



GAHC010048502020

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1604/2020

ANANTA PRASAD
S/O LATE RAGHUNATH PRASAD, R/O WARD NO. 6, CHATANTOLA,
JACKSON ROAD, DIST-DHUBRI, ASSAM, PIN-783301

VERSUS

THE GAUHATI HIGH COURT AND 5 ORS.
(THE HIGH COURT OF ASSAM, MIZORAM, NAGALAND AND ARUNACHAL
PRADESH), REPRESENTED BY THE REGISTRAR GENERAL, GUWAHATI,
PIN-781001

2:THE REGISTRAR (ADMINISTRATION)
THE GAUHATI HIGH COURT
GUWAHATI-781001

3:THE PRESIDING OFFICER/ MEMBER
MOTOR ACCIDENT CLAIMS TRIBUNAL
DHUBRI
PIN-783301

4:MS. SANTANA GHOSH
PRESENTLY SERVING AS LOWER DIVISIONAL ASSISTANT (L.D.A.)
MOTOR ACCIDENT CLAIMS TRIBUNAL
DHUBRI
PIN-783301

5:THE DISTRICT GENDER SENSITIZATION AND INTERNAL COMPLAINTS
COMMITTEE
DHUBRI
REPRESENTED BY ITS MEMBER SECRETARY
OFFICE OF THE DISTRICT AND SESSIONS JUDGE
DHUBRI



PIN-783301

6:ANUP NARAYAN GHOSH
PRESIDING OFFICER/MEMBER
MOTOR ACCIDENT CLAIMS TRIBUNAL
DHUBRI
PIN-78330

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : SC, GHC

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 09-09-2021

Heard Mr. M.K. Choudhury, learned senior counsel for the petitioner. Also heard Mr. U.K. Nair, learned senior counsel for the respondents no. 1, 2, 3 and 5.

2. Considering the nature of the order proposed to be passed, although it may be a final order in the writ petition, we do not deem it appropriate to issue notices to the respondent no. 4 Ms. Santana Ghosh and respondent no. 6 Mr. Anup Narayan Ghosh.

3. The respondent no. 4 had lodged a written complaint under Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (in short, the Act of 2013), against the petitioner and the said written complaint had resulted in a proceeding under the Act, which is continuing, and in this writ petition the Court is not required to go into the question of the legality and validity of such proceeding. Alternatively, an independent disciplinary proceeding was also initiated against the petitioner, purportedly on the same cause of action, wherein an order of suspension was also passed against the petitioner. The independent disciplinary proceeding and the order of suspension are assailed in this petition, which pertains to the service conditions of the petitioner, and therefore the complainant in a sexual harassment proceeding, which otherwise is continuing as per law, is neither a necessary party, nor is required to be heard, in the proceeding pertaining to the

service conditions simplicitor in respect of the petitioner.

Further no ground of malafide against the respondent No. 6 is urged upon in the writ petition, and therefore the respondent concerned need not be arrayed in person.

4. The petitioner is presently serving as a Chief Administrative Officer in the Motor Accidents Claim Tribunal (in short MACT), Dhubri and the respondent no. 4 Ms. Santana Ghosh is also an employee of the MACT, Dhubri and in the hierarchy of the staff in the office of the MACT, Dhubri, it is stated that the respondent no. 4 is subordinate to the petitioner. The dispute raised in this writ petition arose from a complaint lodged by the respondent no. 4 Ms. Santana Ghosh dated 16.12.2019 under Section 9 of the Act of 2013. The copies of such complaint were also marked towards the other superior officers in the establishment of the District and Sessions Judge, Dhubri and other relevant superior authorities. In the process, a regular explanation was called for from the petitioner by the respondent no. 5 being the District Gender Sensitization & Internal Committee, Dhubri in the office of the District and Sessions Judge, Dhubri which is represented by its Member Secretary. When such explanation was called for from the petitioner, the petitioner was also placed under suspension as per the order dated 13.02.2020 of the Presiding Officer/Member MACT, Dhubri.

5. The order of suspension of 13.02.2020 reads that pending departmental proceeding the petitioner is placed under suspension with immediate effect. In the meantime a show cause notice dated 13.02.2020 under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 (in short, the Rules of 1964) was also served on the petitioner. We have also taken note that in response to the explanation called for from the petitioner, the petitioner had submitted his reply.

6. In this writ petition, the core grievance raised by the petitioner is against the order of suspension dated 13.02.2020 and the show cause notice under Rule 9 of the Rules of 1964. Although certain averments have also been made as regards the veracity and correctness of the allegation raised in the complaint under Section 9 of the Act of 2013, but such contention has not been urged upon in this writ petition. We also clarify that the correctness and veracity of the allegation made in the complaint petition would be within the domain of the Internal Committee to go into, rather than it being adjudicated in any manner in a writ petition.

7. From the said point of view, we only take into consideration the contention raised by the petitioner against the order of suspension dated 13.02.2020. We have also taken note that the disciplinary proceeding initiated against the petitioner under Rule 9 of the Rules of 1964 read with Article 311 of the Constitution of India as to why any of the penalties prescribed under Rule 7 of the said Rules cannot be inflicted upon the petitioner, as per the show cause notice dated 13.02.2020.

8. A perusal of the charges recorded in the show cause notice dated 13.02.2020 under Rule 9 of the Rules of 1964 shows that all such charges relate to the allegation of sexual harassment that the petitioner had meted out to the respondent no. 4, Ms. Santana Ghosh. In other words, we have to understand that the misconduct raised in the disciplinary proceeding drawn up against the petitioner under Rule 9 of the Rules of 1964 pertains to a misconduct of sexual harassment.

9. Mr. M.K. Choudhury, learned senior counsel for the petitioner assails the order dated 13.02.2020 whereby the petitioner was placed under suspension on two grounds. According to the learned senior counsel when the provisions of the Act of 2013 is read conjointly with the provisions of the Rules of 1964, an employee against whom there is an allegation of sexual harassment cannot be placed under suspension, inasmuch as a suspension is a concept under Rule 6 of the Rules of 1964 and the provisions of the Rules of 1964 does not get invoked at the stage when a complaint of sexual harassment is raised against an employee. As the provisions of the Rules of 1964 were not applicable at that stage when the written complaint under Section 9 of the Act of 2013 was made, where the proceedings are governed only by the provisions of the Act of 2013 and there being no provision under the Act of 2013 for placing an employee under suspension, any act of placing such an employee under suspension would be an act without jurisdiction.

10. Mr. M.K. Choudhury, learned senior counsel in his submission raised the contention that a complaint of any sexual harassment at workplace would be covered by Section 9 of the Act of 2013 which provides that in the event any aggrieved woman in writing lodges 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, the same would be subjected to the procedure

prescribed under Section 10 of the Act of 2013 requiring the Internal Committee, or as the case may be the Local Committee, to settle the matter between parties through a conciliation and in the event an attempt for conciliation failed, to follow the procedures prescribed under Section 11 of the Act of 2013 for conducting an inquiry to such complaint.

11. The learned senior counsel submits that such procedures would ultimately lead to an inquiry report under Section 13 of the Act of 2013.

12. It is submitted that Section 13 of the Act of 2013 provides that where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegations of sexual harassment against the petitioner concerned has been proved, it shall recommend to the employer or the district officer, as the case may be, to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable.

13. By referring to the provisions of Section 13, a submission is made that the provisions of the relevant service rules for misconduct, which in the present case would be the Rules of 1964, would be applicable only from the stage when the Internal Committee or the Local Committee arrives at its conclusion as regards the allegation of sexual harassment. In corollary, it is submitted that prior to the stage of Internal Committee or the Local Committee as the case may be, arriving at its conclusion, the provisions of the Rules of 1964 would be inapplicable and it being so, the authority concerned would have no jurisdiction to invoke the provisions of the Rules of 1964 in order to place the person concerned under suspension.

14. It is further contended that as the provisions of the Rules of 1964 would be applicable only at a stage subsequent to the arrival of the conclusion of the Internal Committee or the Local Committee, as the case may be, as regards the allegation of sexual harassment, and till such stage the authorities concerned would even not have the jurisdiction to even initiate a proceeding under Rule 9 of the Rules of 1964. From such point of view, the disciplinary proceeding against the petitioner under Rule 9 of the Rules of 1964, as per the show cause notice dated 13.02.2020, would also be without jurisdiction and authority of law.

15. Per contra, Mr. U.K. Nair, learned senior counsel for the respondents submits that whenever an allegation of sexual harassment is raised against any employee, under the

provisions of Rule 19(i) of the Act of 2013, it is the duty of the employer to treat such sexual harassment as a misconduct under the service rules and initiate action for such misconduct. Accordingly, it is submitted by Mr. U.K. Nair, learned senior counsel that as admittedly there is an allegation of sexual harassment against the petitioner, it is the duty of the respondent employer to treat it as a misconduct and once it is treated as a misconduct the provisions of the Rules of 1964 gets invoked and as such, both the order of suspension as well as the order of drawal of the disciplinary proceeding are within the competence of the respondent employer.

16. Mr. U.K. Nair, learned senior counsel raises a further contention that the inquiry initiated by the Internal Committee under Section 11 of the Act of 2013 itself is an act of initiating a disciplinary proceeding under the Rules of 1964 and therefore, the respondent employer has the jurisdiction to place the employee concerned under suspension.

17. Considering the rival submissions of the petitioner as well as the respondent and considering the nature of the contentions being raised, the issue that is required to be decided is at what stage it has to be understood that the Rules of 1964 stands invoked in a case where the Internal Committee begins its inquiry under the Act of 2013. A further issue that would require an adjudication would be that if a conclusion is arrived that the Rules of 1964 stands invoked at the stage when the Internal Committee had initiated its inquiry and therefore, the employer would have the jurisdiction to place the employee under suspension, whether in the present case the record reveals that the circumstances contemplated by the law for placing an employee under suspension has been satisfied.

18. In order to arrive at an answer to the first issue raised, we examine the relevant provisions of the Act of 2013 as well as that of the Rules of 1964.

19. Section 9 of the Act of 2013 provides that any aggrieved woman may make a complain in writing of a sexual harassment at workplace to the Internal Committee, if so constituted, or to the Local Committee, if it is not so constituted, within a period of three months from the date of the incident and in case of a series of incidents, within a period of three months from the date of the last incident.

20. Section 10 of the Act of 2013 provides that the Internal Committee, or the Local

Committee, as the case may be, may, before initiating an inquiry under Section 11, request the aggrieved woman to settle the matter between herself and the person against whom the allegation is made through a conciliation. In the event the settlement is arrived no further inquiry is required to be conducted by the Internal Committee or the Local Committee. In the event a conciliation is not arrived under Section 10 of the Act of 2013, the Internal Committee or the Local Committee, as the case may be, under Section 11(1) of the Act of 2013, shall proceed to make an inquiry into the complaint in the event the person against whom the allegation is made is an employee, in accordance with the provisions of the service rules applicable and where no such service rules exist, in such manner as may be prescribed for the case in respect of a domestic worker. Section 11(1) of the Act of 2013 also provides that where both the parties are employees, the parties shall, during the course of the inquiry, be given an opportunity of being heard, and a copy of the findings be made available to both the parties enabling them to make representation against the findings before Committee.

21. Section 11(3) of the Act of 2013 provides that for the purpose of making an inquiry contemplated under Section 11(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 under the Code of Civil Procedure, for the purpose of summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any documents, or any other matter which may be prescribed.

22. Section 11(4) of the Act of 2013 provides that the inquiry under Section 11(1) is to be completed within a period of ninety days.

23. Section 12 of the Act of 2013 provides that during the pendency of an inquiry, the Internal Committee or the Local Committee, on a request made by the aggrieved woman may recommend to the employer to transfer the aggrieved woman or the person against whom the allegation is made to any other workplace or grant the aggrieved woman a leave for a period of three months or grant such other relief to the aggrieved woman as the case may be.

24. Section 13 (1) of the Act of 2013 provides that on the completion of the inquiry, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its

findings to the employer or the district officer, as the case may be, within a period of ten days from the date of completion of the inquiry and such report be also made available to the parties concerned. Section 13(2) of the Act of 2013 provides that where the Internal Committee or the Local Committee arrives a conclusion that the allegation of the aggrieved woman has not been proved, it shall recommend to the employer or the district officer that no action is required to be taken.

25. Section 13(3) of the Act of 2013 provides that where the Internal Committee or the Local Committee arrives at a conclusion that the allegation against the person concerned has been proved, it shall recommend to the employer or the district officer to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the person concerned and in the event there are no service rules, in such manner as may be prescribed.

26. Section 19 of the Act of 2013 provides for the duties of the employer, wherein, paragraph 19(i) provides that the employer shall treat sexual harassment as a misconduct under service rules and initiate action for such misconduct. A conjoint reading of Section 13(3) providing for a recommendation by the Internal Committee or the Local Committee upon the allegation of sexual harassment being proved to take action for sexual harassment, as a misconduct in accordance with the provision of service rules and 19(i) providing for that the employer shall treat sexual harassment as a misconduct and initiate action for such misconduct would go to show that although under Section 13(3) it may be recommendatory on the part of the Internal Committee or the Local Committee requiring the employer to take action under the service Rules as a misconduct, but Section 19(i) makes it mandatory for the employer to treat the sexual harassment as a misconduct and initiate action for the purpose.

27. The provision of Sections 9, 10, 11, 12, 13 and 19 are extracted 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.

10. Conciliation.—(1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation: Provided that no monetary settlement shall be made as a basis of conciliation.

(2) Where settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

(4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

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.

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

CHAPTER V INQUIRY INTO COMPLAINT

12. Action during pendency of inquiry.—(1) During the pendency of an inquiry on a written request made by the aggrieved woman, the Internal Committee or the local Committee, as the case may be, may recommend to the employer to—

(a) transfer the aggrieved woman or the respondent to any other workplace; or

(b) grant leave to the aggrieved woman up to a period of three months; or (c)

grant such other relief to the aggrieved woman as may be prescribed. (2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

(3) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

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:

Provided 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.

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.”

28. A reading of the provisions of Sections 9, 10, 11, 12, 13 and 19 of the Act of 2013 would go to show that the act of sexual harassment is included as a misconduct under the relevant service Rules. Section 13(3) of the Act of 2013 provides that when the Internal Committee or the Local Committee arrives at a conclusion that the allegation against the person against whom allegation is made has been proved, it has to be understood that the misconduct of sexual harassment has been proved. Correspondingly, when we read Section 9 of the Act of 2013 which provides for a complaint being made in writing of a sexual harassment at work place it has to be understood that through such complaint in writing, an allegation of the misconduct of sexual harassment had been made. In other words, Section 9 indicates of there being an allegation of misconduct of sexual harassment and Section 13(3) provides that the allegation of misconduct of sexual harassment has been proved. In either way, it is a case of an allegation of misconduct and where the allegation of misconduct has been proved. When we read the aforesaid provisions of the Act of 2013 conjointly with the provisions of the Rules of 1964, we find that Rule 9(2) of the Rules of 1964 provides that the disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held. In other words, under the Rules of 1964 there is a requirement of framing definite charges by the disciplinary authority on the basis of the allegation of misconduct on which the inquiry is proposed to be held.

29. Rule 9 (3) and (4) of the Rules of 1964 provides for the opportunity to be given to the government servant for preparing his defence and after receipt of the written statement of defence on the requirement of the disciplinary authority to either itself inquire or to appoint an inquiring authority in respect of such allegations. Rule 9(6) provides for the procedure to be adopted by the inquiring authority for conducting the inquiry. On a conjoint reading of the provisions of Section 11(1) with that of Rules 9(2)(3)(4) and (6), we notice that when the Internal Committee or the Local Committee proceeds to make an inquiry into the complaint of sexual harassment, it does so in the same manner as provided under the provisions of the service rules as may be applicable. In other words, when the respondent is governed by the Rules of 1964 the procedure similar to the procedure prescribed under Rule 9(2)(3)(4) and (6) would be followed by the Internal Committee and the Local Committee.

30. Section 11(1) of the Act of 2013 makes it explicit that the Internal Committee or the

Local Committee would follow the procedure under Rule 9(3), providing for the person against whom the allegation is made to prepare his statement of defence by allowing him to inspect all such materials that may be available on record, and, thereafter assume the role of an inquiring authority under Rule 9(6). The only variation is that in a disciplinary proceeding simplicitor under the Rules of 1964, the disciplinary authority will provide the opportunity to the government servant to prepare his statement of defence but in the proceeding under the Act of 2013, it would be the Internal Committee or the Local Committee who would provide such opportunity.

31. From such reading, when we look at the provisions of Section 9 of the Act of 2013 that an aggrieved woman may make in writing a complaint of sexual harassment in a work place, such complaint takes the form of a definite charge on the allegation that the disciplinary authority is required to frame under Rule 9(2) of the Rules of 1964.

32. A disciplinary proceeding is understood to have been initiated with a show cause notice issued to a delinquent under Rule 9(2) of the Rules of 1964. As a parallel can be drawn between framing of definite charges on the allegation under Rule 9(2) of the Rules of 1964 and the making of a written complaint by an aggrieved woman under Section 9(1) of the Act of 2013, we can take a view that on receipt of a written complaint from an aggrieved woman on the allegation of sexual harassment in a work place under Rule 9(1) of the Act of 2013, such written complaint itself can be construed to be the initiation of a disciplinary proceeding under the Rules of 1964. The only difference or variance that would be applicable would be that in case of a proceeding under the Act of 2013, the Internal Committee or the Local Committee would be at liberty to give opportunity to the delinquent to submit his written statement of defence and that the committee itself would also be the inquiring authority as contemplated under Rule 9(6) of the Rules of 1964 and the report to be submitted under Section 13 (3) of the Act of 2013 would be an inquiry report contemplated under Rule 9(7) of the Rules of 1964. The subsequent procedure provided under Rule 9 and Rule 10 and Rule 11 of the Rules of 1964, as the case may be, shall follow. The said aspect is implicit from the provisions of Section 13(3) of the Act of 2013 itself which provides that upon the report of the Internal Committee or the Local Committee arriving at the conclusion that the allegation of sexual harassment has been proved, it shall recommend to the employer or district officer

to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules i.e. the Rules of 1964, where Section 19(i) provides that it shall be mandatory for every employer to treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct. As the proceeding under the Act of 2013 on an allegation of sexual harassment is subjected to the same procedure as under the Rules of 1964, except for a minor procedural variance at the initial stage, we can safely arrive at a conclusion that the proceeding in respect of an allegation of sexual harassment under the Act of 2013 has all the necessary ingredients of a procedure to be followed in respect of an allegation of misconduct under the Rules of 1964.

33. In view of such similarity and albeit minor variance as indicated above, we can safely conclude that a proceeding on the allegation of sexual harassment under the Act of 2013 is also in the nature similar of a proceeding for misconduct under the Rules of 1964 and in fact all the requirements and the ingredients of the Rules of 1964 are also included in the proceeding under the Act of 2013.

34. The word 'misconduct' is defined in the Black's Law Dictionary, Sixth Edition, to mean a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior willful in character, improper and wrong behavior etc. The meaning of the word misconduct itself shows that it is a wide concept. Although the meaning of misconduct is not defined under the Rules of 1964, but to understand the concept of misconduct in relation to the service of an employee, it has to be an undesirable act on the part of the employee which may contain the ingredients indicated hereinabove and adversely affecting the functioning of the employer's establishment.

35. The act of sexual harassment of a woman employee in a workplace would definitely be a forbidden act which would be willful in character and improper and wrong behavior. It being so, it would also be a misconduct in respect of the service of an employee, apart from, may be, it also violating any other law both civil and criminal.

36. When we look at the provisions of the Act of 2013 and the Rules of 1964, it is noticeable that the misconduct of committing an act of sexual harassment on a woman had been carved out from the concept of misconduct simplicitor under the Rules of 1964 by

providing for some special provisions therefor under the Act of 2013. The meaning given to the expression sexual harassment and lodging of the complaint of sexual harassment and the procedure to be followed in dealing with it to the extent it is provided are special laws.

37. Under the laws of interpretation, the provisions of special law would prevail over the general law to the extent the special law is at a deviation from the general law, but the provisions of the general law would govern the field to the extent it is not expressly excluded by the special law.

38. Apart from the initial deviation under which a proceeding for sexual harassment is initiated, as already indicated above, a significant deviation that is noticed under the Act of 2013, is that in the event a written complaint is made by the aggrieved woman under Section 9(1) of the Act of 2013, it is mandatory for the authorities to carry forward the proceeding and bring it to its logical end, but whereas, under the Rules of 1964, in the event of there being an allegation of misconduct, it is upto the disciplinary authority to act upon it in the manner it may deem appropriate.

39. In the absence of any express exclusion at the provisions of the Rules of 1964 in the Act of 2013, and more significantly, on the contrary, there being specific reference and reliance upon the Rules of 1964 (service rules to which the person against whom the allegation of sexual harassment is made is subjected to) for the further procedure to bring the process to its logical end, we have to understand that in respect of a proceeding on the allegation of sexual harassment all other provisions of the Rules of 1964 would be applicable, except for those provisions, for which special provisions are made in the Act of 2013.

40. Rule 6 of the Rules of 1964 provides that the appointing authority or any other authority to which its sub-ordinate or any other authority empowered by the Governor in that behalf may place a Government servant under suspension where, amongst others, a disciplinary proceeding against him is contemplated or is pending.

41. The two conditions to be satisfied to place a government servant under suspension are that the appointing authority or the concerned authority must arrive at its satisfaction that a disciplinary proceeding is being contemplated or is pending against the government employee. If a person concerned is being subjected to a proceeding under the Act of 2013 as

indicated above and such proceeding is in fact a disciplinary proceeding under Rule 9 of the Rules of 1964 with a minor variance as indicated above, such proceeding would also be a pending proceeding against such person. As it is a pending proceeding, we can safely conclude that even the provision of Rule 6 of the Rules of 1964 would be applicable where such person if subjected to the Rules of 1964 can also be placed under suspension if it is deemed appropriate in the view of the appointing authority or the concerned authority. It can also be taken note that the special law under the Act of 2013 does not expressly exclude a suspension under Rule 6 of the Rules of 1964 and following the principle of law referred above it cannot be said that the power to suspend under Rule 6 of the Rules of 1964 would not be available in the event of a proceeding being initiated under Section 9(1) of the Act of 2013.

42. We have also taken note of that under Rule 14(2) of the Central Civil Services (Classification, Control and Appeal) Rules [in short, CCS (CCA) Rules], a proviso had been incorporated, providing for that when there is a complaint of sexual harassment requiring an enquiry into such complaint, it shall be deemed to be an enquiry by the Enquiring Officer appointed by the disciplinary authority for the purpose of CCS (CCA) Rules. The nature and purpose of the amendment incorporated in the CCS (CCA) Rules, in our view is also inconformity with the view taken by drawing a parallel between an enquiry by the Internal Committee or by the Local Committee in a proceeding under the Act of 2013 with that of a proceeding in a disciplinary proceeding for misconduct under the Rules of 1964.

43. A contention has also been raised that in view of the provisions of Section 12 of the Act of 2013, the power to suspend under Rule 6 of the Rules of 1964 will not be available. Section 12 of the Act of 2013 enables the Internal Committee or the Local Committee to recommend to the employer to transfer the aggrieved woman or the person against whom the allegation of sexual harassment is made to any other workplace or to grant leave to the aggrieved woman up to a period of three months, or to grant other relief to the aggrieved woman as may be prescribed. Rule 6 of the Rules of 1964 on the other hand empowers the disciplinary authority to suspend an employee upon the contemplation or pendency of a disciplinary proceeding.

44. In our view the two powers under Section 12 of the Act of 2013 and Rule 6 of the Rule

of 1964 act upon two different spheres. The power under Section 12 of the Act of 2013 to transfer the aggrieved woman or the person against whom the allegation of sexual harassment is made or to grant leave to the aggrieved woman are woman centric in nature, to save the woman from the immediate situation, whereas the power to suspend an employee under Rule 6 of the Rules of 1964 is for disciplinary authority to prevent the employee concerned from interfering with the proceeding. The purport and purpose of the two provisions being different, it cannot be said that Section 12 of the Act of 2013 would take away the power under Rule 6 of the Rules of 1964.

45. Having arrived at a conclusion that even in respect of a proceeding under the Act of 2013, a person against whom there is an allegation of sexual harassment can be placed under suspension, we answer the issue involved in this petition that the Member, MACT, Dhubri was within his jurisdiction and authority to place the petitioner under suspension inasmuch as, prior to it, there was a written complaint against him alleging sexual harassment on work place. But at the same time, suspension is a concept which is not to be construed to be a punishment, but is an empowerment on the appointing authority to keep an employee away from the work place if the appointing authority is of the view that the presence of the employee in the work place may have adverse affect in the proceeding itself.

46. From the said point of view, we look into the records to find out as to why the present petitioner was placed under suspension. Merely because there is an allegation of a sexual harassment through a written complaint, ipso-facto may not be an acceptable reason on its own to place an employee under suspension, unless the appointing authority or the disciplinary authority or the authority concerned has reasons to believe that further allowing the employee to remain present in the work place would adversely affect the proceeding that had been initiated. Upon verification of the records, we find that no such material is available to show that the presence of the petitioner would adversely affect the proceeding initiated against him nor any conclusion had been arrived at by the Member, MACT before placing him under suspension, that the continued presence of the petitioner would adversely affect the proceeding.

47. For the reasons of there being no material to support the decision to place the petitioner under suspension, we deem it appropriate to interfere with the order dated



13.02.2020 placing the petitioner under suspension. Accordingly, the same is set aside.

48. We have also taken note of that in respect of same set of allegations, another show cause notice dated 13.02.2020 had also been initiated against him against the petitioner by the Member, MACT, Dhubri purportedly under Rule 9 of the Rules of 1964.

49. As we have already held that the initiation of a proceeding pursuant to a written complaint by the aggrieved woman is itself a proceeding under Rule 9 of the Rules of 1964, a subsequent proceeding on the same set of allegations would not be maintainable. Accordingly, the show cause notice dated 13.02.2020 is also set aside.

50. Setting aside the show cause notice dated 13.02.2020 shall not be construed that the proceeding initiated by the Internal Committee or the Local Committee on the written complaint of the aggrieved woman has also been interfered and such proceeding shall continue and be brought to its logical end as per law.

51. In view of the provision of Sections 13(3) and 19(i) of the Act of 2013 that any report to be submitted by the Internal Committee or the Local Committee providing that the allegation have been proved are to be further proceeded by the disciplinary authority as a misconduct under the Rules of 1964, we further provide that all the provisions of the Rules of 1964 from that stage onwards are also required to be strictly followed and would govern both the petitioner as well as the disciplinary authority.

52. Accordingly, the order of suspension dated 13.02.2020 stands set aside as well as the parallel proceeding drawn under Rule 9 of the Rules of 1964 by the show cause notice dated 13.02.2020 shall also stands set aside.

53. Writ petition stands allowed in the above terms.

JUDGE

Comparing Assistant