinued the payment of her salary with effect from 08th May, 2020.

7. The Petitioner moved an application (C.M. No. 9969/2021) seeking leave to amend the writ petition so as to also impugn the Discharge OM. By order dated 12th May, 2021, this request was allowed and as a result, her present challenge encompasses the termination of her services and a range of consequential reliefs, which reads as follows:

"a. Issue a writ of mandamus and/or any other appropriate writ, order or direction to quash and set aside the impugned office memorandum dated 14.02.2020 issued by ████████ Akademi to terminate the service of the Petitioner,

b. Issue an appropriate writ, order, or direction directing Respondent No. 1 to provide to the Petitioner and place on record (i) information pertaining to the officer/authority who reviewed and assessed the Petitioner's performance for the period February 15 December 31, 2018; (ii) the Petitioner's appraisal report for the aforesaid period, as reviewed by the relevant officer/authority; (iii) information pertaining to the officer/authority who issued the appraisal form to the Petitioner in January 2020; (iv) information relating to the constitution and composition of the "Review Committee"; (v) minutes of meetings and proceedings of the "Review Committee" purportedly constituted to review the Petitioner's performance; and (vi) file notings/observations of the President prior to issuing the impugned office memorandum dated 14.2.2020;

c. Issue a writ of mandamus and/or any other appropriate writ, order or direction, directing the Respondent No. 1 to reinstate the Petitioner to her former position, with continuity of service, full back wages, and other

⁴ "the Discharge OM"



consequential service benefits;

d. Issue a writ of mandamus and/or any other appropriate writ, order or direction to the Respondent No. 1 and all other office bearers of ████████ Akademi to refrain from taking any adverse decision with respect to the Petitioner's employment status during the pendency of this case before this Hon'ble Court;

f. Issue an appropriate writ, order or direction, directing Respondent No. 1 to comply with Section 19 of the POSH Act, particularly with respect to displaying the composition of the ICC and the policy to prevent sexual harassment at a prominent place, and to organize sensitization workshops on the POSH Act at regular intervals at ████████ Akademi for all employees;

g. Issue an appropriate writ, order or direction, directing Respondent No. 1 to pay compensation at a minimum of Rs 5 lakhs for the mental trauma, pain, suffering and emotional distress caused to the Petitioner;

h. Issue an appropriate writ, order or direction, directing the Respondent No. 3 to impose a penalty of Rs 50,000/- on the Respondent No. 1 for failing to comply with the directions dated December 16, 2019 and January 16, 2020 issued by Respondent No. 2, as well as for failing to comply with the duties mentioned in Section 19 of the POSH Act;

i. Pass an ad-interim order in terms of the prayers in clauses (a) to (e) above;

j. Pass such other or further order(s)/direction(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case to meet the ends of justice."

8. In the meantime, the Akademi filed a separate writ petition, W.P.(C) No. 2546/2021, challenging the jurisdiction of the LCC. In that proceeding, the LCC was arrayed as Respondent No.2 and the Petitioner as Respondent No.3. Through this petition, the Akademi sought to question the competence of the LCC to entertain and enquire into the allegations levelled by the Petitioner, and prayed for the following reliefs:

"a) issue a writ, order or direction in the nature of certiorari thereby quashing the proceedings initiated before respondent no. 2;

b) issue a writ, order or direction in the nature of certiorari setting aside and quashing the order dated 16.01.2020 passed by the respondent no. 2 bearing no. F.14(62)/DC/ND/CO-ORD/2019/476.

c) award exemplary costs in favour of the petitioner and against the respondents"



9. By a consolidated judgement dated 25th October, 2021, this Court determined the jurisdictional issue, holding that the Secretary fell within the definition of “employer” under Section 2(g) of the POSH Act, and therefore only the LCC was competent to enquire into the allegations levelled against him. The ICC, constituted within the Akademi, was found lacking such authority. In the same judgment, this Court also quashed the Discharge OM, whereby the Petitioner’s services had been terminated, finding it unsustainable in law. As a result, W.P.(C) 1103/2020 filed by the Petitioner stood allowed, while W.P.(C) 2546/2021 instituted by the Akademi was dismissed.

10. The aforesaid judgment was carried in appeal by the Akademi and its Secretary through LPA 433/2021 and LPA 441/2022, respectively. On 12th November, 2021, a Division Bench of this Court stayed the operation of the impugned judgment. Aggrieved, the Petitioner approached the Supreme Court, wherein by order dated 12th April, 2022 passed in SLP (C) No. 20089/2021, it was observed that the stay effectively deprived the Petitioner of the reliefs granted, including reinstatement and emoluments. Accordingly, the Supreme Court modified the stay, directing that the Petitioner be paid emoluments from 01st April, 2022 onwards, until final disposal of the appeal before the Division Bench.

11. Subsequently, the Division Bench, noting that the Secretary had not been heard at the stage of deciding the writ, with the consent of parties, by order dated 23rd January, 2023 in LPA 441/2022, set aside the judgment and remanded the matter for fresh consideration. It was however, directed that the interim direction issued by the Supreme Court would continue to operate during the remanded proceedings. In view of this order, LPA 433/2021 was



rendered infructuous and was accordingly disposed of without further directions.

12. By order dated 30th January, 2023, this Court directed the impleadment of the Secretary as Respondent No. 4.

13. After remand, extensive arguments were heard in W.P.(C) No. 1103/2020, and the matter was reserved for judgment on 07th July, 2025.

14. Subsequently, through CM Appl. 43876/2025 [in W.P.(C) No. 2546/2021], it was pointed out that owing to an inadvertent omission, W.P.(C) No. 2546/2021 had not been listed along with W.P.(C) No. 1103/2020 despite the remand directed by the Division Bench being applicable to both the Petitioners, when the matter was taken up on 24th July, 2025, counsel for both sides fairly acknowledged that the arguments already advanced in W.P.(C) No. 1103/2020 sufficiently encompassed the issues and reliefs in W.P.(C) No. 2546/2021, and that no further hearing was required. In view of this common stand of parties, orders in W.P.(C) No. 2546/2021 were also reserved, to be pronounced along with W.P.(C) No. 1103/2020.

QUESTIONS FOR DETERMINATION

15. What began as a complaint of sexual harassment and alleged retaliatory termination has traversed multiple rounds of litigation: first before the LCC, then in writ proceedings before this Court, followed by appeals before the Division Bench, intervention by the Supreme Court, and ultimately a remand for fresh adjudication.

16. In light of the controversy arising in these two writ petitions, the following questions arise for determination:

(i) Whether the LCC was vested with jurisdiction to enquire into the



allegations of sexual harassment levelled by the Petitioner against the Secretary of the Akademi?

(ii) Whether the Discharge OM terminating the services of the Petitioner, is liable to be quashed?

(iii) Depending on the findings on the above, what reliefs, if any, ought to be granted to the Petitioner?

SUBMISSIONS ADVANCED

17. Mr. Ritin Rai, Senior Advocate, advanced the following submissions on behalf of the Petitioner/Complainant:

The LCC alone is vested with the jurisdiction to inquire into the Petitioner's complaint of Sexual Harassment

18. As per Section 6 and 9 of the POSH Act, the LCC is vested with jurisdiction to inquire into sexual harassment firstly, when the allegations are levelled against the “employer” within the meaning of Section 2(g), and secondly, where no statutorily compliant ICC is in place at the workplace. Further, the ICC cannot inquire into complaints of sexual harassment and cannot exercise its jurisdiction unless a complaint is made to it in writing.

The Secretary is the “employer” in terms of Section 2(g) of the POSH Act

19. The POSH Act defines the term “employer” and “workplace” with width to include the head of every branch or unit of every organization within its ambit. The head office of the Akademi, in Delhi, constitutes a standalone workplace under Section 2(o)(i). In terms of Section 2(g)(i) and (iii), the head of every branch, as well as the person discharging contractual obligations, are included with the term “employer”. The expansive provisions of the Act, particularly in the context of who is an “employer” within the meaning of the Act, have to be interpreted purposively to ensure a



fair inquiry, as the Act is an ameliorative social welfare legislation.

20. Clause 8(I) of the Akademi's Constitution designates the Secretary as its Principal Executive Officer, and Clause 8(III)(f) further affirms this role while also authorising the Secretary to execute contracts on behalf of the Akademi. The Secretary is, in practice, the senior-most officer functioning from the Akademi's head office in Delhi and has been consistently recognised, including by the Parliamentary Standing Committee, as the executive head of the institution. Even the Akademi, in its pleadings, has acknowledged that the Secretary is the administrative-in-charge. On this basis, it was urged that the Secretary squarely answers to the statutory description of "employer" under Section 2(g), thereby vesting jurisdiction in the LCC to enquire into the Petitioner's complaint.

21. The Akademi and the Secretary wrongly rely on certain circulars to claim that the President is the head of the institution. These only show the President's role in approving participation in national and international events, awards, and grants, while day-to-day administration of the Delhi office rests with the Secretary, who in fact also oversaw the Petitioner's appointment, leave applications, and office memoranda.

22. In terms of Section 4(i) of the Act, it is the employer who is required to constitute an ICC at the workplace. The Akademi, in its counter-affidavit, admits that the Secretary has sanctioned the constitution of the Akademi's ICC by circular dated 20th/23rd September, 2019. Being the Principal Executive Officer, executive head, administrative-in-charge, person discharging contractual obligations, and the sanctioning authority for the ICC, the Secretary is undoubtedly the "employer" within the meaning of the POSH Act, vesting exclusive jurisdiction in the LCC to inquire into



complaints of sexual harassment against him.

Failure to constitute an ICC as required by law

23. The ICC is defined as a committee which is constituted as per the stipulations of the POSH Act. The President *suo moto* referred the Petitioner's email dated 07th November, 2019 addressed to the Executive Board outlining the acts of sexual harassment by the Secretary to the ICC 'already existing at the Akademi'. The said ICC was in no manner compliant with the Act, as it's Presiding Officer was only a programme officer and not a senior-level woman employee which is in contravention of Section 4(2)(a) of the POSH Act. The ICC also had no external members as on 07th November, 2019, which is in contravention of Section 4(2)(c) of the POSH Act. Even as on date, there are no external members in the Akademi's ICC.

24. The *ex-post-facto* additions of 'external members', through letter dated 08th November, 2019 and email dated 05th December, 2019, underscore the lack of a validly constituted ICC as on 07th November, 2019. One of the two 'external members' sought to be added by the President, Dr. Vanita, is in fact a member of the Akademi's Executive Board and not an external member. Pertinently, the ICC is further required to be constituted by an order in writing and displayed conspicuously in the workplace in terms of Section 4(1)(a) read with Section 19(b) of the Act. The President's *ex post-facto* additions to the ICC were only communicated through private letters addressed to the Petitioner, and do not set right the lack of a validly constituted ICC. There was no validly constituted ICC on the date of the Petitioner's email.

25. Courts have emphasised the need for an ICC to be validly constituted in compliance with the statutory provisions. Failure to set up an ICC in



accordance with the Act has been held to go to the root of the constitution of the ICC nullifying all proceedings before such an ICC.⁵ Thus, the LCC is vested with exclusive jurisdiction to inquire into the Petitioner's complaint.

Jurisdictional invalidity of the ICC report

26. Under Section 9(1) of the POSH Act, the ICC can act only on a written complaint from the aggrieved woman, except in cases of incapacity or death, and only with her consent.

27. The Petitioner never filed any complaint before the ICC. In her first email of 07th November, 2019 to the President, she specifically denied its jurisdiction and sought an independent external committee. The President wrongly treated this as a complaint and referred it to the ICC without her consent. She reiterated her objection on 09th and 13th November, 2019. Her only written complaint regarding sexual harassment was filed with the LCC on 29th November, 2019.

28. Upon receiving notice from the ICC on 29th November, 2019, the Petitioner immediately objected to its jurisdiction, cited bias, and informed them of her complaint before the LCC. She submitted five written responses between 01st and 30th December, 2019, refusing to participate and requesting closure. Nevertheless, the ICC continued to issue notices.

29. Without a written complaint, the ICC's proceedings were void. The Petitioner's refusal to join them cannot be held against her. The *ex parte* report of 14th January, 2020 is a nullity, vitiated by bias, as the ICC both rejected her reasons for "withdrawal" and simultaneously closed the inquiry. The Courts have condemned ICC inquiries that are coloured with bias and

⁵ *Punjab & Sind Bank v. Durgesh Kavar*, 2020 SCC OnLine SC 755; *Punita K. Sodhi v. UOI*, 2010 SCC OnLine Del 3087, *Rashi v. UOI*, 2020 SCC OnLine Del 1555.



have directed the LCC to conduct inquiries in such cases.⁶

The Petitioner's discharge from service is illegal and mala fide

30. The Discharge OM merits setting aside as it is arbitrary, perverse, *mala fide* and based on irrelevant and inapplicable material. The discharge is nothing but reprisal for the Petitioner's refusal to submit to the Secretary's sexual demands and for instituting appropriate legal proceedings. It is trite that while an employer has the discretion not to confirm a probationer, such discretion cannot be exercised arbitrarily or with an oblique purpose. Therefore, any discharge of a probationer though couched in innocuous terms, is amenable to judicial review if it is shown to be tainted by *mala fide* or based on irrelevant considerations.⁷ Further, if an organization chooses to hold an enquiry into the alleged inefficiency of a probationer, the non-confirmation of the probationer's services as a result of that enquiry held behind the back of the probationer would be punitive and liable to be set aside.⁸ Reliance to this effect is placed on the decision of the Supreme Court in *Abhay Jain v. High Court of Rajasthan*.⁹

31. Independent of *mala fide*, the discharge order is also liable to be struck down for having been issued in blatant violation of this Court's interim directions dated 29th January, 2020 and 13th February, 2020. After recording the undertaking made on behalf of the Akademi, this Court had specifically directed that the Petitioner will continue to be on paid leave till 16th March, 2020; these orders were confirmed by the Division Bench, and further continued on 16th March, 2020. Despite the undertaking that the

⁶ *P. Sudha v. District Collector*, Judgment dated 08th September, 2019 in W.P. No. 34081 of 2018

⁷ *Pradip Kumar v. UOI*, (2012) 13 SCC 182; *Punjab & Sind Bank* (supra); *Ms. X v. High Court of Madhya Pradesh*, (2022) 14 SCC 187

⁸ *Abhay Jain v. High Court of Rajasthan*, (2022) 13 SCC 1.

⁹ (2022) 13 SCC 1



Petitioner's paid leave status would continue, the Akademi, without disclosure of any ongoing inquiry into her so-called inefficiency and without seeking leave of Court, proceeded to discharge her on 14th February, 2020, barely a day after reaffirming its undertaking. Such conduct, is *ex facie* arbitrary, *mala fide*, and in defiance of judicial orders. The discharge OM is therefore not only procedurally unsustainable but also demonstrates a retaliatory intent to penalise the Petitioner for asserting her legal rights.

32. Without prejudice to the foregoing, the OM is additionally liable to be quashed for the reasons set out below:

The Petitioner has been discharged from service pursuant to a "Review Committee" unknown to law

33. The discharge OM rests on the recommendations of a so-called "Review Committee." However, neither the Constitution of the Akademi nor its service bye-laws contain any provision for the constitution of such a committee to assess the performance of a probationer. Under Clause 6(1) of the bye-laws, the confirmation of a probationer is the exclusive prerogative of the President, who is designated as the Controlling Authority. The creation of a "Review Committee" is, therefore, a legal fiction without statutory or contractual basis. This infirmity is aggravated by the Akademi's inconsistent and contradictory explanations regarding its composition: at different stages it has claimed that the committee was (a) constituted by the President but chaired by the Vice-President and comprised of "officers of the Akademi" and "reputed individuals"; and, alternatively, that it consisted of three convenors of languages handled by the Petitioner along with one representative of the General Council. Despite repeated directions, the Akademi has failed to disclose the exact composition, dates of meetings, or



minutes of deliberations of the committee. In these circumstances, the Petitioner's discharge, having been effected in a manner contrary to the governing bye-laws, is unsustainable.

34. Even if, for argument's sake, the President were assumed to have delegated his powers to such a body, the process followed by the "Review Committee" is in substance an enquiry conducted behind the Petitioner's back. The Supreme Court in *Abhay Jain* has held that where the termination of a probationer is founded on findings of an enquiry conducted without affording her an opportunity to be heard, the order is punitive and liable to be struck down. The Office Memorandum here is not innocuous: it carries stigmatic observations about the Petitioner's alleged inefficiency and unprofessionalism. Moreover, the Akademi has admitted that the termination was premised on "unprofessionalism and misconduct." This renders the order punitive in character. Having passed such an order, without a formal enquiry or even an oral hearing affording to the Petitioner, the discharge is vitiated for violating the principles of natural justice.¹⁰

35. The Akademi's contention that the Petitioner had an appellate remedy before the Executive Board under Rule 21 of the service bye-laws is devoid of merit. The record shows that the Executive Board itself approved the discharge, leaving no impartial forum before which an appeal could lie. A termination founded on the opaque recommendations of a "Review Committee" a body unknown to the bye-laws and constituted in a non-transparent manner, cannot be countenanced. The order is, therefore, arbitrary, *mala fide*, and liable to be set aside.

The recommendations of the Review Committee vitiated by extraneous

¹⁰ *High Court of Gujarat v. Jayashree Chamanlal Buddhhatti*, (2013) 16 SCC 59



considerations

36. The Discharge OM states that the “Review Committee” considered office memoranda issued to the Petitioner and the Annual Performance Appraisal Report, 2018¹¹ to arrive at its recommendations. The Akademi has stated that the OMs dated 11th March, 2019; 18th March, 2019; 08th May, 2019 and 17th September, 2019 and APAR was considered by the “Review Committee”.

37. The Court is empowered to examine such material in order to ascertain whether the Petitioner’s discharge from service is based on irrelevant considerations and/or punitive. Reliance to this effect is placed on ***Dipti Prakash Bannerjee v. SNB National Centre for Basic Sciences***¹² and ***Ms. X v. High Court of Madhya Pradesh***.¹³

38. In any event, reliance on the APAR was wholly impermissible. It is trite that unless an APAR is communicated to the appraisee within a reasonable amount of time, it cannot form the basis for non-confirmation of services, even for a probationer.¹⁴

39. A perusal of the OMs considered by the “Review Committee” manifests the *mala fide* conduct of the Akademi. None of the OMs reveal the Petitioner’s performance was unsatisfactory or she was unsuitable. Evidently, as set out below, each of the OMs considered were issued by the Secretary, or at his behest, in terms of Clause 38(2) of the service bye-laws, for frivolous reasons not attributable to the Petitioner, and as a result of the Petitioner resisting his demands for sexual favours:

a. No OMs were issued by the Secretary against the Petitioner in 2018.

¹¹ “APAR”

¹² (1999) 3 SCC 60

¹³ (2022) 14 SCC 187



- b. OM dated 11th March, 2019 erroneously reprimanded the Petitioner for failing to reply to a previous OM, that the Petitioner had, in fact, responded to, which response had been misplaced by the officer concerned. Accepting the Petitioner's response, on 18th March, 2019 the Secretary asked her to be more careful in the future.
- c. Immediately after closing the previous OM and realizing that it could not be used against the Petitioner, the Secretary directed issuance of another OM on the very same day, i.e 18th March, 2019. The OM dated 18th March, 2019 recorded the lapses of Mr. JK Verma, who was under the supervision of the Petitioner, and sought to attribute blame on the Petitioner for Mr. Verma's lapses. The Petitioner, in her response, acknowledged the lapses on the part of Mr. Verma and informed the Secretary that Mr. Verma had taken full responsibility for the mistake. Accepting the Petitioner's response in this regard, on 08th May, 2019, the Petitioner was warned to be careful in the future.
- d. Once again, on the very same day of the closure of the previous OM, another OM dated 08th May, 2019 came to be issued for an alleged improper leave application when the Petitioner sought leave for the last rites of her grandmother. The Petitioner submitted her response clarifying the context in which the application came to be submitted.
- e. Upon returning from Ranchi around noon on 16th September, 2019 where the Petitioner was sexually assaulted by the Secretary, the Petitioner took a half-day leave. Nevertheless, an Office Memorandum dated 17th September, 2019 was issued by the Secretary, objecting to her absence from office after returning from an outstation assignment, despite her arrival

¹⁴*Abhay Jain* (supra); *S.K. Kardam v. Punjab National Bank* 2021 SCC OnLine Del 6920



being only at noon. Notably, the same OM bears a handwritten note by the Secretary himself, granting her permission to apply for half-day leave.

40. The Petitioner's performance was in fact frequently commended by authors, dignitaries, and external stakeholders. Seen in this light, the President, ought to have considered whether the Petitioner was liable to overcome her purported shortcomings in terms of the proviso to Rule 6(1) of the service bye-laws before recommending the termination of her probation. The Petitioner's discharge being based on impermissible and irrelevant material is perverse and liable to be set aside.

Retaliatory discharge of the Petitioner, vitiated by mala fides

41. The discharge of the Petitioner is tainted by *mala fides*, being a direct reprisal for her complaint of sexual harassment. The Petitioner, from the outset, was subjected to threats of adverse employment consequences by the Secretary for not reciprocating to his unwelcome sexual advances. He frequently warned her that her services would not be confirmed if she did not accede to his demands, going as far as demanding "bodily satisfaction" in exchange for confirmation of her services. Such acts also constitute sexual harassment in terms of Section 3(2) of the Act, and a probationer cannot be left remediless. The President, Vice-President, and members of the ICC warned the Petitioner to withdraw her complaint against the Secretary and "reconcile" with him in order to ensure that her services are confirmed. Evidently, therefore, the Petitioner's termination reeks of *mala fide* for resorting to the due process of law against a perpetrator of sexual harassment, more so given that all of the material considered for the discharge were issued by, or at the behest of, the person accused of sexual harassment.



42. Time and again, courts have been implored to look into sexual harassment complaints in their full context, and not in isolation.¹⁵ The Supreme Court has taken judicial notice of victimization of complainants of sexual harassment, intended to suborn the dignity of women in workplaces, and set aside retaliatory acts vitiated by *mala fides*.¹⁶ The Akademi's discharge of the Petitioner is a colourable exercise of power which ought not to be countenanced. The Akademi should also be made to compensate the Petitioner for its flagrant violations of the law and putting its organizational heft behind the perpetrator while victimizing the Petitioner.

43. At this juncture, it must be noted that both the Akademi and the Secretary have raised overlapping legal and factual grounds in support of their petition. To the extent they advance common factual and legal grounds, these are addressed together in the following discussion. Where distinct pleas are urged on behalf of the Secretary, they are separately noted and dealt with.

44. Ms. Geeta Luthra, Senior Advocate, representing the Akademi, submits as follows:

45. There are two separate streams of cause of action which have been improperly integrated and conflated: (a) The original case of the Petitioner limited to seeking compliance of directions of LCC *qua* the alleged complaint under the POSH Act and (b) the Petitioner's attempt of integrating a second distinct cause of action i.e., grievance against non-confirmation of her probationary employment.

46. The two distinct causes of action cannot be merged integrated into

¹⁵ *UOI v. Mudrika Singh*, 2021 SCC OnLine SCC 1173; *Punita Sodhi* (supra)

¹⁶ *Punjab & Sind Bank* (supra)



one proceeding. The unamended writ petition was confined only to reliefs arising from the alleged sexual harassment complaint and could not have been expanded midstream to impugn the discharge order.

The Petitioner made a formal written complaint to the Executive Board and submitted to the jurisdiction of the ICC

47. On 07th November, 2019, the Petitioner addressed a written complaint via email to the Executive Board of Respondent No.1, titled “Complaint against [REDACTED] for acts of sexual harassment and assault.” In the complaint, she explicitly sought the institution of an independent inquiry by persons of impeccable integrity and experience in handling sexual harassment complaints, thereby formally invoking the POSH framework and submitting to the jurisdiction of the ICC. Having styled and worded her email as a “Complaint,” the Petitioner cannot now be permitted to deny that it fell within the POSH regime.

48. The Petitioner was fully conscious that the Executive Board is the apex authority exercising control over the Akademi. In compliance with Section 4 of the Act, the Executive Board referred the complaint to the ICC. In her response dated 09th November, 2019, the Petitioner acknowledged this fact and appreciated the reference.

49. The ICC was duly constituted as per law, comprising of a senior member, 5 internal members and 3 external members in compliance with Section 4 of the POSH Act.

50. The Petitioner actively participated in these proceedings, going so far as to forward a copy of her police complaint dated 25th November, 2019 to the ICC.

51. On 29th November, 2019, the Petitioner lodged a complaint before the



LCC, despite the ICC already having taken cognizance of her earlier representation. Once a duly constituted ICC is seized of a complaint, the LCC is precluded from exercising jurisdiction and entertaining the Petitioner's complaint at that stage, was inconsistent with the scheme of the Act.

52. The ICC thereafter concluded its inquiry and rendered a detailed report dated 14th January, 2020, accompanied by binding recommendations under Section 13(2) of the POSH Act. In terms of Section 13(4), the employer is under a statutory obligation to act upon such recommendations.

53. By voluntarily invoking the jurisdiction of the ICC, appreciating its constitution, and participating in its proceedings, the Petitioner is now estopped from challenging its competence. To permit her to re-agitate the matter before the LCC would amount to forum shopping. This conduct attracts the doctrine of election, as laid down in *Dipankar Chakraborti v. State of West Bengal & Ors.*¹⁷

Report and Recommendations of ICC have attained finality and remain unchallenged by the Petitioner

54. The inquiry report of the ICC, along with its findings and recommendations, stands unchallenged and has, therefore, attained finality. Under Section 13(2) read with Section 18 of the POSH Act and Rule 11 of the POSH Rules, 2013, such findings are statutorily appealable before the Industrial Tribunal-I at Rouse Avenue District Courts, New Delhi.

55. The Petitioner, however, has not preferred any appeal against the ICC's report before the designated appellate forum, nor has she assailed it in the present proceedings. Having allowed the statutory remedy to lapse, it is

¹⁷ 2020 SCC OnLine CAL 2112



not open to her to indirectly undermine the ICC's findings in the guise of challenging jurisdiction. It is settled law that what cannot be done directly, cannot be done indirectly. The judgment of this Court in *Asha Rani v. Plan International & Ors.*¹⁸ is relied upon for the submission that proper remedy is to file appeal under POSH Act.

No requirement under the POSH Act or Vishaka judgment that chairperson of ICC ought to be senior to Respondent/ Parties

56. A perusal of the POSH Act makes it abundantly clear that there is no requirement that members of ICC should be senior to the accused or any of the parties. Section 4 lays down composition of ICC and it provides that senior most female employee should be chairperson of the ICC. There is no provision which mandates that the chairperson should be senior to Respondent or for that matter the Petitioner. Further, there is no averment in any of the pleadings on behalf of Petitioner that the chairperson of the ICC ought to be senior to the Secretary.

57. Reliance to this effect has been placed on the judgment of the Calcutta High Court in *Banani Chattopadhyay v. Union of India*,¹⁹ where the court held that members of the ICC may not be a rank higher than that of the respondent under the provisions of the POSH Act. Any contrary interpretation thereto would lead to disastrous consequences and in that event the ICC would be denuded of its jurisdiction to conduct an enquiry.

58. Additionally, the Office Memorandum dated 9th September, 2016, issued by the Department of Personnel and Training, clarifies that neither the CCS (CCA) Rules nor the POSH Act impose any restriction on the

¹⁸ W.P. (C) 8603/2015

¹⁹ 2022 SCC OnLine Cal 3592



Chairperson of the ICC being junior in rank to the respondent officer.

The Secretary is not “Employer”

59. Under the Constitution of the Akademi, the executive authority vests not in the Secretary but in the Executive Board. Article 14(i) expressly provides that the Executive Board “...*exercises the executive authority of the Akademi subject to policy directives of the General Council...*”. Further, Article 14(ii) declares that the Executive Board is “... *responsible for supervision and control of the work of Akademi and its office...*”. This dovetails with Section 2 (g) (ii) of the POSH Act, which defines “employer” to include any person responsible for the management, supervision, and control of the workplace. On a plain reading, it is the Executive Board, and not the Secretary, that answers to this description. The Explanation to Section 2(g), which widens the ambit of “employer,” further supports this interpretation.

60. The President, as the Head of the Executive Board, exercises supervisory control over the functioning of the Akademi. No affairs of the Akademi are conducted without the President’s approval. This is manifest from the documents filed on behalf the Akademi which demonstrate that for last more than 20 years approval of President is taken for affairs of the Akademi. The Petitioner is well aware of this fact, having herself submitted several proposals and tasks for the President’s approval during her tenure. In this light, Petitioner’s attempt to portray the Secretary as the highest authority in the Akademi, or at least within its Delhi office, is misleading. Both the Constitution and the service bye-laws of the Akademi make it clear that the Secretary functions as a record-keeper and a clerical head, acting under the overall control of the Executive Board and the President. Lacking



managerial or supervisory authority in his own right, the Secretary cannot be regarded as an “employer” within the meaning of Section 2(g).

Non confirmation of services of Petitioner as her performance was unsatisfactory during probation

61. The Petitioner was appointed by the Akademi *vide* letter dated 26th December, 2017. The said letter clearly stipulated that the Petitioner would be on probation for a period of two years, during which her services could be discontinued without notice and without assigning any reason. The Petitioner expressly accepted these terms *vide* her letter dated 02nd January, 2018. Accordingly, the relationship between the Akademi (as employer) and the Petitioner (as employee) was contractual in nature, and the termination of her services is not amenable to challenge by way of a writ petition. Reliance is placed on ***MCD v. Suman Devi***²⁰ wherein it was held that it is the prerogative of the employer to judge the suitability of a probationer, and termination of probation does not affect any vested right. Further, in ***Dinesh Kumar Mishra v. UOI***²¹ the court observed that when terms between employee and employer are governed by contract, there cannot be judicial review of whether the employee was entitled to extension of probation or not. Reliance is also placed on ***Rajasthan State Road Transport Corporation v. Zakir Husain***²² to argue that that protection under Article 311 is extended only to Central Government employees; as the Petitioner was not a government servant, she cannot claim such safeguards. In any event, temporary and probationary employees have no substantive right to hold the post, and their services may be terminated without enquiry.

²⁰ 2014 (7) SLR 627 (DB)

²¹ 2011 (181) DLT 36

²² (2005) 7 SCC 447



62. During her tenure from 15th February, 2018, the Petitioner was repeatedly found wanting in performance. Several Office Memoranda were issued to her highlighting deficiencies, but no appreciable improvement was observed. Accordingly, at the end of the two-year probationary period, her services were not confirmed. The Discharge OM coincided with the date of expiry of her probation and was thus a routine administrative act of non-confirmation. The attempt of the Petitioner to make much of the date of termination, it was submitted, is misplaced.

63. The Petitioner, as a probationer has no vested right to continue in service. Courts have consistently held that termination of probation cannot ordinarily be interfered with unless it is demonstrably punitive or stigmatic. In the present case, the order of discharge is couched in neutral terms and does not attract judicial interference. In this regard, reliance is placed on the judgment in *Abhijit Gupta v. SNB National*²³ and *Raj Kumr Kaushik v. Bharat Scouts & Guides*²⁴ where even adverse remarks such as “perverted mind” and “dishonest duffer having no capacity to learn” were not considered stigmatic so as to invalidate termination.

64. Additionally, reliance is placed on the decision in *Pinaki Ghosh v. International Airport Authority of India*²⁵ wherein the Court upheld that termination of a probationer without assigning any reason is valid in law. It was held that the employer has the authority to terminate the services of a probationer at its discretion. Further reliance is placed on *Thomas School (ST) v. Manish Kaushik & Anr.*²⁶ where the Court observed that the determination of whether a probationer’s services are satisfactory lies solely

²³ (2006) 4 SCC 469

²⁴ 2017 (239) DLT 173

²⁵ 2007 (144) DLT 234



with the employer. The Court cannot substitute its own opinion in place of the employer's assessment regarding the probationer's performance.

65. Moreover, the Petitioner had an alternative remedy available under the Bye-laws of the Akademi to challenge her non-confirmation, which she consciously chose not to avail.

Prayers in the Writ Petition

66. The writ petition, as originally filed, was limited to seeking enforcement of the LCC's interim directions granting the Petitioner three months' paid leave commencing 16th December, 2019. That period concluded on 16th March, 2020. Despite the fact that her services had been lawfully discontinued on 14th February, 2020, the Petitioner has continued to draw emoluments until the present day, amounting to over INR 30 lakhs, thereby securing more than the interim relief she initially claimed.

67. It was only thereafter that the Petitioner sought, by way of amendment, to enlarge the scope of the writ petition to assail the Discharge OM and to seek reinstatement and other consequential reliefs.

68. This amounts to an impermissible alteration of the very character of the petition. Order VI Rule 17 of the Code of Civil Procedure, 1908²⁷ does not permit the substitution of an entirely new cause of action under the guise of amendment. Reliance is placed on the decision of this court in ***Director General Foreign Trade v. M/s Masumi Overseas Pvt Ltd***²⁸ wherein it was held that amendments which seek to add entirely new cause of action which amount to new plaint in place of what was originally there would normally be refused by Court.

²⁶ 2017 (4) AD Delhi 734

²⁷ "CPC"

²⁸ 2015 (9) AD Delhi 635 (DB)



69. In addition to the above submissions, the following submissions have been made by Mr. Ashish K. Dixit on behalf of the Secretary:

Issue of jurisdiction determined by ICC report and recommendation

70. The issue of jurisdiction has been exhaustively dealt by ICC in its report and recommendation dated 14th January, 2020. The ICC, after considering the material before it, categorically held that it was the competent forum to enquire into the allegations, and that the Secretary does not fall within the definition of “employer” under the POSH Act.

71. Pertinently, the Respondent No. 2/LCC has produced no material, pleading or law to demonstrate the basis for entertaining the complaint or issuing interim recommendations dated 16th December, 2019 and 16th January, 2020. The Secretary’s case, therefore, is that the LCC acted wholly without jurisdiction in assuming seisin of the matter.

Secretary not Employer under POSH Act

72. The Secretary himself is an employee of the Akademi, appointed by the Executive Board under Article 8(i) of the Akademi’s Constitution. As such, he cannot, by any legal fiction, be treated as the “employer” under the POSH Act. The Petitioner’s own appointment was made by the President of the Akademi, who, under Clause 3(d)(ii) of the service bye-laws, is also designated as her controlling authority. Therefore, the Petitioner’s attempt to characterise the Secretary as the employer is contrary to the governing documents of the institution.

73. The Akademi is neither the “local authority” nor the “appropriate government” as mentioned in Section 2 (g)(i) of POSH Act. The Akademi does not fall within the definition of local authority as defined under Section 3(31) of the General Clauses Act, 1897. The Appropriate Government under



the POSH Act is the Central Government and admittedly the Akademi is not Central Government Department. On the contrary, it autonomous body registered as Society under the Society Registration Act, 1860. Mere fact that government is funding the Akademi will not make the Akademi Central Government or Department within the meaning of word appropriate government as used in POSH Act. It is further undisputed that the employees of the Akademi are not Central Government employees.

74. The structure of the Akademi, as delineated in its Constitution, leaves no ambiguity. Article 14(i) vests the executive authority of the Akademi in the Executive Board, while Article 14(ii) makes the Executive Board responsible for the supervision and control of the work of the Akademi and its offices. A bare reading of Article 14 (i) (ii) in conjunction with Section 2 (g)(ii) of POSH Act, the only conclusion which can be drawn is that the Secretary is not the employer under the POSH Act. For ease of reference the same is reproduced herein below:

Section 2 (g) (ii) of POSH Act	Article 14
“...in any workplace not covered under sub clause (i), <u>any person responsible for management, supervision and control</u> of workplace; Explanation- For the purposes of this sub-clause “<u>management</u>” includes the person or <u>board or committee</u> responsible for <u>formulation and administration of policies</u> for such organization;	(i)- to <u>exercise the executive authority</u> of the Akademi subject to policy directives of the General Council; (ii) <u>to be responsible for the supervision and control of work of the Akademi and its office;</u>

75. The Secretary does not possess any independent Executive Authority. He is bound to act under the directives of the Executive Board and the



President. Under Article 5 of the Constitution of the Akademi, the President also possesses the power to take decisions on behalf of the General Council or the Executive Board. In this scheme, the Secretary is nothing more than a functionary or custodian of records and cannot be elevated to the position of “employer” as envisaged in the POSH Act.

As per the scheme of POSH Act there can be only one Employer

76. The statutory framework of the POSH Act does not contemplate multiple “employers” within a single organisation. The Act casts a cluster of obligations on the employer, including the constitution of ICC (Section 4), compliance with interim recommendations (Section 12), implementation of duties to prevent and redress sexual harassment (Section 19), and reporting obligations (Section 22). These duties are designed to be discharged by one body or authority, not fragmented across multiple actors. Accepting the Petitioner’s contention that both the President and the Secretary could simultaneously qualify as “employer” would render compliance with these statutory duties impossible and thereby defeat the object and efficacy of the Act.

As per LCC, the President is the Employer

77. The Petitioner’s writ petition is founded upon interim recommendations dated 16th December, 2019 and 16th January, 2020 issued by the LCC under Section 12 of the POSH Act. The said provision expressly contemplates that such recommendations are to be addressed to the “employer”. In this case, the interim recommendation dated 16th January, 2020 was addressed to the President of the Akademi. This, in itself, demonstrates that even the LCC recognised the President, and not the Secretary, as the employer of the Akademi within the meaning of the Act.



Petitioner aware that approval of president is required and taken for day to day affairs of the Akademi.

78. The Petitioner's plea that the Secretary alone exercised control over the Akademi's affairs, and that the President had no role in the day-to-day functioning, is factually incorrect and misleading. During her tenure, the Petitioner herself prepared and routed numerous proposals relating to events, seminars, and delegations, all of which were submitted for the President's approval through proper channel. The Petitioner is well aware that such approvals were invariably obtained and recorded on file. Her omission to disclose these facts in the writ petition is a deliberate attempt to mislead this Court.

79. The Secretary has placed on record several such proposals initiated by the Petitioner, which were thereafter approved by the President. These documents have not been denied by the Petitioner in her short response or otherwise. By way of example, documents annexed with the counter-affidavit show that proposals authored by the Petitioner were expressly forwarded for the President's sanction before being acted upon.

80. This practice has not only been consistent since the commencement of the Petitioner's employment but continued even after she lodged her complaint on 07th November, 2019. The documentary record makes it plain that the President's approval was integral to the Akademi's functioning. The Petitioner's attempt to now contend that the President had no supervisory role is clearly contrary to her earlier stand and is unsustainable.

ANALYSIS AND FINDINGS

81. The first issue to be addressed is the Akademi's preliminary objection to the amendment of pleadings in W.P. (C) No. 1103/2020. According to the



Akademi, the amendment changes the character of the writ petition itself and is impermissible under Order VI Rule 17 of the CPC, making the additional reliefs unsustainable. This objection, however, is misplaced. As the writ petition is instituted under Article 226 of the Constitution, the technical constraints of the CPC do not govern the exercise of jurisdiction with the same rigidity. In any event, the amendment permitted on 12th May, 2021 does not introduce a fresh cause of action, but merely brings on record subsequent developments that are intrinsically connected with the Petitioner's original grievance. The proceedings have remained pending since 2020, with the LCC's proceedings itself under stay. In such circumstances, to exclude the additional reliefs on a narrow technical plea would defeat the cause of justice. This Court therefore finds no merit in the objection, which stands overruled.

Whether the LCC has the jurisdiction to inquire into the Petitioner's complaint of sexual harassment?

82. The primary issue for consideration is whether the LCC has the jurisdiction to inquire into the Petitioner's complaint of sexual harassment. Section 6 of the POSH Act delineates the jurisdiction of the LCC and empowers it to inquire into complaints in two specific situations: first, where the complaint is against the employer, and second, where the establishment has failed to constitute an Internal Committee in accordance with the statute. The enquiry, therefore, turns on whether the Secretary of the Akademi falls within the definition of "employer" within the meaning of Section 2(g) of the POSH Act.

83. Section 2(g) of the POSH Act defines "employer" in a broad and inclusive manner:



“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 may be, 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) xx ... xx ... xx;”

84. The Petitioner submits that clause (i) of Section 2(g) is attracted in the present case, as the Akademi is an institution wholly financed by the Government of India through the Ministry of Culture. On this footing, it is urged that the Akademi must be treated as an “organisation or institution of the appropriate Government”, rendering its head the “employer” for purposes of the Act.

85. The Akademi, on the other hand, contends that it is an autonomous body registered under the Societies Registration Act, 1860, and does not constitute a department of the Central Government or a “local authority” as defined under the General Clauses Act, 1897. Its registration, funding pattern, and constitution demonstrate its independent character. The responsibility for overall supervision and control is vested in the Executive Board, with the President as its head, and not in the Secretary.

86. The Court is of the opinion that the term “employer” under Section 2(g) cannot be construed in a narrow, formalistic manner. The POSH Act is



a remedial statute enacted to secure a safe and dignified workplace for women. Its provisions must, therefore, be given a purposive interpretation, lest the very mischief it seeks to remedy is left unchecked. The definition of “employer” is deliberately cast in wide terms to ensure accountability of those in positions of authority - whether that authority is derived from the organisation’s governing instruments/framework or from *de facto* or effective control over the workplace.

87. The Secretary stresses that he is himself an appointee of the Executive Board under Article 8 of the Akademi’s Constitution, functioning under the control of the President, and therefore cannot be treated as the “employer” within the meaning of Section 2(g). According to him, it is the President, as head of the Executive Board, who alone qualifies as “employer” for the purposes of the POSH Act.

88. However, this contention cannot be accepted in view of the statutory definitions. Section 2(o)(i) of the Act defines “workplace” to include “*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.*” It is an admitted position that the Akademi receives full financial support from the Ministry of Culture and functions under its aegis. Its Head Office in Delhi is, therefore, a “workplace” within the meaning of Section 2(o)(i). Consequently, the definition of “employer” under Section 2(g)(i) stands attracted.

89. It is in this context necessary to delineate the role and functions of the Secretary. Clause 8(I) of the Akademi’s Constitution expressly designates the Secretary as its “Principal Executive Officer”. Under Clause 8(III)(f), the



Secretary is empowered to execute contracts on behalf of the Akademi. The Parliamentary Standing Committee has also acknowledged the Secretary as the principal executive and administrative head of the Akademi. Importantly, even in the pleadings and documents placed on record by the Akademi, the Secretary is described as the administrative-in-charge of the institution.

90. In these circumstances, the Secretary, being the senior-most officer at the Delhi Head Office and vested with day-to-day administrative and employment responsibilities, answers to the description of “employer” within the meaning of Section 2(g)(i). The attempt to distance him from this responsibility by reference to the formal supervisory role of the President overlooks the functional reality of the Secretary’s position. To hold otherwise would reduce the statutory protection under the POSH Act to an empty formality, contrary to both its language and its remedial purpose.

91. Even assuming, *arguendo*, that the Akademi does not fall within Section 2(g)(i), the Secretary would still come within the sweep of Section 2(g)(ii), which defines “employer” as any person responsible for the “management, supervision and control” of the workplace. The Explanation deliberately widens the scope of “management” to include those entrusted with administration and policy implementation. On the record, the Secretary is expressly recognised as the principal executive officer of the Akademi and is responsible for its day-to-day administration. His position therefore squarely answers the test under clause (ii).

92. The same conclusion follows under Section 2(g)(iii), which treats “employer” as the person discharging contractual obligations towards employees. The Secretary executes contracts on behalf of the Akademi and



holds the power to appoint staff, as evidenced by Clauses 8(III)(f) and 14(VII) of its Constitution. These provisions make plain that the Secretary plays a decisive role in the employment relationship and cannot be reduced to the position of a mere custodian of records or conduit for approvals. By virtue of these functions, he squarely falls within the definition of “employer” under the Act.

93. The wide and purposive definition of “employer” under the framework of POSH Act is designed precisely to prevent internal hierarchies from frustrating accountability. The focus must be on the functional role of the individual concerned, whether he wielded authority over administration, personnel decisions, and workplace management. In this case, the Secretary’s role is unmistakable: he was part of the selection committee that appointed the Petitioner; she addressed her pre-appointment correspondence to him; he sanctioned the ICC; issued memoranda regarding her service; and exercised powers to grant leave to the staff. The Akademi’s attempt to characterise him as subordinate to the President is belied by the Bye-Laws which reveal that both the President and Secretary function under the general superintendence of the Executive Board. While the President may hold supervisory powers, it is the Secretary who serves as the executive head in the day-to-day running of the Akademi. On any functional assessment, he answers to the definition of “employer” under the Act.

94. The Akademi relies on the judgment of the High Court of Bombay in *Dr. David G. Samuel v. Collector/District Magistrate, Pune & Ors.*²⁹ to urge for a narrow construction of “employer.” Such reliance, however, is misplaced. The facts of that case were materially distinct: the respondent in

²⁹ Decision dated 30th November, 2021 in WP(C) 3784 of 2021



a sexual harassment inquiry sought to thwart a duly concluded proceeding by contending that, as President of the Governing Board of Trustees, he himself was the “employer” and thus beyond the Internal Committee’s reach. The High Court of Bombay decisively rejected this contention, observing that the objective of the Act is not to shield the accused but to insulate the inquiry mechanism from employer influence. Far from assisting the Akademi, the ratio of that decision reinforces a purposive reading of the Act so that its remedial safeguards are not rendered illusory.

95. The reliance on the decision of the High Court at Calcutta in ***Banani Chattopadhyay v. State of West Bengal***³⁰ is equally unavailing. When this Court’s decision dated 25th October, 2021 was cited before the High Court at Calcutta, it expressly distinguished the facts of the case before it from those in the present matter. Consequently, ***Banani Chattopadhyay*** turned on materially different facts and, having itself noted the distinction from this Court’s decision of 25th October, 2021, is inapplicable to the present controversy.

96. As regards the Secretary’s contention that under the scheme of the POSH Act there can be only one “employer,” and that since the President is the employer the Secretary cannot simultaneously be treated as such, the argument is misconceived. The Act is a piece of social welfare legislation and must be interpreted in a manner that advances its object of ensuring accountability and protection against workplace harassment. To restrict the definition of “employer” in the narrow manner suggested would defeat the very purpose of the Act by allowing individuals exercising supervisory or administrative control to evade responsibility by shifting the designation of

³⁰ 2022 SCC OnLine Cal 3592



“employer” onto another.

97. In sum, the statutory framework, read in light of its beneficial purpose as affirmed in *Sohail Malik v. UOI*,³¹ supports a broad construction of the term “employer” so as to secure protection against workplace harassment. On a functional appraisal, the Secretary of the Akademi answers to that description under Section 2(g)(i), and in any event within the scope of Section 2(g)(ii) and (iii). To hold otherwise would be to elevate form over substance and to frustrate the very object of the legislation. This Court therefore holds that the LCC had jurisdiction to inquire into the Petitioner’s complaint against the Secretary of the Akademi.

98. The Petitioner has also urged that the ICC of the Akademi was not validly constituted and, in any event, that she never submitted her complaint to it. In her view, the ICC therefore lacked jurisdiction from the outset. However, in light of the discussion above, it is unnecessary to enter into questions regarding the ICC’s composition or whether its jurisdiction was ever invoked. What is determinative is that, under the statutory framework, the ICC has no authority to entertain a complaint against the Secretary, who qualifies as an “employer” under Section 2(g). Any report or recommendation issued by the ICC in relation to such a complaint is, accordingly, without authority of law and *non est*.

99. With respect to the Akademi’s contention that the Petitioner, having invoked the ICC’s jurisdiction and participated in its proceedings, is estopped from questioning its competence and that her recourse to the LCC amounts to forum shopping, it is pertinent to note that the Petitioner

³¹ 2023 SCC OnLine Del 3764. See also: *Sukalyan Halder v. State of West Bengal*, Judgment dated 08th September, 2023 in W.A. No. 18829 of 2023



consistently objected to the ICC's jurisdiction at every stage. In her very first email dated 07th November, 2019 to the President, she expressly denied its jurisdiction and requested an independent external committee. These objections were reiterated on 09th and 13th November, 2019. On 29th November, 2019, she lodged a formal complaint of sexual harassment before the LCC- not subsequent to the ICC's decision but prior to the commencement of its proceedings. Upon receipt of the ICC's notice on the same day, she immediately objected to its jurisdiction, pointed to bias, and apprised the ICC of her complaint before the LCC. Between 01st and 30th December, 2019, she filed five written responses refusing to participate and requesting closure of the proceedings. Despite this, the ICC continued to issue notices and, by its report dated 14th January, 2020, simultaneously rejected her objections while closing the inquiry. In these circumstances, the doctrine of election relied upon by the Akademi has no application.

Whether the termination of the Petitioner's services is liable to be set aside?

100. Through the amendment, the Petitioner has also assailed the termination of her services during the pendency of these proceedings. The Akademi argues that she was on probation for a period of two years, which came to an end on 14th February, 2020. Her services were discontinued on the basis of the Review Committee's assessment and the satisfaction of the President. Since her appointment was contractual in nature, the Akademi contends that the termination of a probationer is not open to challenge under writ jurisdiction. In support, reliance is placed on *MCD v. Suman Devi*,³² where it was held that assessing a probationer's suitability is the exclusive

³² 2014 (7) SLR 627 (DB)



prerogative of the employer, and such termination does not impinge upon any enforceable right. Reference is also made to ***Dinesh Kumar Mishra v. Union of India***,³³ which holds that when employment is governed by contract, issues such as extension or confirmation of probation fall outside the scope of judicial review.

101. This Court is mindful of the limited scope of judicial review in matters of probation and confirmation of service. At the same time, it is well established that even an order styled as a discharge simpliciter is open to interference where it is shown to be vitiated by *mala fides* or founded on extraneous considerations. In this regard, it is apposite to refer to the decisions of the Supreme Court in ***Ms. X v. High Court of Madhya Pradesh***,³⁴ ***Punjab & Sind Bank v. Durgesh Kuwar***³⁵ and ***Dipti Prakash Banerjee v. SNB National Centre for Basic Sciences***.³⁶ As held in ***Dipti Prakash Banerjee***, Courts are not precluded from lifting the veil of termination simpliciter to examine whether the action is a subterfuge to punish a probationer for extraneous reasons.

102. Although the impugned termination order is styled as a discharge simpliciter, the surrounding circumstances leave little doubt that it was vitiated by *mala fides*. The same is apparent from the following:

(i) The Petitioner has alleged that the President and Vice-President attempted to pressure her into withdrawing her complaint against the Secretary. It is pertinent to note that Section 19 of the POSH Act places a statutory obligation on the employer to extend institutional support to the aggrieved woman, including: (a) assisting her, should she choose to file a

³³ 2011 (181) DLT 36

³⁴ (2022) 14 SCC 187

³⁵ (2020) 19 SCC 46



complaint under the Indian Penal Code, 1860³⁷ or any other applicable law; (b) initiating appropriate action under the IPC or any other prevailing law against the perpetrator, or where the perpetrator is not an employee, taking necessary steps at the workplace where the incident occurred, if the aggrieved woman so desires. However, instead of extending the institutional support mandated by law, the President, by letter dated 08th November, 2019, requested the Deputy Commissioner of Police, P.S. Parliament Street, to keep the Petitioner's criminal complaint against the Secretary pending until the ICC inquiry was completed. The Petitioner immediately raised concern in her letter dated 09th November, 2019 to the Deputy Secretary, which was also copied to the Executive Committee. She reiterated this grievance in her email of 09th December, 2019, responding to the third notice issued by the ICC, where she recorded that during a meeting on 5th December 2019 the President had pressured her to withdraw her complaint and made it clear that no action would be taken against the Secretary.

(ii) Despite interim orders of the LCC and of this Court directing that the Petitioner be treated as on paid leave, the Akademi proceeded to terminate her services by the Discharge OM, without apprising this Court of the impending action. The termination coincided with the pendency of the sexual harassment complaint against the Secretary, a timing that, on its face, suggests a retaliatory intent. The Executive Board, acting with due propriety, ought to have deferred any such step until the complaint was resolved.

(iii) The manner in which the Petitioner's services were terminated is equally questionable. The termination was purportedly based on

³⁶ (1999) 3 SCC 60

³⁷ "IPC"



recommendations of a so-called “Review Committee,” a body unknown to either the Akademi’s Constitution or its Service Bye-laws. Clause 6(1) of the Bye-laws vests the power to confirm a probationer solely in the President, as Controlling Authority. Even if delegation were assumed permissible, the procedure adopted bore all the hallmarks of a disciplinary enquiry yet was carried out without affording the Petitioner any opportunity of hearing. Such a process cannot be cloaked as a routine appraisal of probation.

(iv) The Office Memoranda forming the basis of the Review Committee’s assessment originated either from the Secretary himself or at his direction, the same individual against whom the sexual harassment complaint was then pending. The Supreme Court in ***Punjab & Sind Bank*** has held that an order discharging a female employee on the basis of material supplied by, or at the behest of, the very person accused of harassment constitutes unfair treatment and is vitiated by *mala fides*. In the present case, the Akademi has not produced any independent or neutral assessment of the Petitioner’s performance to justify the termination.

103. Viewed cumulatively, these circumstances demonstrate that the Petitioner’s termination was not a *bona fide* exercise of administrative discretion but a classic case of colourable exercise of power. An ostensibly lawful authority, to discharge a probationer, was invoked for an impermissible and retaliatory purpose: to stifle a legitimate complaint of sexual harassment and shield the Secretary from scrutiny. This amounts to *malice in law*. Equally, the sequence of coercion, retaliatory steps, and procedural improprieties establish *malice in fact*. The Discharge OM is, therefore, unsustainable and liable to be set aside.



104. The Akademi's contention that the Petitioner had a statutory right of appeal to the Executive Board under Rule 21 of the Service Bye-laws also does not withstand scrutiny. The discharge order was itself approved by the Executive Board, thereby rendering the so-called appellate remedy illusory. An appeal cannot lie to the very authority that sanctioned the impugned action. This viewed alongside the opaque constitution of the "Review Committee" and the irregular process it adopted, the discharge order cannot be sustained.

105. Courts have consistently stressed that allegations of sexual harassment must be assessed in their full context and not in isolation. The Supreme Court has repeatedly taken judicial notice of the entrenched pattern of victimisation of complainants - often through retaliatory measures designed to silence them and erode their dignity at the workplace. In such cases, courts have not hesitated to set aside administrative actions tainted by *mala fides*.³⁸ The Akademi's discharge of the Petitioner falls squarely within this category. The impugned order is a colourable exercise of power, effected through a procedure unknown to law, and based on irrelevant and stigmatic material, all without affording the Petitioner any opportunity of hearing. It thus stands vitiated as arbitrary, violative of natural justice, and unsustainable in law.

CONCLUSION

106. In view of the foregoing, the Secretary is held to be an "employer" within the meaning of Section 2(g) of the POSH Act. Consequently, the complaint of sexual harassment against the Secretary would lie only before the LCC and the ICC would lack jurisdiction to entertain or inquire into any

³⁸ *Punjab & Sind Bank* (supra), *X v. State of MP* (supra)



such complaint. Furthermore, the termination of the Petitioner's services is found to be vitiated by illegality and *mala fides*.

107. Before parting, it must be observed that the present controversy could well have been avoided had the Akademi, as a premier cultural institution, acted with the degree of openness and responsibility the law demands. When confronted with a complaint of sexual harassment against its own Secretary, the Akademi could have easily agreed to independent examination by the LCC, thereby reinforcing institutional confidence in its processes and upholding the statutory framework of the POSH Act. Instead, it chose to resist such scrutiny through technical objections and, simultaneously, terminated the services of the complainant during the pendency of proceedings. The Akademi's assertion that the Petitioner continues to draw salary as a probationer without discharging duties ignores that this situation is a direct consequence of the Akademi's own conduct. Rather than accommodating her in another branch office or providing a work environment free from hostility, the Akademi elected to treat her as an adversary. The statute itself contemplates interim measures, including paid leave, to protect the dignity and security of a complainant. Accordingly, the consequences of present arrangement which affords the Petitioner salary without work, cannot be attributed to the Petitioner.

108. Institutions such as the Akademi shoulder not only administrative obligations but also a responsibility to exemplify the creation of safe and dignified workplaces. Rather than perceiving the LCC's role as intrusive, the Akademi could have treated it as an opportunity to ensure transparency and restore faith among its employees and the public at large.

109. The POSH Act was enacted to provide effective remedies and to



prevent precisely such situations where hierarchies within organisations can obstruct a fair inquiry. Compliance with its mandate is not a matter of discretion but a legal obligation. The Akademi's approach in this case serves as a reminder that statutory bodies must not be seen as protecting individuals in positions of power at the expense of those who seek justice.

110. In the result, for the reasons recorded hereinabove, this Court holds that the LCC had jurisdiction to inquire into the Petitioner's complaint and that the termination of her services was vitiated by *mala fides* and non-compliance with the principles of natural justice. The Discharge OM dated 14th February, 2020 is accordingly quashed. The complaint filed by the Petitioner shall proceed before the LCC in accordance with law.

111. Accordingly, the petitions are disposed of in the following terms:

- (a) The Inquiry report dated 14th January, 2020 of the ICC and its opinion and recommendations is declared to be without jurisdiction and *non est*.
- (b) The LCC is directed to proceed with the Petitioner's complaint expeditiously and in accordance with the provisions of the POSH Act.
- (c) The Office Memorandum dated 14th February, 2020 terminating the services of the Petitioner is quashed.
- (d) The Petitioner shall be deemed to continue in service as a probationer, in terms of her appointment letter, until the conclusion of the inquiry before the Local Committee. She is reinstated to her post with continuity of service, full back wages, and all consequential benefits.
- (e) The Akademi is directed to immediately release the Petitioner's salary for the current month and clear outstanding salary arrears, if any, within four weeks from today. An affidavit confirming compliance with these directions shall be filed by the Akademi within two weeks thereafter.



(f) The Petitioner shall be deemed to be on paid leave till the Local Committee passes appropriate interim orders with regard to provision of a safe working environment to her.

(g) Upon conclusion of the inquiry by the Local Committee, the competent authority of the Akademi shall be at liberty to review the Petitioner's performance and take a decision on her employment status in accordance with law.

(h) In view of the finding that the Secretary falls within the definition of "employer" under Section 2(g) of the Act, and that any complaint against him would not lie before the Internal Committee, the issue of whether the Internal Committee was validly constituted and its details displayed under Section 19 of the Act is left open.

(i) The Petitioner's claim for compensation on account of alleged mental trauma, pain, suffering, and emotional distress is left open for determination by the Local Committee in terms of Section 15 of the POSH Act.

112. The petition W.P.(C) 1103/2020, is thus allowed in the above terms. The Petition filed by the Akademi bearing No. W.P.(C) 2546/2021 stands dismissed.

113. Having regard to the sensitivity of the subject matter and in order to safeguard the identities of both the Petitioner and the Secretary, it is directed directs that the name of the institution (Respondent No.1 in W.P.(C) 1103/2020) as well as the secretary be redacted in the version of this judgment that is released into the public domain.

114. Disposed of along with pending applications.

SANJEEV NARULA, J

AUGUST 28, 2025/nk