IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2385 OF 2024

Ashok Upadhyay ...Petitioner
Versus
Union Bank of India & Ors. ...Respondents

Mr. Sanjay Kelkar & Omkar Kelkar for Petitioner.

Mr. Ashok D. Shetty a/w Rita K. Joshi (through VC) for Respondent No.1.

CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.

DATE: 12th AUGUST 2026

ORAL JUDGMENT: (Per G. S. KULKARNI, J.)

1. This petition under Article 226 of the Constitution of India is filed for the following substantive reliefs:

> "a) that this Hon'ble Court be pleased to set aside and quash the Order of the Appellate Authority ordering reinvestigation and the Report of the Second Committee dated 30.06.2023;
> b) That this Hon'ble Court be pleased to issue a writ of certiorari and set aside and quash the orders dated 04.09.2023 and 03.02.2024 respectively passed by the Respondent Nos. 3 and 2 as those are against the provisions of the Sexual Harassment of Women at Work Place (Prevention, Prohibition & Redressal) Act, 2013 and Sexual Harassment of Women at Work Place (Prevention, Prohibition & Redressal) Rules, 2013 and Regulation 4 (g) of the Union Bank of India Officer Employees' (Discipline & Appeal) Regulations as well as The CVC Act 2003 and the circulars issued by CVC.
> c) That this Hon'ble Court be pleased to restore the Petitioner to his original position in the Grade of SMGS-V with the same pay scale which he was drawing before imposition of the penalty vide order dated 04.09.2023 and to stay the effect of the orders dated 04.09.2023 and 03.02.2024."

2. As seen from the prayers, the Petitioner is aggrieved by the action, whereby by the impugned order, a penalty was imposed on him. Respondent No.1/Bank, being the employer, imposed the following penalty on the Petitioner *vide* order dated 04.09.2023, which reads as follows:

> "Major penalty of 'Reduction to a lower grade from SMGS-V to SMGS-III by fixing him on the basic pay of Rs.63840/- i.e. initial basic pay applicable to SMGS-III, as specified in Regulation 4(g) of the Union Bank of India Officer Employees (Discipline & Appeal) Regulations be and is hereby imposed on Shri Ashok Upadhyay."

3. The primary contention of the Petitioner is that the complainant/Respondent No.4, who was impleaded as a party Respondent to the present petition and who is stated to have been served through the Bank, made a complaint against the Petitioner on 03.04.2023, alleging sexual harassment at the workplace at the hands of the Petitioner. The said complaint was referred to the Internal Complaints Committee (for short, "the Committee"), which undertook an enquiry. An enquiry report dated 20.04.2023 was submitted by the Committee, exonerating the Petitioner. Such report was submitted to the Respondent No.1's Field General Manager, Pune. It is the Petitioner's case that the complainant/Respondent No.4 also registered an FIR bearing no. 61/2023 on 22.04.2023 with the Panaji Police Station under Sections 354 and 354-A of the Indian Penal Code, 1860, against the Petitioner and after completion of the investigation, the proceedings are now stated to be pending before the Judicial Magistrate First Class at Panaji.

4. Insofar as the proceedings before the Internal Complaints Committee, which exonerated the Petitioner *vide* report dated 20.04.2023, are concerned, the complainant/Respondent No.4 filed an appeal before the Appellate Authority on 30.05.2023. It is the Petitioner's case that neither any notice of such appeal was served on the Petitioner, nor the Petitioner was heard by the Appellate Authority. The Appellate Authority is stated to have ex-parte directed reinvestigation i.e., a fresh enquiry was ordered by appointing a new committee. It is the Petitioner's case that the new Internal Complaints Committee undertook re-investigation into the said complaint made by the complainant/Respondent No.4 and a Report dated 30.06.2023 came to be submitted, wherein the Petitioner was held guilty of sexual harassment of the complainant/Respondent No.4 at workplace.

5. The Petitioner has contended that, being aggrieved by the recommendation made by the Committee upon re-investigation dated 30.06.2023, the Petitioner preferred an appeal against the said recommendations, which was filed on 20.07.2023. It is on the aforesaid premise that, on 25.08.2023, the Petitioner received a Show Cause Notice, whereby the Petitioner was called upon to show cause as to why punishment should not be imposed on him.

6. In response to the said Show Cause Notice, the Petitioner requested for the status of his appeal which he had filed against the recommendation dated 30.06.2023, as also the merits of such recommendation, which referred to audio/video clips, which were requested to be furnished to him, but the same were not supplied to the Petitioner. Such request was made by the Petitioner by letters dated 29.08.2023 and thereafter on 31.08.2023. The Disciplinary Authority, however, after receipt of the said letters, informed the Petitioner that the Appellate Authority had rejected the appeal *vide* order dated 30.08.2023. It is the Petitioner's case that no hearing was granted by the Appellate Authority while passing the order dismissing the appeal.

7. It is on the aforesaid backdrop that the Petitioner contends that he was surprised to receive the impugned order dated 04.09.2023 (supra), imposing a major penalty. Aggrieved by the same, on 16.10.2023, the Petitioner filed an appeal under Regulation 17 of the Service Regulations before the Chief General Manager (HR), being the Appellate Authority. By an order dated 03.02.2024, the said appeal preferred by the Petitioner was rejected. Thereafter, the same was communicated to the Petitioner on 05.02.2024. It is on such backdrop that the present petition has been filed.

8. The case of the Petitioner rests on two basic issues; firstly, that initially the Internal Complaints Committee, after investigation had exonerated the Petitioner by report dated 20.04.2023. However, subsequently, on the basis of the ex-parte order dated 06.06.2023 passed in the appeal filed by the complainant/Respondent No.4, he was again put in the dock. It is his grievance that a copy of such order was also not made available to the Petitioner, much less inviting any participation of the Petitioner on the adjudication of the said proceedings. In these circumstances, it is the Petitioner's contention that the entire exercise undertaken by the new committee qua its recommendation dated 30.06.2023 is wholly without jurisdiction, as such Appellate Authority, as constituted by the Respondent No.1 had no jurisdiction in terms of what is provided under Section 18 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**POSH Act**") and the rules framed thereunder, being the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("**POSH Rules**").

9. We need to first examine such contention as urged by the Petitioner, as the basis for the re-investigation was the order dated 30.06.2023 passed by the

Appellate Authority. The question, therefore, is whether the constitution of the Appellate Authority was in accordance with law and whether it was competent to deal with the appeal in the manner as provided by Section 18 of the POSH Act read with Rule 11 of the POSH Rules.

10. To answer the said question, it would be necessary to take into consideration, as to what is provided under the provisions of the POSH Act. Section 18 provides for an appeal, thereby accordingly a remedy *inter alia* to any person aggrieved from the recommendations made under sub-section (2) of Section 13 or under clause (i) or clause (ii) of sub-section (3) of Section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations, to prefer an appeal to the *"court or tribunal",* in accordance with the provisions of the service rules applicable to the said person or, where no such service rules exist, then without prejudice to the provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal *"in such manner as may be prescribed"*. Section 18 of the POSH Act as also Rule 11 of the POSH Rules are required to be noted, which read thus:

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

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"Rule 11 of the POSH Rules

> **11. Appeal.-** Subject to the provisions of section 18, any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clauses (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the appellate authority notified under clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946)."
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> (emphasis supplied)

11. From the plain reading of Section 18 of the POSH Act, it is clear that the aggrieved person may prefer an appeal to the "Court or Tribunal". The Service Rules can prescribe filing of an appeal before any of these forum i.e., either to be filed before the 'court' or a 'tribunal'. This would bring about a situation that either an appeal would be maintainable before the Court or the Tribunal and as to before which of these forums an appeal could be preferred is required to be governed by the Service Rules. Coming to the later concluding part of Section 18, if no service rules exist, in such event, the person aggrieved may prefer an appeal in such manner as "may be prescribed". Section 2(k) of the POSH Act has defined the word "prescribed" which means prescribed by rules made under the POSH Act. Hence, it is Rule 11 of the POSH Rules (supra) which becomes applicable.

12. As noted hereinabove, Rule 11, which is subject to Section 18, provides that any person aggrieved by the recommendations made under sub-section (2) of Section 13 or under clause (i) or clause (ii) of sub-section (3) of Section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the Appellate Authority notified under Clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946. Thus, the appellate forum as provided under clause (a) of Section 2 of

Industrial Employment (Standing Orders) Act, 1946, in such situation would be the Appellate Authority. Section 2(a) of the Industrial Employment (Standing Orders) Act, 1946 reads thus:

> "**2(a)** "appellate authority" means an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act:
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> Provided that in relation to an appeal pending before an Industrial Court or other authority immediately before the commencement of the Industrial Employment (Standing Orders) Amendment Act, 1963 (39 of 1963), that court or authority shall be deemed to be the appellate authority."

13. A cumulative reading of Section 18 read with Rule 11 do not bring about any authority or jurisdiction with the employer to create or constitute an Appellate Authority. If these provisions are so read, it would amount to defeating the provision(s) as also reading something in the provision which the legislature has avoided to incorporate.

14. Mr. Shetty, on behalf of the Bank, was unable to point out the service rules framed by the Bank prescribing the Appellate Authority to be either the Court or the Tribunal. He also could not point out any authority/jurisdiction in law which would empower the employer to appoint an Appellate Authority of its choice. In these circumstances, we are of the opinion that the Internal Appellate Authority which was constituted by Respondent No.1 would not have jurisdiction, as it cannot be labeled to be an Appellate Authority constituted as per the provisions of Section 18 and/or Rule 11.

15. As noted above, the Petitioner was exonerated by the recommendation dated 20.04.2023 of the Internal Complaints Committee and the matter was re-opened by an order dated 06.06.2023 by the Appellate Authority which itself was illegally constituted, and which acted arbitrarily in passing an order to order a fresh enquiry on the complaint without any notice to the Petitioner much less participation of the Petitioner before the said Appellate Authority. Hence, the entire exercise undertaken by the Respondents leading to the passing of the impugned order, imposing penalty in question, is on the edifice of such patent illegality. Further, most surprisingly the order dated 06.06.2023 passed by the Appellate Authority was not even served on the Petitioner and the Petitioner was straightaway foisted into a re-investigation, or a fresh exercise at the hands of another Internal Complaints Committee. Thus, certainly in the backdrop of the earlier exoneration, the manner in which the fresh exercise was undertaken is not only illegal for the aforesaid reasons, but the same has caused severe prejudice to the Petitioner. More importantly, in such circumstances, the order passed by the Appellate Authority, in our opinion, was non-est, and that too passed by an inherently illegal Appellate Authority.

16. In this view of the matter, we are of the opinion that once the basis of the fresh report and the consequent re-investigation, as ordered by the Appellate Authority being illegal, there was no question of the said recommendations being recognized by the disciplinary authority, and it could not have acted upon, so as to impose punishment on the Petitioner as awarded by the impugned order 04.09.2023. Accordingly, the impugned order would be required to be held to be illegal, when tested on the requirements of law.

17. It is also not the case that apart from the enquiry under the POSH Act, any independent departmental proceedings were initiated so as to accord any sanctity to the orders which are passed by the Disciplinary Authority dated 04.09.2023, and the Appellate Authority in passing the order dated 03.02.2024, rejecting the Petitioner's departmental appeal against the penalty as awarded. It is not the case of Respondent No.1/Bank that an independent chargesheet was issued to the Petitioner under any independent departmental enquiry as the issuing of the Show Cause Notice dated 25.08.2023 was based on the recommendations which were made by the fresh Internal Complaints Committee constituted on the remand of the proceedings in pursuance of the order dated 06.06.2023 passed by the Appellate Authority, which itself was constituted without jurisdiction.

18. No doubt, in a given case the employer by following the lawful procedure would have jurisdiction to impose an appropriate punishment on the charges being proved in an exercise being undertaken under the said Act, in such circumstances, an independent disciplinary enquiry may not be necessary. However, the fact remains that for this the procedure to be undertaken needs to be legal having due sanctity in law. Neither the victim/complainant nor the person against whom such complaint is made can suffer prejudice or have their legal rights breached. This, precisely, has not happened.

19. In the aforesaid circumstances, we are of the clear opinion that the impugned order dated 04.09.2023 passed by the Disciplinary Authority and confirmed by the Appellate Authority *vide* order dated 03.02.2024 cannot stand the test of law. These orders are accordingly quashed and set aside.

20. Insofar as the complaint of the complainant/Respondent No.4 is concerned, in the event the complainant/Respondent No.4 feels aggrieved by the recommendation dated 20.04.2023, we keep open all contentions and remedies of Respondent No.4, for espousing her cause before the appropriate appellate forum as available in law, and if such proceedings are instituted by Respondent No.4 within a period of six weeks from today, the same shall not be rejected on the ground of limitation and accordingly further appropriate course of action as the law may prescribe can be adopted. All contentions of the parties in that regard are expressly kept open.

21. Ordered accordingly.

22. Before parting, we may also observe that, we are not satisfied in the manner in which Respondent No.1/Bank has handled the entire issue. It has caused prejudice not only to the Petitioner but also to the complainant/Respondent No.4. Recently, a Division Bench of this Court of which one of us (G. S. Kulkarni, J.) was a member in ***Shashikant Anant Kale Vs. The State of Maharashtra, through Department of Urban Development & Ors.*** (Writ Petition No. 1939 of 2026) has taken a view that it is a mandate of law that the authorities must notify the appropriately constituted Appellate Authority, so as to enable the aggrieved person to approach the duly constituted Appellate Authority, so as to avoid any uncertainty in this regard. A misreading of the relevant provision of the POSH Act by the Respondent has led to a prejudice being caused to both the parties as on one hand, the complainant was misguided in preferring an appeal to an authority not mandated by law and on the other hand, the Petitioner, once being exonerated was made to face the ignominy of another enquiry directed by an invalid Appellate Authority. The Bank and other such public institutions must be cautious and careful while interpreting legal provisions, lest the altogether misconceived interpretation made by the Respondent No. 1/Bank, leading to a chaotic situation.

23. The Writ Petition stands allowed in the aforesaid terms. No costs.

(DR. NEELA GOKHALE, J) **(G. S. KULKARNI, J.)**