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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2297 OF 2026

GlaxoSmithKline Pharmaceutics Limited,
Plot No.A-10, M.I.D.C., Ambad,
Nashik – 422 010
having registered office at 252,
Dr. Annie Besant Road, Worli,
Mumbai 400 030 … **Petitioner**

Vs.

1. **Suhas Shankar Pagare**,
residing at Sushil Heights, Flat No.8,
Near IDEA Show Room, College Road,
Parijat Nagar, Nashik 422 005
2. **Glaxo Laboratories Employees Union**,
Nashik, C/o. Pradip Bhimaji Shelke,
4 Diploma Apartment, Datenagar,
Opp. Asaram Bapu Ashram,
Gangapur Road, Nashik 422 010. … **Respondents**

Mr. Kiran Bapat, Senior Advocate with Mr. P.N. Salgaonkar, & Mr. Pratik Salgaonkar i/by Salgaonkar & Co., for the petitioner.

Mr. K.W. Thakare with Mr. G.R. Naik, Mr. Uresh U. Sawant, and Ms. Rutika Naik i/by M/s. G.R. Naik & Co., for the respondent No.1

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 2, 2026.

PRONOUNCED ON : APRIL 9, 2026

JUDGMENT:

1. By the present writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner challenges the Part I Award dated 9 December 2025 passed by the Industrial Court at Nashik in Reference (IT) No. 3 of 2013, whereby it has been held that the departmental enquiry was not conducted in accordance with the mandate of the judgment in *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, and further that the enquiry was neither legal nor fair, and that the findings recorded by the Enquiry Officer are perverse.

2. The facts leading to the filing of the present writ petition, as set out by the petitioner, are that respondent No. 1 was employed with the petitioner since 14 May 1990 in the production department at its Nashik establishment. It is stated that respondent No. 1 had a checkered service record, having been issued warnings on eight occasions, suspended on seventeen occasions, and subjected to stoppage of increments thrice, on account of alleged misconduct including unsatisfactory performance, indiscipline, misbehaviour with the management, and habitual absenteeism. It is further stated that in the year 2010, respondent No. 1 was elected as Vice President of respondent No. 2 Union. It is the case of the petitioner that in the year 2011, a lady employee working in the ointment department had proceeded on medical leave due to certain ailments, and upon resuming duties on 7 February 2011, she was informed that her department had been changed at the instance of the respondents. In order to discuss the said change, the concerned employee approached respondent No. 1 at the office

of respondent No. 2. It is alleged that instead of addressing her grievance, respondent No. 1 subjected her to sexual harassment by demanding sexual favours and further assaulted her physically. The said employee lodged a complaint dated 19 February 2011 with the petitioner in that regard.

3. Upon receipt of the said complaint, the petitioner took cognizance of the allegations and conducted a preliminary inquiry, following which a Show Cause Notice dated 1 April 2011 came to be issued to respondent No. 1 under the provisions of the Bombay Industrial Employment (Standing Orders) Rules, 1959. Respondent No. 1 submitted a reply on the same date seeking a period of ten days to respond to the allegations contained in the Show Cause Notice. Thereafter, respondent No. 1 addressed a further communication dated 8 April 2011 requesting for a copy of the complaint made by the lady employee. Upon consideration of the reply dated 28 April 2011, which was found to be unsatisfactory, the petitioner issued a Charge Sheet dated 8 June 2011 alleging misconduct and informing respondent No. 1 of the initiation of a domestic enquiry in accordance with the applicable Model Standing Orders. Respondent No. 1 submitted his reply dated 14 June 2011 to the Charge Sheet, calling upon the petitioner to take action against the complainant.

4. The petitioner thereafter appointed Dr. U.S. Kharote as Enquiry Officer to conduct the domestic enquiry into the allegations of sexual misconduct against respondent No. 1. The enquiry proceedings were conducted between 24 June 2011 and 18 November 2011. It is stated that the proceedings were

conducted in Marathi, though recorded in English. Respondent No. 1 was permitted to be represented by one Mr. Prashant Dev and was afforded an opportunity to lead evidence and examine witnesses in his defence. Upon conclusion of the enquiry, the Enquiry Officer submitted his report dated 29 December 2011 holding respondent No. 1 guilty of the charges levelled in the Charge Sheet.

5. A copy of the enquiry report was furnished to respondent No. 1 by the petitioner vide communication dated 17 July 2012. It is further stated that in October 2012, respondent No. 1 filed Complaint (ULP) No. 46 of 2012 before the Labour Court at Nashik under the provisions of the MRTU and PULP Act, alleging victimization on account of his position in the Union. According to the petitioner, the said complaint was filed only with a view to delay the termination proceedings. It is further the case of the petitioner that apart from the domestic enquiry, a preliminary enquiry and an additional enquiry through a non-governmental organization were also conducted, though not mandatorily required. It is stated that the records of such enquiry could not be produced as the same were not traceable due to renovation work. However, it is contended that respondent No. 1 had participated in such enquiry, which fact stands admitted by him. It is further contended that the Enquiry Officer has not relied upon the findings of the NGO enquiry and has confined his consideration strictly to the charges contained in the Charge Sheet dated 8 June 2011. It is also asserted that the dismissal letter indicates that a copy of the NGO report was furnished to respondent No. 1, and

that there was no specific pleading in the Statement of Claim alleging non-supply of such report. The petitioner has also pointed out that respondent No. 1 filed an application for production of documents seeking the NGO report only in the year 2023. It is further stated that respondent No. 1 did not obtain any interim or final relief in the proceedings before the Labour Court. The petitioner, therefore, proceeded to consider the findings recorded in the enquiry report dated 29 December 2011, and having regard to the gravity of the misconduct alleged, issued an order dated 7 December 2012 terminating the services of respondent No. 1 with immediate effect.

6. Thereafter, respondent No. 1 withdrew Complaint (ULP) No. 46 of 2012, which withdrawal was permitted by the Labour Court by order dated 9 January 2013. Subsequently, an industrial dispute was raised challenging the termination, which came to be referred by the appropriate Government to the Industrial Tribunal as Reference (IT) No. 3 of 2013. Respondent No. 1 filed his Statement of Claim seeking reinstatement with continuity of service and full back wages. The petitioner appeared before the Tribunal and filed its Written Statement denying the allegations and placing its case on record. The Tribunal framed issues and both parties adduced oral as well as documentary evidence.

7. Upon consideration of the material on record and after hearing the parties, the Industrial Tribunal passed the impugned Part I Award dated 9 December 2025 holding that the domestic enquiry conducted against respondent No. 1 was not fair, legal, or in compliance with the principles of natural justice and the

mandate of the *Vishaka* judgment. The Tribunal further held that the findings recorded by the Enquiry Officer were perverse and granted liberty to the petitioner to lead evidence before the Tribunal to establish the charges of misconduct. Aggrieved thereby, the petitioner has approached this Court by way of the present writ petition.

8. Mr. Bapat, learned Senior Advocate appearing for the petitioner, submits that the Industrial Tribunal has committed a grave error in law in vitiating the domestic enquiry on the ground that the enquiry, though conducted in accordance with the Model Standing Orders, did not adhere to the guidelines laid down in the judgment of the Supreme Court in *Vishaka* on the issue of sexual harassment. It is contended that once the Supreme Court had clarified that such guidelines would operate only till suitable legislation is enacted, and where statutory provisions in the nature of Model Standing Orders are already in place governing disciplinary proceedings, there was no requirement to constitute a separate Complaints Committee as contemplated under the *Vishaka* guidelines. It is therefore submitted that the finding of the Tribunal vitiating the enquiry on this ground is legally unsustainable, and the impugned Award deserves to be quashed and set aside.

9. It is further submitted that the Supreme Court in the case of *Medha Kotwal Lele* has recognized that the State of Maharashtra had amended its service rules so as to include sexual harassment as a misconduct. It is contended that the judgment in *Vishaka* clearly lays down that the guidelines and procedure prescribed

therein are to operate only in the absence of legislation governing the field. Therefore, where the Model Standing Orders provide a mechanism for dealing with misconduct, including sexual harassment, the employer is required to proceed in accordance with such statutory framework. It is submitted that the Tribunal has committed a patent error of law in holding that the petitioner ought to have followed the procedure under the Central Standing Orders and not the Model Standing Orders. According to the petitioner, this finding runs contrary to the law declared by the Supreme Court and is liable to be interfered with.

10. It is further contended that the Tribunal has failed to examine the core issue, as to whether the domestic enquiry was conducted in a fair and proper manner and whether the findings recorded by the Enquiry Officer were perverse. It is submitted that there is no discussion or finding in the Award to indicate any breach of principles of natural justice. It is further submitted that the Tribunal has not independently assessed the evidence led in the enquiry proceedings. According to the petitioner, the record of the enquiry clearly establishes that the charges of sexual harassment against respondent No. 1 stood proved. However, the Tribunal has declared the enquiry to be vitiated solely on the ground of non-compliance with the Central Standing Orders, without addressing the merits of the findings. It is further contended that having held the enquiry to be vitiated, the Tribunal has permitted the petitioner to lead evidence before it to prove the misconduct, which reflects non-application of mind. It is submitted that once the enquiry conducted under the Model Standing Orders

had established the misconduct, the direction to re-prove the same before the Tribunal is inconsistent and renders the reasoning unsustainable in law. In support of the aforesaid submissions, learned Senior Advocate has placed reliance on the judgment of the Supreme Court in *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

11. Per contra, Mr. Thakare, learned Advocate appearing for respondent No. 1, submits that in the absence of enacted legislation governing sexual harassment at the workplace, the Supreme Court in Vishaka had laid down comprehensive guidelines and norms to be followed by all employers. It is submitted that the said guidelines were issued in exercise of powers under Article 32 of the Constitution for enforcement of fundamental rights and were expressly declared to be binding under Article 141 of the Constitution of India upon all courts and authorities. It is further submitted that the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into force only with effect from 9 December 2013. Until such enactment, the field was occupied by the guidelines laid down in *Vishaka*, as supplemented by subsequent directions dated 26 April 2004 and 17 January 2006, which specifically required constitution of a Complaints Committee to act as an inquiry authority in matters of sexual harassment. It is submitted that directions were also issued for appropriate amendments in the Industrial Employment (Standing Orders) Rules, including those applicable in the State of Maharashtra. It is therefore contended that until 9 December 2013, the *Vishaka*

guidelines had full force of law and were binding upon all establishments, including those governed by Standing Orders.

12. It is further submitted that a Division Bench of this Court in *Arati Durgaram Gavandi v. Managing Director, Tata Metaliks Ltd*. has categorically held that every employer is bound to comply with the mandate of the Supreme Court in *Vishaka*, and that appointment of an Enquiry Officer alone would not constitute compliance unless a duly constituted Complaints Committee, as envisaged in the said judgment, is established. It has been held that failure to constitute such a Complaints Committee amounts to a breach of the law declared by the Supreme Court. It is, therefore, submitted that the said judgment of the Division Bench is binding and cannot be disregarded by a Single Judge. It is contended that a coordinate Bench cannot take a contrary view or dilute the ratio laid down in *Arati Durgaram Gavandi*, and the Tribunal was justified in following the binding precedent.

REASONS AND ANALYSIS:

13. I have given anxious consideration to the rival submissions and to the material placed before the Court. The petitioner contends that the Industrial Tribunal has gone wrong in law by holding the domestic enquiry illegal merely because a separate Complaints Committee was not constituted in the exact form spoken of in Vishaka. The respondent, on the other hand, contends that Vishaka was the law of the land, that it occupied the field till the coming into force of the POSH Act, and that therefore the employer could not bypass that regime and proceed only under the

Model Standing Orders.

Nature of Vishaka Guidelines:

14. The starting point has to be the judgment in *Vishaka,* because without understanding that decision, the controversy cannot be resolved. At the time when that judgment was delivered, there was absence of any proper law dealing with sexual harassment at the workplace. The Supreme Court itself took note of this gap and felt that such a situation cannot continue, because it directly affects dignity, safety, and equality of women. Therefore, the Court stepped in and framed guidelines. This was because there was immediate need to protect rights till Parliament acts. It is important to understand that the Court clearly said that they will be binding. This was done by using Article 141 of the Constitution which means whatever law Supreme Court declares becomes binding on all courts and authorities. So even though there was no statute, the guidelines operated like law. But at the same time, the Court clearly said that these guidelines will operate only till a legislation is enacted. So the intention was temporary filling of gap.

15. Another very important aspect is that the Court did not apply single method for all kinds of employers. For government and public authorities, it directed that service rules should be amended to include sexual harassment as misconduct and provide proper procedure. For private establishments, the Court pointed towards the Standing Orders system.

16. The next issue which requires careful consideration is what is meant by the expression “legislation” in the context of labour law and whether Standing Orders when amended to include provisions relating to sexual harassment can be treated as having the force of such legislation. This question is important because at first sight one may think that legislation means only an Act passed by Parliament. But in labour law the meaning of “law” and “legislation” has been understood in a broader sense. It is well settled that Standing Orders once they are certified under the provisions of the Industrial Employment (Standing Orders) Act do not remain mere private terms between employer and employee. They do not remain like a contract which parties can change at will. After certification, they acquire a binding character. Both sides are required to follow them strictly. In fact, courts have repeatedly held that such Standing Orders have statutory force. This means they operate like law within the establishment. The employer cannot act contrary to them, and the employee also cannot ignore them. This position has been consistently recognized, and therefore Standing Orders are treated as a framework governing service conditions. Further it is also an accepted principle that law is not confined only to what Parliament directly enacts. When a statute gives power to the Government to make rules or amendments and such power is exercised then those rules also have the force of law. This is known as delegated legislation. It is called so because Parliament delegates some power to make detailed provisions. Once such rules are made under that authority, they are not mere administrative instructions. They are binding

and enforceable. Courts treat them as part of statutory law. Applying this principle if the appropriate Government amends the Model Standing Orders by including provisions relating to sexual harassment, such as defining misconduct, laying down procedure, and providing mechanism for inquiry, then such amendment becomes part of the statutory scheme. It is made under authority given by law and, therefore, it binds all establishments to which those Standing Orders apply. The employer must follow it. Therefore, when such provisions are included in Standing Orders they carry legal force. They regulate conduct, define misconduct and provide consequences. In that sense they can properly be understood as "legislation" though not in the strict sense of a Act of Parliament. They fall within the category of delegated legislation. They operate as law within their field. Thus, inclusion of sexual harassment provisions in Model Standing Orders is a legally recognized method of regulating such conduct within the workplace.

17. The expression "occupy the field" has to be understood properly because if it is taken in a technical way, then the real meaning in the present context may get lost. In constitutional law this phrase is usually used to say that when a law is made by a competent legislature on a subject, and it covers that subject fully then no other law can operate in a conflicting manner. It means that the entire area is taken over by that law. But in the context of *Vishaka*, the Supreme Court was not using this phrase in such a strict constitutional sense. What the Court was really saying was something practical. At that time, there was no law dealing with

sexual harassment at workplace. Because of that the Court laid down guidelines so that there is system in place. But at the same time the Court clearly indicated that these guidelines are not permanent. They are only to operate till a legislation is created. So when the Court used the expression “occupy the field” it meant that once a law is enacted that law will take over and the guidelines will no longer operate independently. It was a way of saying that the temporary arrangement will give way to a permanent legal framework. The use of the word “suitable” by the Court is also very important. The Court did not say just “any legislation”. It said “suitable legislation”. This means that the law must be capable of dealing with the problem in a complete manner. It should address the issue across different kinds of workplaces and situations. If a law covers only a small section, then it cannot be said to be suitable in the sense intended by the Court.

Role of Standing Orders as Law:

18. When this idea is applied to Standing Orders, the limitation becomes clear. Standing Orders apply only to certain types of industrial establishments which are covered under the Industrial Employment (Standing Orders) Act. Many categories of workers and workplaces do not fall within this framework. For example, domestic workers, small establishments, educational institutions in certain situations, or informal sector workers may not be covered. Therefore, even if Standing Orders are amended to include provisions on sexual harassment they would still operate only within a limited field. Because of this limited coverage, such

amendments cannot be treated as occupying the entire field. They can certainly operate as law within the establishments to which they apply. They can provide protection and procedure for those employees. But they cannot extend beyond that scope. For all other areas not covered by Standing Orders, the *Vishaka* guidelines would continue to apply until a complete legislation is made. Therefore, it follows that amendments to Standing Orders can only partially address the issue. They are important and legally valid within their area but they do not satisfy the requirement of a "suitable legislation" which covers the entire field. That requirement was fulfilled only when a comprehensive statute came into force covering all workplaces.

Emergence of Comprehensive Statutory Framework under POSH Act:

19. Finally, the position of law underwent a complete change when Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This enactment is a detailed law made after considering the need for a uniform system across the country. The law now applies to the whole of India and is not limited to any one type of establishment. It extends to both public and private sectors. It also includes unorganized sector which earlier had no coverage. Even domestic workers who are often outside employment systems are brought within its protection. This shows that Parliament intended to create a complete statute covering all workers. This Act mandates constitution of Internal Complaints Committees in establishments with a certain number of employees. Where such committees

cannot be formed provision is made for Local Committees. It defines what acts will amount to sexual harassment. It also lays down the procedure to be followed during inquiry. It gives responsibilities to employers such as ensuring safe working conditions and assisting in the inquiry process. There is no longer a situation where different establishments follow different methods. Because of this structure the earlier guidelines given in *Vishaka* cannot continue as the governing law. Therefore, the field is governed by this Act. It is also necessary to note that this Act does not depend only on existing systems like standing orders. The duties are imposed directly by the statute itself. The obligation flows from the Act. In this way, the law becomes stronger and more effective. Thus, after the coming into force of this Act the legal position becomes uniform. The earlier gaps are filled. The system is no longer dependent only on partial systems. The statute now governs the entire field in a complete manner.

20. Even after the coming into force of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the role of standing orders has not come to an end. They still have importance, but their position has changed. The Act itself makes it clear that every employer must treat sexual harassment as misconduct and must incorporate such provision in service rules or standing orders. This shows that the legislature was conscious that internal service conditions must reflect this prohibition. Therefore, standing orders are now used as a tool to give effect to the Act at the workplace. They operate as part of implementation. This also means that the standing orders now function within the system of

the Act. Before 2013 if standing orders were amended to include sexual harassment provisions they had their own legal force as delegated legislation. They could regulate conduct within the establishment and provide a basis for disciplinary action. But even then they were only covering a limited area the establishments to which they applied. They were not capable of addressing the issue across all sectors and categories of workers. After the Act came into force the situation changed. Now the authority flows from the statute itself. The obligation to include such provisions in standing orders arises because the Act. Therefore, standing orders are now subordinate to the Act and function as a means of carrying out its provisions. They help in applying the law within the structure of the establishment. Thus, the legal position becomes clear. Before 2013 amended standing orders could operate as law within a limited field and could give effect to the *Vishaka* principles in those establishments. But they could not be treated as complete legislation for the entire country. After 2013 the statutory regime under the Act governs the entire field. Standing orders continue to exist but only as part of mechanism under the Act. They assist in implementation but the governing law is the statute itself.

Judicial Developments and Applicable Legal Principles:

21. The later judgments of the Supreme Court also support this understanding. In *Medha Kotwal Lele v. Union of India,* (2013) 1 SCC 297, the Court found that even after *Vishaka*, many institutions were not properly following the guidelines. Because of this failure the Court issued further directions. It made it very clear that the Complaints Committee as spoken in Vishaka will act as the

inquiry authority in such cases. This means that the findings of that Committee will have the same value as findings in a disciplinary enquiry. The Court also directed that necessary amendments should be carried out not only in service rules but also in the Industrial Employment Standing Orders Rules. This shows that the Court itself expected that the standing orders will carry these changes and operate as part of the legal system dealing with such misconduct.

22. This position becomes even clearer in the later judgment of *Aureliano Fernandes v. State of Goa,(2024) 1 SCC 632.* In that case, the Supreme Court examined the full journey from *Vishaka* guidelines to the final legislation in the form of the PoSH Act. The Court explained that *Vishaka* was filling a gap till legislation came. It also explained how later directions and amendments tried to support that system. The Court clarified how enquiries in such matters must be conducted. It said that even though some flexibility is allowed the enquiry must still be fair. The phrase "as far as practicable" does not mean that the employer can ignore basic procedure. It only means that strict technical rules can be adjusted, but the requirement of natural justice must always remain. The person accused must know the allegations, must get material, and must get chance to defend. If this is not followed, then the enquiry cannot stand. Thus, when all these judgments are read together one clear position comes out. The law did not operate in a vacuum after *Vishaka*. It worked through existing systems like service rules and standing orders. At the same time it insisted on fairness in enquiry.

23. Seen from this angle, the submission made on behalf of the petitioner has much substance. The Tribunal was required to look at the actual manner in which the enquiry was conducted and not merely at the form of the authority conducting it. Simply because a Complaints Committee in the exact format as described in *Vishaka* was not constituted that by itself could not have been treated as enough to declare the entire enquiry illegal. The law requires examination of substance.

24. The petitioner has placed a specific case that the enquiry was conducted under the Model Standing Orders, which themselves have statutory force. It is stated that the workman was given proper notice of the charges. He was supplied with the complaint and all relevant material. He was present in the proceedings. He was allowed to take assistance of a representative. He was also given opportunity to defend himself and to meet the allegations. If these facts are correct, then it shows that the enquiry was not conducted behind his back or in a secret manner. It indicates that the workman was aware of what was alleged against him and was given a chance to answer it. In such a situation the Tribunal was under a duty to examine whether the enquiry satisfied the requirement of fairness. It is not the form of the authority that decides validity. The Tribunal should have considered whether the workman understood the charges, whether he was given documents, whether he could participate effectively, and whether he was denied any reasonable opportunity. Instead, the Tribunal has stopped at saying that a particular type of committee was not formed therefore the approach becomes erroneous.

25. If the substance of fairness is present then minor variations in procedure cannot make the enquiry bad. A disciplinary proceeding must be a fair process. If the workman knew the case against him, had access to the material and was given a fair chance to explain, then the enquiry cannot be rejected only on the ground that the format of a Committee was not followed. Therefore, the Tribunal was required to go deeper and examine whether any injustice was caused. If no prejudice is shown and if the process satisfied the principles of natural justice, then the enquiry could not have been set aside on such a ground. The failure to undertake this examination makes the judgment of the Tribunal legally unsustainable.

26. At the same time, the submission made on behalf of the respondent also cannot be ignored, because it is correct to the extent that the judgment in *Vishaka* had clear legal force. The Supreme Court itself had said that those guidelines will operate as law and will be binding on all employers and institutions. This position continued till a legislation was enacted. Therefore, it is not open for the petitioner to argue that *Vishaka* had no binding effect. That position cannot be accepted because it goes against the settled constitutional principle under Article 141.

27. This understanding is further supported by the later judgment in *Aureliano Fernandes*, where the Supreme Court clearly explained that *Vishaka* guidelines and the subsequent directions were filling the gap and were to be treated as law until the field was occupied by proper legislation, which came in the form of the POSH Act. This shows that during the relevant period,

the employer was not free to act without regard to *Vishaka*. The employer was required to keep those guidelines in mind and ensure that the process adopted does not violate the spirit of those directions. The real issue is whether *Vishaka* applied or not. The real question is whether there was such a violation of those guidelines or of principles of natural justice that the entire enquiry becomes invalid.

28. If the employer has conducted a disciplinary proceeding where the workman was informed of the allegations, was given access to the complaint and supporting material, was allowed to participate, and was given a fair chance to defend himself, then the requirement of fairness may be satisfied. In such a case, even if the forum was not formally named as a "Complaints Committee" in the exact language of Vishaka, that alone may not be sufficient to invalidate the enquiry. The purpose of the *Vishaka* guidelines was to ensure fairness, sensitivity, and protection against arbitrary action. If that purpose is substantially achieved then the enquiry cannot be set aside only on naming or structural differences. Therefore, what is required is to see whether any prejudice has been caused to the workman. If the workman has been denied opportunity or if material has been withheld or if the process was biased or one-sided, then certainly the enquiry would fail. But if no such prejudice is shown and the workman had full opportunity to defend, then mere absence of a designated Committee cannot be treated as fatal.

29. The respondent has also placed reliance on the scheme brought in by the enactment of the Sexual Harassment of Women

at Workplace (Prevention, Prohibition and Redressal) Act, 2013. There is no doubt that after this enactment the entire legal position has become clear. The Act defines what amounts to sexual harassment. It makes it compulsory for employers to create Internal Complaints Committees. It also provides for Local Committees in certain cases. It lays down duties, procedure, and consequences. Therefore, as on today, there is no uncertainty. The field is occupied by statute.

30. However, this position by itself does not decide the present dispute. One must see the time when the cause of action arose and when the enquiry was conducted. If the facts relate to a period prior to the coming into force of this Act on 9 December 2013, then the Court cannot directly apply the provisions of this statute as if they were always in force. Law has to be applied according to the time when the events happened. Therefore, for that earlier period the Court has to fall back on the legal position that existed then, which consisted of the Vishaka guidelines and the service or standing order rules applicable to the establishment.

31. It is true that the POSH Act is a complete legislation. It has taken over the entire field which was earlier occupied through judicial guidelines. In that sense it has occupied the field fully. But before this Act came the situation was different. The legislation existed through judicial directions and through existing service models like standing orders. Therefore, while dealing with cases from that earlier period, the Court cannot apply present standards in a mechanical way. Therefore, the reliance on the POSH Act helps to understand the present legal position but for deciding the

present dispute what is important is whether at the relevant time the employer followed a procedure within the model available to it. If that is satisfied then absence of a committee as required by statute cannot make the enquiry invalid.

Analysis of Tribunal's Findings:

32. The Tribunal appears to have fallen into error if it has treated the absence of a Complaints Committee in the manner contemplated in *Vishaka*, as making the enquiry illegal, without going into the facts of how the enquiry was conducted. The law does not permit such a conclusion without examination. The Tribunal was required to see whether the workman was given a fair opportunity to defend himself. The focus should have been on the conduct of the enquiry. It should have been seen whether the workman understood the allegations, whether he had access to the complaint and material and whether he was able to answer the case made against him. If these issues were present then the enquiry could not have been rejected because it did not carry a particular label. It was also necessary for the Tribunal to examine the findings of the Enquiry Officer on their own merits. A finding cannot be set aside merely because the Tribunal takes a different view. The Tribunal had to consider whether the conclusions reached by the Enquiry Officer were supported by evidence on record. It also had to see whether any part of the enquiry process was conducted in a manner which violated principles of natural justice. Natural justice means fairness in action. If the procedure adopted was such that the workman was denied a chance to defend then the enquiry would fail. But if no such defect is shown

then the findings cannot be disturbed. If the Tribunal has not undertaken this exercise and has instead proceeded on a assumption that non-constitution of a Complaints Committee is itself sufficient to vitiate the enquiry, then such reasoning cannot be sustained. A legal conclusion must follow from examination of facts. It cannot rest only on a broad proposition without applying it to the record of the case. The failure to analyse the evidence and the procedure makes the finding incomplete. A finding that the conclusions of the Enquiry Officer are “perverse” is a serious finding and cannot be made in a routine manner. Perversity does not mean that another view is possible. It means that the conclusion is either based on no evidence at all or that it is so unreasonable that no reasonable person could have reached it. It may also arise where relevant material is ignored or irrelevant material is relied upon. Therefore, before recording such a finding, the Tribunal was required to carefully examine the entire evidence. From the material referred to in the pleadings it appears that the petitioner did follow such process. A charge sheet was issued. The workman was called upon to give his reply. Evidence was recorded during the enquiry. They form the backbone of a disciplinary proceeding. Such a record required careful scrutiny by the Tribunal. It could not have been brushed aside in a summary manner without proper discussion. The Tribunal was expected to analyse whether these steps satisfied the requirement of fairness and whether any real prejudice was caused. In the absence of such examination, the conclusion reached by the Tribunal cannot be said to be legally sustainable.

33. For these reasons, the Tribunal's approach, to the extent it holds the enquiry not legal merely on the ground that it was not conducted in the exact manner of *Vishaka*, is not sustainable. The correct course was to examine the actual fairness of the process, the material disclosed, the opportunity given, and the prejudice, if any, caused to the workman. If that exercise is not shown in the Award, then the finding that the enquiry was illegal and the findings of the Enquiry Officer were perverse cannot be allowed to stand.

34. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) The writ petition succeeds;

(ii) The Part I Award dated 9 December 2025 passed by the Industrial Court, Nashik in Reference (IT) No. 3 of 2013, to the extent it holds that the domestic enquiry is illegal, unfair and vitiated, and that the findings of the Enquiry Officer are perverse, is quashed and set aside;

(iii) The matter is remanded to the Industrial Tribunal for fresh consideration of the issue regarding validity of the domestic enquiry, in accordance with law and in light of the observations made herein. The Tribunal shall specifically examine whether the enquiry was conducted in compliance with principles of natural justice, whether any real prejudice was caused to the workman, and whether the findings of the Enquiry Officer are supported by evidence;

(iv) The Tribunal shall decide the said issue afresh, without being influenced by its earlier observations, and thereafter proceed in accordance with law;

(v) All contentions of the parties on merits are kept open;

(vi) The Industrial Tribunal is requested to dispose of the reference expeditiously, preferably within a period of six months from the date of receipt of this order;

(vii) Rule is made absolute in the aforesaid terms. No order as to costs.

(AMIT BORKAR, J.)