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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 167/2024

ANDREA PEREIRA ... PETITIONER
Versus
STATE OF GOA THR.
THE CHIEF SECRETARY
AND 3 OTHERS ... RESPONDENTS

Ms Caroline Collasso, Advocate for the Petitioner.

Ms Maria Correia, Additional Government Advocate for Respondent No. 1.

**CORAM:- M. S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATED :- 28th February, 2024.

P.C.:

1. Heard Ms Collasso for the Petitioner and Ms Maria Correia, learned Additional Government Advocate for the Respondent No. 1.

2. The challenge in this petition is to the impugned report (in annexure A of the petition) made by an Internal

Complaints Committee (ICC), holding that the allegation against the Respondent in the complaint has not been proved and recommending the employer that no action is required to be taken in the matter. This report and recommendation are made under Section 13(2) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (said Act),

3. Ms Correia points out that as against the report and recommendation made by the ICC under Section 13(2) of the said Act, an appeal lies in terms of Section 18 of the said Act to the prescribed authority.

4. Ms Correia refers to the provisions of Sections 13 and 18 of the said Act, to be read with Rule 11 of the 2013 Rules made under the said Act. She also produces on record the Government Notification dated 16/11/1978 appointing the Presiding Officer of the Tribunal-Cum-Labour Court as the appropriate authority to exercise the

functions of an appellate authority under the provisions of the Industrial Employment (Standing Orders) Act, 1946.

5. Based on the above, Ms Correia submits that since the Petitioner has an alternate and efficacious remedy available under the said Act and the Rules made thereunder, this petition may not be entertained. Instead, the Petitioner may be relegated to avail of the alternate remedy.

6. Ms Collasso submits that in the case of ***Dasharath Kallapa Bhosale V/s State of Maharashtra & Ors (Writ Petition No. 786 of 2021)***, the order was made on 11/03/2021 in the context of the availability of the alternate remedy under the said Act and the Rules made thereunder. She submits that there is no clarity whether, in the absence of specific notification under the said Act, the Presiding Officer under the Standing Orders Act can exercise appellate jurisdiction. Besides, Ms Collasso submits that the Petitioner is questioning the very

constitution of the ICC. For these reasons, Ms Correia submits that such an alternate remedy may not be efficacious.

7. We are satisfied that an alternate remedy is available under the said Act and the Rules made thereunder.

8. Section 13 of the said Act is concerned with the inquiry report if submitted by the ICC or the local committee, as the case may be. Section 13(2) is relevant, and the same is transcribed below for the sake of reference:

“Section 13(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 be recommended to the employer and the District Officer that no action is required to be taken in the matter”

9. In this case, the ICC has made a report/recommendation under Section 13(2) of the said Act as quoted above, inasmuch as it has held that the

allegation against the respondent is not proved, and it recommended to the employer that no action is required to be taken in the matter.

10. Section 18 of the said Act reads as follows:

“Section 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.

11. Thus, Section 18, as quoted above, provides that any person aggrieved from the recommendations made under Section 13(2) of the said Act may prefer an appeal to the Court or Tribunal in accordance with the provisions of the service rules applicable to such 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.

12. The expression “*prescribed*” is defined under Section 2(k) to mean “*prescribed by rules made under this Act*”. In the exercise of the powers conferred under Section 21(1), the Central Government has framed the Sexual Harassment of Women at Workplace (Prevention of Prohibition and Redressal) provides Rules, 2013 (said Rules).

13. Rule 11 is relevant and is transcribed below for the sake of convenience:

“Rule 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 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 (20 of 1946). ”

14. Thus, on the conjoint reading of Sections 13 and 18 of the said Act and Rule 11 of the said Rules, we are satisfied that the Petitioner can institute an appeal against the impugned report/recommendations made by the ICC under Section 13(2) of the said Act to the Appellate Authority notified under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946.

15. Ms Correia has produced on record a Government notification dated 16/11/1978 issued under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946. This notification reads as follows:

*“Notification
No.1/5/78-L.AB/Apptt/Apll, authority
In exercise of the powers conferred by clause (a)
of Section 2 of the Industrial Employment
(Standing Orders) Act, 1946 (20 of 1946), the
Lieutenant Governor of Goa, Daman and Diu*

hereby appoints the Presiding Officer of the Industrial Tribunal-cum-Labour Court, Panaji as an appropriate authority for the Union Territory of Goa, Daman and Diu to exercise the functions of an appellate authority under the said Act.

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

G. M. Sardessai, Under Secretary, Industries and Labour. Panaji, 16th November, 1978.”

16. Ms Correia assures this Court that this Notification still holds the field, and in terms of same, it is the Industrial Tribunal-cum-Labour Court, Panaji, which is constituted as an Appellate Authority under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946. Thus, the Petitioner can always institute an appeal before this Authority against the impugned report/recommendation of the said Act.

17. The order dated 11/03/2021 in Writ Petition No. 786 of 2021 (Dashrath Bhosale) mainly records the opinion expressed by the Tribunal's Presiding Officer and then requires the AGP to explain the position. However, the

order dated 11/03/2021 made by the Co-ordinate Bench does not hold that no alternate appeal remedy is provided under the said Act or the Rules made thereunder.

18. For the above reasons, we do not propose to entertain this Petition and grant the Petitioner liberty to avail of the alternate remedy as indicated above. Although the existence of an alternate remedy does not operate as an absolute bar to this Court exercising its jurisdiction under Article 226 of the Constitution, still, in the absence of any special reasons, a Petition is not entertained when an efficacious and alternate remedy is provided under the Act or Rules. This is a self-imposed restriction. In this case, no special reasons exist justifying any departure.

19. In ***Radha Krishan Industries v. State of Himachal Pradesh 2021 SCC Online SC 334***, the Hon'ble Supreme Court summarised the principles governing the exercise of writ jurisdiction when an alternate remedy is available. The Court held that when a right is created by a statute

that prescribes the remedy or procedure for enforcing the right or liability, a resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

20. Section 18(2) provides that an appeal is to be instituted within 90 days of the recommendation. Ms Collasso states that the Petitioner will institute an appeal within two weeks from today without seeking any further extension. If such an appeal is indeed filed within two weeks from today, then we direct that the same should be disposed of on its own merits because we are satisfied that the Petitioner had bonafide instituted this Petition for want of clarity on the issue of alternate remedy. The Petitioner was pursuing the Petition before this Court, and it would not, in this case, be appropriate to non-suit the Petitioner on the ground of limitation. Accordingly, we direct that if

the appeal is indeed instituted within two weeks from today, the Appropriate Authority must dispose of the Appeal on merits and in accordance with law.

21. Further, at Ms Collasso's request, we clarify that all contentions of the Petitioner, including the contention that the constitution of the ICC was not in accordance with provisions of the said Act or the Rules made thereunder, are kept open for being raised before the Appellate authority.

22. The Petition is accordingly disposed of, with liberty in the above terms. There shall be no order for costs. All concerned to act on an authenticated copy of this order.

VALMIKI SA MENEZES, J. M. S. SONAK, J.