

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.10583 of 2024

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioner	: Mr. Kallol Bose, Adv., Mr. Rohit Das, Adv., Ms. Kishwar Rahman, Adv., Ms. Sristi Roy, Adv., Ms. Divya J. Tekriwal, Adv., Mr. Rishav Mazumder, Adv.
For the State	: Mr. Sirsanya Bandopadhyay, Adv., Mr. Ritesh Kr. Ganguly, Adv.
For NUJS	: Mr. Soumya Majumder, Adv., Ms. Sanjukta Dutta, Adv., Mr. Kinnor Ghosh, Adv.
For respondent no.7	: Mr. Avik Ghatak, Adv., Mr. Abhinav Rakshit, Adv.
Hearing concluded on	: 15.05.2024
Judgment on	: 22.05.2024

Kausik Chanda, J.:-

The petitioner is an Associate Professor at the West Bengal National University of Juridical Sciences, Kolkata. In this writ petition, the petitioner has impugned an order dated March 05, 2024, passed by the local committee, 24-Parganas (North), constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (in short, the Act of 2013).

2. By the said order, the local committee rejected a complaint filed by the petitioner under the Act of 2013 on the ground of limitation.

3. It appears that the petitioner filed her complaint before the local committee on December 26, 2023, and after receiving the complaint, the local committee issued a notice under the Act of 2013 upon respondent no.7, who subsequently filed his reply denying the allegations made against him by the petitioner. On March 5, 2024, the petitioner filed an application for condonation of delay in filing the complaint. On the same date, the local committee by an order dated March 5, 2024, rejected the complaint. The relevant part of the said order dated March 5, 2024, is quoted below:

“Decision with reasons- After perusing the complaint and the reply it is found that the purported complaint narrates the occurrence of a series of alleged incidents of sexual harassment (reflected in paragraph number 8 to 20 of the complaint letter – Annexure-1) with the Complainant.

Whereas the mention of first alleged incident of sexual harassment, said to occur on Sept. 2019, is described in the paragraph number 8 of the complaint letter; the 20th paragraph of the complaint letter contains the description of last incident of alleged sexual harassment that occurred in or around the month of April, 2023.

The incidents occurred after the month of April, 2023, as narrated by the complainant in paragraphs number 21 to 34, do not contain descriptions of such incidents that come under the purview of 'sexual harassment' according to Section-2(n) the Sexual Harassment of Woman at Work Place (Prevention, Prohibition and Redressal) Act, 2013.

The Local Committee, North24-Parganas, considering the entire complaint and upon hearing of the aggrieved woman on 5th March, 2023, resolved to conclude that the last incident of alleged 'sexual harassment' happened within 30th April, 2023.

But the complaint was filed on 26.12.2024 before the Local Committee, North 24 Parganas, so it is a delayed filing as per provision of Section-9(1) the Sexual Harassment of Woman at Work Place (Prevention, Prohibition and Redressal) Act, 2013.

Further on 05.03.2024 the Complainant filed an application for condonation of delay citing the reason of "instigating circumstances" at her University wherein she was attempting to resolve it inside the institution. The complainant also submitted on 05.03.2024, a prayer seeking direction for documents from the employer and providing transportation and leave for witness, by annexing the list of witness.

The Local Committee, North 24 Parganas does not satisfy itself with the reasons stated in the written application of the complainant, dated 05.03.2024, for condonation of delay, as the Local Committee

does not find any such circumstances which prevented the aggrieved woman to file the complaint before the committee within the prescribed time period as stated in the proviso under Sec. 9 (1) of the SHW Act, 2013.

Hence, the Local Committee, North 24 Parganas, unanimously resolved that the complaint of the aggrieved woman is not acceptable for further proceeding as the complaint is barred by time limit as per provision of Section-9(1) the Sexual Harassment of Woman at Work Place (Prevention, Prohibition and Redressal) Act, 2013.”

4. The learned advocate appearing for the petitioner submits that the committee has failed to read the complaint in its proper perspective and misdirected itself in concluding that the complaint filed by the petitioner was barred by limitation, relying solely on the definition of “sexual harassment” as provided under Section 2(n) of the Act of 2013. The local committee has failed to take into consideration the definition of “sexual harassment” under Section 3(2) of the Act of 2013.

5. The learned advocate appearing for the petitioner submits that if the complaint filed by the petitioner is read as a whole, it will be apparent that the petitioner has alleged several incidents of implied or explicit threats of detrimental treatment in her employment. Respondent no.7 also interfered with her work and created an intimidating and hostile work environment for her. The petitioner has also been subjected to humiliating treatment affecting her health and safety. The committee did not take into consideration the definition of “sexual harassment” under Section 3(2) of

the Act of 2013 and erroneously held that the complaint of the petitioner was barred by limitation.

6. Mr. Soumya Majumder, learned advocate appearing for the university, on the other hand, supports the findings of the local committee. Mr. Majumder submits that nothing has been alleged in the complaint that occurred after April 2023, in relation to or connected with any act or behaviour of sexual harassment. Therefore, the alleged incidents of victimization having no nexus with the sexual harassment cannot extend the period of limitation. Mr. Majumder further submits that the local committee has considered the complaint of the petitioner as well as the reply filed by respondent no.7 and came to a factual finding that no act of sexual harassment took place beyond April, 2023. The documents produced before the committee with the reply of respondent no.7 make it clear that none of the incidents alleged to have taken place after April, 2023, have any nexus with the act or behaviour of sexual harassment. Therefore, the findings of the committee should not be interfered with by this Court.

7. Mr. Avik Ghatak, learned advocate appearing on behalf of respondent no.7, submits that the petitioner herself filed an application for condonation of delay. The committee was not satisfied with the explanation provided by the petitioner in her application, and as such, the petitioner at this juncture cannot contend that her complaint was not barred by

limitation. Since the petitioner could not sufficiently explain the delay in filing the complaint, the local committee has rightly rejected the complaint.

8. I am of the view that the order dated March 5, 2024, passed by the local committee cannot be sustained.

9. The relevant provisions of the Act of 2013 are quoted below:

“2. Definitions.

....

(n) “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely—

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;”

....

“3. Prevention of sexual harassment.—(1) No woman shall be subjected to sexual harassment at any workplace.

(2) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment—

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment; or
- (iii) implied or explicit threat about her present or future employment status; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(vi) humiliating treatment likely to affect her health or safety.”

....

“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. The “circumstances” as envisaged under Section 3(2) must occur in relation to or in connection with any act or behaviour of “sexual

harassment” within the meaning of Section 2(n) of the Act of 2013. In other words, the circumstances as described under Section 3(2) of the Act of 2013 by themselves do not constitute acts of sexual harassment. Those circumstances must be linked with the “sexual harassment” of the woman at workplace as defined under Section 2(n) of the Act of 2013. In computing the period of limitation, the expression “sexual harassment” as appearing in Section 9 of the Act of 2013 must be interpreted in the context of both Section 2(n) and Section 3(2) of the Act of 2013.

11. Whether the complaint of the petitioner was time barred or not must be adjudged in the light of the aforesaid provisions of Act of 2013.

12. In her complaint dated December 26, 2023, the petitioner narrates the various incidents that allegedly took place from September 2019 to December 21, 2023.

13. In paragraph 8 of the complaint, the petitioner narrates an incident, where shortly after September 13, 2019, she was allegedly asked to go out with respondent no.7 for dinner, ahead of a selection proceeding for her promotion to the position of Associate Professor.

14. Paragraph 9 of the complaint alleges that on September 27, 2019, respondent no.7 again insisted that she go out for dinner with him. It is further alleged that respondent no.7 touched her hand inappropriately.

15. Paragraph 10 speaks of an incident of October 2019, when respondent no.7 allegedly asked for sexual favours from the petitioner.

16. Paragraph 17 alleges that after July 16, 2021, respondent no.7 threatened the petitioner to withhold her promotion since she did not accept the opportunity for a “personal friendship” with him.

17. A reading of paragraphs 18 and 19 shows that the petitioner was ultimately promoted as Associate Professor with effect from May 1, 2018, in terms of a resolution of the Executive Council of the University dated April 2, 2022.

18. Paragraph 20 suggests that in March 2023, respondent no.7 again called the petitioner to his office, expressing a desire to give her another opportunity to mend their relationship. Thereafter, respondent no.7 frequently called the petitioner to his office on one pretext or the other and behaved in a lighthearted manner. In the month of April 2023, respondent no.7 called the petitioner to his office and asked her to go with him on a trip to a resort in Mandarmoni. The petitioner refused such proposal.

19. Paragraph 21 onwards, the petitioner narrates a series of vindictive actions of respondent no.7. It is alleged that the petitioner was removed on August 29, 2023, by respondent no.7 as Director, Centre of Financial, Regulatory and Governance Studies based on some false allegations related to the refund of Rs.1,00,000/- (one lakh) to National Foundation of Corporate Governance (NFCG) for failure to complete a project. The petitioner suggested that she was not responsible for non-completion of the relevant project.

20. Paragraph 26 of the complaint alleges that respondent no.7 with his vindictive attitude drafted the minutes of the meeting of 91st Executive Council meeting in a confusing manner to make it appear as if a preliminary enquiry had been directed against the petitioner by the Principal Secretary, Department of Law, Government of West Bengal, though in the said meeting, it was resolved to enquire into the misutilisation of development grant from University Grants Commission, which was unrelated to the petitioner.

21. Paragraph 29 alleges that respondent no.7, in spite of specific protest by the Principal Secretary, Law, again clubbed the issue of misutilisation of UGC grant with the NFCG issue into one agenda and circulated the agenda for the 92nd Executive Council meeting to be held on November 11, 2023 to confuse the Executive Council.

22. In paragraphs 30 to 33, the petitioner alleges that by an e-mail dated November 6, 2023, the petitioner complained of her harassment and victimisation directly to the Executive Council members. The petitioner was asked to meet with all the members of the Executive Council on November 27, 2023. On November 27, 2023, when the petitioner saw respondent no.7 was present in the meeting, she requested for his recusal. Respondent no.7 denied the recusal stating that he was the Chairman of the meeting. The meeting was deferred to December 21, 2023. Though the petitioner was present at the university on December 21, 2023, till about 8 p.m. when the

meeting concluded, she was never called for any hearing. Subsequently, the petitioner came to learn that respondent no.7 had not even allowed the Executive Council to discuss the harassment complaint made by the petitioner. In fact, he manipulated the Executive Council into appointing a one-man enquiry committee to enquire into the false and trumped-up allegations against the petitioner.

23. The second last paragraph of the complaint is quoted below:

“In the above circumstances, I am passing my days in fear and apprehension. Since, the Executive Council has refused to look into my complaints, I do not have any other remedy. Simply because I have refused to be enticed into the immoral sexual advances of Mr. N.K. Chakraborty. I have been continuously harassed and victimized over the last four years. In harassing and victimizing me, the Vice-Chancellor has left no stone unturned to misutilise his position as the head of the institution and has jeopardized my career prospects as also made the workplace toxic for me.”

24. The local committee came to a finding that the last incident of alleged “sexual harassment” occurred within April 30, 2023, but the complaint was filed on December 26, 2023. Therefore, the complaint was barred by limitation as per provisions 9 (1) of the Act of 2013. The local committee also found that the application for condonation of delay dated March 5, 2024, failed to demonstrate any circumstances that prevented the petitioner to file the complaint before the local committee within the

prescribed time period as mentioned in the proviso to Section 9 (1) of the Act of 2013.

25. It is, therefore, evident that the local committee did not consider the incidents that allegedly took place after April, 2023 as “sexual harassment.”

26. In my view, the incidents alleged to have taken place between April, 2023 and December 21, 2023, suggest that the petitioner has been subjected to threat of detrimental treatment in her employment and respondent no.7 has created an intimidating, offensive and hostile work environment for her.

27. In the present case, the allegations made in the complaint clearly suggest that the circumstances of victimisation and detrimental treatment allegedly taken place between April, 2023 till December, 2023 have a nexus with the alleged sexual harassment of the petitioner between September, 2019 to April, 2023. Therefore, if the complaint is read as a whole, would lead to a conclusion that the same was within the period of limitation in terms of Section 9 (1) of the Act of 2013.

28. In the aforesaid fact, it is inconsequential whether the petitioner failed to explain the delay in filing the complaint in her application dated March 5, 2024.

29. Mr. Majumder, learned advocate appearing for the university, has strenuously argued that the incidents alleged to have taken place between April, 2023 and December 21, 2023, have no relation with the alleged

“sexual harassment” as contained in Section 2 (n) of the Act of 2013. It has been further argued that even in her complaint dated November 6, 2023, before the Executive Council, the petitioner did not allege any sexual harassment. Mr. Majumder argues that the allegations made in the complaint are false. The local committee, therefore, has rightly held that the complaint of the petitioner was barred by limitation.

30. I am unable to accept such contention. The question of limitation is a mixed question of law and fact and, therefore, the issue of limitation could not have been decided by the local committee at the threshold stage without evidence.

31. The local committee, in deciding the issue of limitation, should accept the allegations made in the complaint at its face value. There is no occasion to examine the veracity of the allegations made in the complaint at the threshold stage.

32. In this regard, reference may be made to the judgment reported at **(2019) 13 SCC 372 (Urvashiben v. Krishnakant Manuprasad Trivedi)**.

Paragraph 15 of the said judgment is quoted below:

“15. It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under Order 7 Rule 11(d)CPC. Equally, it is well settled that for the purpose of deciding application filed under Order 7 Rule 11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into. Article 54 of the

Limitation Act, 1963 prescribes the limitation of three years, for suits for specific performance. The said Article reads as under:

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
*	*	*
54. For specific performance of a contract	3 years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

From a reading of the aforesaid Article, it is clear that when the date is fixed for performance, limitation is three years from such date. If no such date is fixed, the period of three years is to be computed from the date when the plaintiff, has notice of refusal. When rejection of plaint is sought in an application filed under Order 7 Rule 11, same is to be considered from the facts of each case, looking at the averments made in the plaint, for the purpose of adjudicating such application.”

33. In the aforesaid facts, in my view, the order dated March 5, 2024, passed by the local committee is not sustainable and accordingly, the same is set aside with a direction upon the local committee to conclude the proceedings initiated on the complaint filed by the petitioner on merit in accordance with the provisions of the Act of 2013.

34. Accordingly, W.P.A. No.10583 of 2024 stands allowed.

35. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)