

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 12.12.2022

Pronounced on: 23.12.2022

WP(C) No.1810/2021

... PETITIONER(S)

Through: - Ms. Sharaf Wani, Advocate.

V/s

UT OF J&K AND ORS.

...RESPONDENT(S)

*Through: - Mr. Irfan Andleeb, Dy. AG-for R1 to R3.
Mr. Owais Shafi, Advocate-for R4,*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged enquiry report dated 08.02.2021 rendered by respondent No.2 as also order No.818-JK(HME) of 2020 dated 23.10.2020, whereby Complaints Committee under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the Act of 2013), has been constituted for enquiring into the complaints of sexual harassment against women employees of the Health & Medical Education Department and its subordinate offices. A consequent direction has been sought commanding the respondents to re-constitute the Complaints Committee under the Act of 2013 and to hold a *de novo* enquiry into the allegations of sexual harassment of the petitioner at the hands of respondent No.4.

2) Briefly stated, the case of the petitioner is that on 13.12.2019, she received a phone call from respondent No.4 who was posted as Director Health Services, Kashmir, at the relevant time and the said respondent communicated highly objectionable sexual innuendos to the petitioner in an inebriated state. According to the petitioner, behaviour of respondent No.4 was highly distasteful and unwelcome. At the relevant time, the petitioner was working as Consultant MCH in the Directorate of Health Services, Kashmir. It is alleged that after the aforesaid incident, respondent No.4 continued to harass the petitioner in one way or the another. In this regard, respondent No.4 issued order No.DHSK/PS/4130-36 dated 14.12.2019, whereby he withdrew the charge of National Tobacco Control Programme (NTCP) from the petitioner and created an atmosphere of intimidation and hostility for the petitioner. On 25.12.2019, the official vehicle of the petitioner was also withdrawn by respondent No.4, whereafter in the month of January, 2020, respondent No.4 did not allow the petitioner to proceed to Delhi to attend NPCC meeting . It is alleged by the petitioner that she was harassed on numerous occasions by respondent No.4 unnecessarily for one reason or the other. Another incident which has been narrated by the petitioner relates to 23rd January, 2021, when she was allegedly made to wait in the lobby of SKICC just to humiliate her. It is further alleged that respondent No.4 called the petitioner several times privately to sit in his office. It is also alleged that the petitioner applied for Surveillance Medical Officer in World Health Organization and later on for the post of Registrar/Demonstrator in Government

Medical College, Srinagar, but on both occasions, respondent No.4 did not relieve the petitioner in order to further humiliate and harass her.

3) The petitioner is stated to have lodged a complaint with respondent No.1 through email and Whatsapp on 28.04.2020 and 05.05.2020 respectively, however, no action was taken by the said respondent. Thereafter respondent No.4, vide order No.554-JK(HME) of 2020 dated 22.07.2020, relieved the petitioner from the charge of Epidemiologist and she was asked to report to her original place of posting i.e., SDH, Kangan. According to the petitioner, this was done just to harass and intimidate her, although respondent No.4 had no authority to pass such order. It has been submitted that the aforesaid order was later on revoked by respondent No.2 in terms of Government Order No.817-JK(HME) of 2020 dated 23.10.2020.

4) On 18.09.2020, the petitioner is stated to have sent reminder to respondent No.1 regarding her complaint and when no heed was paid to her complaint, the petitioner filed a complaint before Advisor to Lieutenant Governor on 19.09.2020 and thereafter before the Lieutenant Governor on 25.09.2020 followed by reminder dated 14.10.2020. Eventually, cognizance of the complaint of the petitioner was taken and the matter was referred to the Complaints Committee. After conducting enquiry, the Complaints Committee has rendered the impugned report dated 08.02.2021, whereby the Committee has concluded that the allegations against respondent No.4 have not been proved.

5) The petitioner has challenged the impugned enquiry report and the constitution of the Complaints Committee on the grounds that the Complaints Committee formed by respondent No.2 vide impugned order dated 23.10.2020 is against the mandate of the Act of 2013 read with Rules of 2013 for the reason that as per Section 4(2)(c) of the Act of 2013, no external member has been nominated by respondent No.2. It has been submitted that the co-opted member of the Committee, Ms. Tawheeda, Assistant Legal Remembrancer, is not qualified to be made as a member of the Committee nor there is any provision for co-opting the members. It has been submitted that without associating an external member, the mandate of the provisions of the Act of 2013 is not satisfied, which makes the very constitution of the Committee illegal.

6) The impugned enquiry report rendered by the Complaints Committee has been challenged on the grounds that the same is biased on the face of it and that the petitioner was not provided the copy of the reply submitted by respondent No.4, which amounts to violation of principles of natural justice. It has been further submitted that the petitioner was not provided a chance of rebuttal against the contentions/pleas raised by respondent No.4.

7) The writ petition has been contested by the official respondents as well as by respondent No.4 by filing separate replies. In their reply, the official respondents have submitted that when the complaint from the petitioner was received, the same was examined and referred to the Complaints Committee constituted vide Government Order dated

23.10.2020. It has been submitted that Ms. Tawheeda, Assistant Legal Remembrancer, of the Co-operative Department, was nominated as Member Secretary of the Complaints Committee. According to the respondents, the Committee, after enquiring into the matter, found that the allegations against respondent No.4 have not been established. It has been contended that the action taken by the official respondents is in accordance with law and the same does not suffer from any legal infirmity. It is also contended that the petitioner has got alternative efficacious remedy as in terms of Section 18 of the Act of 2013, the petitioner has a right to file an appeal against recommendations of the Committee.

8) Respondent No.4 has filed a separate reply. In his reply, respondent No.4 has submitted that in view of availability of statutory remedy of appeal against the recommendations of the Complaints Committee, the instant writ petition is not maintainable. It has been further submitted that the subject matter of the writ petition comes within the definition of 'service matters' and, as such, the matter is cognizable by the Central Administrative Tribunal. It has been also contended that the constitution of the Complaints Committee is as per the provisions of Section 4(1) of the Act of 2013. According to respondent No.4, the petitioner, after having participated in the enquiry proceedings without any objection, is estopped from challenging the findings of the Complaints Committee. It has been further contended that the actions taken by respondent No.4 in his capacity as Director,

Health Services, Kashmir, were in the interests of administration and if these actions did not go down well with the petitioner, the same cannot form a ground for levelling false and vexatious allegations of sexual harassment against respondent No.4. According to respondent No.4 various administrative orders relating to the petitioner were issued in accordance with the rules for better administration. He has denied having made the phone call to the petitioner of the nature as has been alleged by her.

9) I have heard learned counsel for the parties and perused the pleadings and the record.

10) Before dealing with the rival contentions raised by the parties, it would be apt to deal with the preliminary objection raised by the respondents to the maintainability of the writ petition.

11) The first objection relating to maintainability of the writ petition raised by the respondents relates to availability of alternative remedy of appeal to the petitioner. In this regard reference has been made to Section 18 of the Act of 2013, which makes a provision for appeal against the recommendations made by a Complaints Committee. It reads as under:-

“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 subsection (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.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.”

12) From a perusal of the aforesaid provision, it is clear that the recommendations of a Complaints Committee are appealable to the Court or Tribunal in accordance with the provisions of the service rules applicable to the aggrieved person and where no such service rules exist, the person aggrieved has to prefer an appeal in such manner as may be prescribed.

13) Learned counsel for the respondents have not brought to the notice of this Court any notification or circular whereby Appellate Authority in terms of Section 18 of the Act of 2013 has been prescribed. No service rule has been brought to the notice of this Court that provides a forum for filing an appeal against the recommendations of the Complaints Committee. Thus, in the absence of a forum for filing an appeal against the recommendation of the Complaints Committee, it cannot be stated that the petitioner had an alternative efficacious remedy for challenging the recommendations of the Complaints Committee. The contention of learned counsel for the respondents in this regard is without any merit.

14) The other contention raised by learned counsel for respondent No.4 is that the subject matter of the writ petition qualifies to be a ‘service matter’ within the meaning of Section 3(q) of the Administrative Tribunals Act, 1985 and, as such, the same is cognizable

by the Central Administrative Tribunal. In this regard, the learned counsel has relied upon the judgment of Tripura High Court in the case of **Smt. Rekha Das vs. The Union of India and others** (WP(C) No.243 of 2021 decided on 17.05.2021. In the said judgment, a learned Single Judge of the Tripura High Court has held that the internal enquiry initiated on the basis of a complaint falls within the definition of 'service matters', as such, the matter is cognizable by the Central Administrative Tribunal.

15) The judgment of the learned Single Judge in the aforesaid case has been set aside in appeal by the Division Bench of Tripura High Court in WA No.183/2021 decided on 07.09.2021. In the said judgment, the Division Bench of Tripura High Court has observed that besides a possible imposition of punishment under the service rules, the complaint of sexual harassment at workplace has many other repercussions like recommendation for registration of a case with the police or the complainant may be granted such other relief as may be prescribed. The Division Bench has further noted that if upon conclusion of the enquiry which results into a finding that the allegations are correct, punishment of imposition of penalty on the respondent as per the service rules is not the only consequence. There can be several other consequences like payment of a sum from the salary of the respondent for taking care of mental trauma, pain and suffering caused to the complainant. After noting these possible consequences of recommendations of a Complaints Committee, the

Division Bench came to the conclusion that the learned Single Judge has committed an error in refusing to entertain the writ petition.

16) I am in respectful agreement with what has been observed by the Division of Tripura High Court and I find no merit in the submission of learned counsel for the respondents that the subject matter of the writ petition, wherein challenge has been thrown to the findings of a Complaints Committee, would come within the definition of 'service matters' as contained in Section 3(q) of the Administrative Tribunals Act, 1985. The argument of learned counsel for the respondents in this regard is bound to fail.

17) The third argument that has been raised by learned counsel for the respondents is that the petitioner having participated in the enquiry proceedings conducted by the Complaints Committee without any objection or protest, cannot turn around and challenge the constitution of the Committee. It has been contended that the petitioner has acquiesced in the enquiry proceedings and once the result of the same was not as per her taste, she cannot turn around and challenge the constitution of Committee.

18) *Per contra*, learned counsel for the petitioner has contended that the principle of estoppel cannot override the law. It is further submitted that the petitioner may have participated in the enquiry proceedings conducted by the Complaints Committee but she did not acquiesce in the illegal constitution of the Committee nor did she acquiesce in the

illegal and unlawful procedure adopted by the Committee while enquiring into her complaint. In this regard, the learned counsel has relied upon the judgments of the Supreme Court in the cases of **Krishna Rai (Dead) through LRS and Ors. Vs. Banaras Hindu University**, (2022) 8 SCC 713, **Sneh Gupta vs. Devi Sarup and Ors.** (2009) 6 SCC 194, and **Meeta Sahai vs. State of Bihar and Ors.** (2019) 20 SCC 17.

19) If we have a look at the impugned enquiry report as also the documents placed on record by the parties along with their respective pleadings, there is nothing on record to even remotely suggest that the petitioner has at any point of time expressed here resentment, protest or demur to her participation before the Complaints Committee constituted pursuant to the impugned Government Order dated 23.10.2020. She has participated in the proceedings on a number of dates and has pursued her case vigorously right up to the conclusion of the enquiry without any demur. Even the petitioner does not claim that she has lodged any protest at any point of time as regards the alleged defective constitution of the Committee.

20) According to learned counsel for the petitioner, there can be no estoppel against law. It has been contended that the manner in which the proceedings were conducted clearly reflects that the principles of natural justice were violated and the petitioner cannot be stated to have acquiesced in compromising her right to be heard by the Committee. It has been submitted that the petitioner cannot be stated to have accepted the illegal procedure adopted during the enquiry proceedings.

21) To test the merits of the aforesaid argument of learned counsel for the petitioner that the procedure adopted by the Committee was not in accordance with law, it is necessary to have a look at the contents of the impugned enquiry report. The allegations levelled by the petitioner are enumerated pointwise in the impugned enquiry report. A summary of these allegations is given as under:-

The primary allegation is with respect to an alleged phone call made by the Respondent to the Petitioner on 13.12.2019 at 8:30 pm, in an inebriated state, making various objectionable and sexually coloured statements/comments. It is further alleged that after this incident, the Respondent continued to harass and intimidate the Petitioner continuously. Various incidents have been mentioned in the report that have been alleged by the Petitioner, including incidents where unfavourable orders with respect to removing her from certain posts and withdrawing her official vehicle, disallowing her from attending an important meeting at Delhi, making her wait in the SKICC lobby for hours, being scolded for undertaking a tour to Baramulla, being forced to move to the old office located at Barzulla to avoid being harassed, being forced to meet officials at secretariat, being called to the Respondent's office repeatedly and being scolded and humiliated for trivial matters, being left out of meetings, being transferred/demoted to Kangan, , not being issued an NOC which was required to apply for the post of Registrar/Demonstrator in GMC, not being relieved by the Respondent on securing a job with WHO etc. It is further alleged that the Respondent is habitual calling lady officers at odd hours and when someone speaks out, the respondent intimidates and ridicules them.

22) The observations of the Complaints Committee regarding the aforesaid allegations are summarized as under:

- (i) Regarding Phone call dated 13.12.2019, it was held that this allegation could not be proved by the complainant.

- (ii) Regarding removal from the post of Nodal Officer NTCP, it was held that the allegation could not be proved and the act was to streamline the functioning of the office.
- (iii) Regarding withdrawal of Vehicle, it was held that one vehicle was withdrawn from the complainant but one vehicle was kept at her disposal thus allegation of harassment was not proved.
- (iv) Regarding not being allowed to attend the pre-NPCC meeting at New Delhi, it was held that the allegation could not be proved.
- (v) Regarding being scolded for touring District Baramulla, it was held that the allegation could not be established by the complainant.
- (vi) Regarding being forced to leave new building due to regular harassment, it was held that the allegation could not be proved.
- (vii) Regarding being asked for meeting higher officials in secretariat, it was held that the allegations could not be proved.
- (viii) Regarding being asked to sit with respondent in office, it was held that the allegations could not be proved.
- (ix) Regarding being scolded for raising issue of screening of travelers in the meeting, it was held that the allegation could not be proved.
- (x) Regarding posting of another medical Officer posted as epidemiologist Kashmir and transferring the petitioner to SDH Kangan, it was held that the complainant was relieved from the charge of epidemiologist by the H&ME department and not by the Respondent. He did exceed his power while transferring the complainant but the order was rescinded by the department, thus no prejudice was caused to her.
- (xi) Regarding complaint lodged before Chief Secretary, it was held that the same does not fall within the purview of the committee.
- (xii) Regarding non issuance of NOC for the post of Registrar/Demonstrator in GMC Srinagar, it was held that the Respondent had complied with govt. order no. 02-JK (HME) of 2020, dated 20.01.2020 and compliance of order could not be claimed as

sexual harassment and hence, the allegations were not proved.

(xiii) Regarding non relieving of the complainant for joining as Surveillance Medical Officer in WHO, it was held that the complainant failed to establish any harassment on account of this allegation.

(xiv) Regarding forcing the employees to visit the residence of respondent, it was held that the allegation could not be proved.

(xv) Regarding habitual calling of lady officers by the respondent at odd hours, it was held that the complainant failed to establish the allegations against the respondent.

(xvi) Regarding complaint lodged before Advisor to Hon'ble LG, it was held that it was not within the domain of the committee.

23) From what has been discussed hereinbefore, it is clear that each and every allegation made by the petitioner in her complaint has been considered by the Committee in the light of the material produced before it, whereafter finding on each and every allegation levelled by the petitioner has been given in the report by the Complaints Committee.

24) Much emphasis has been laid by the petitioner on the alleged phone call dated 13.12.2019. According to the petitioner, respondent No.4 conveyed certain sexually coloured remarks to her. It is indicated in the enquiry report that the petitioner was asked to produce the material in support of this allegation and she produced a screenshot which did not show the phone number wherefrom the phone call was made. It is specifically stated in the enquiry report that the complainant was asked whether there is any other evidence in this regard, she replied that whatever evidence regarding obscene phone call was available

with her, she has already placed the same on record in the form of screenshot. Once the petitioner could not produce any material to support her claim that respondent No.4 made a phone call to her on 13.12.2019, it cannot be stated that she was not given an opportunity of producing evidence, as has been contended by her in the writ petition. The report of the enquiry clearly states that a number of opportunities were granted to the petitioner to produce evidence in support of her allegations. The report specifically notes that the petitioner was asked whether she would like to produce any witness in support of her statement to which she replied in negation.

25) Another contention raised by the petitioner is that some person, namely, Ajay Sharma, has not been examined by the Committee. In this regard, in para (16) of the report, the Complaints Committee has noted that despite opportunities, the petitioner did not cite the said person as a witness, as such, he could not be examined by the Committee.

26) So far as the contention of the petitioner that she was not provided the copy of the response filed by respondent No.4 before the Committee is concerned, the same is not borne out from the enquiry report. It is nowhere stated in the report of enquiry that the petitioner had sought a copy of the response of respondent No.4 which was not provided to her. The petitioner has not placed on record anything to show that she sought the copy of the reply filed by respondent No.4 and that her request was declined by the Complaints Committee. In any case, respondent No.4 had only denied the allegations made by the

petitioner in her complaint and it was for the petitioner to support her allegations by producing evidence in support thereof. For this purpose, the petitioner was given sufficient opportunity but she failed even to substantiate her basic allegation regarding phone call of respondent No.4. Thus, it cannot be stated that there has been any violation of principles of natural justice or any other procedure by the Committee while holding enquiry against the petitioner.

27) The question whether the findings of the Committee are based on correct appreciation of the material on record cannot be gone into in these proceedings because the findings recorded in the enquiry proceedings can be interfered with by the High Court on very limited grounds that the principles of natural justice have been observed in breach or that the findings are based on no evidence. In the instant case, as already stated, the principles of natural justice have been adhered to by the Committee and the findings recorded by the Committee are based upon material that was produced before it and it cannot be stated that the findings are based on no evidence. Thus, this Court would not interfere with the findings of the Committee in exercise of its writ jurisdiction, when there is nothing on record to show that the Committee has violated any procedure.

28) Having held that the procedure adopted by the Complaints Committee while conducting enquiry in the instant case is in accordance with law and the principles of natural justice have been adhered to, the question arises whether the petitioner can turn around

and wriggle out of the enquiry report on the ground that its constitution is not in accordance with law.

29) In **Madan Lal vs. State of J&K**, (1995) 3 SCC 486, the Supreme Court has held that when a person takes a chance and participates, thereafter he cannot, because the result is unpalatable, turn around to contend that the process was unfair or the selection committee was not properly constituted. In the said case, the petitioner had appeared before the Interview Committee and thereafter challenged the constitution of the Committee when he did not find his name in the select list.

30) In **G. Sarana vs. University of Lucknow**, (1976) 3 SCC 585, the petitioner, after having appeared before the Selection Committee and on his failure to get appointed, had challenged the selection result pleading bias against him by three out of five members of the Selection Committee. He also challenged the constitution of the Committee. Rejecting the challenge, the Supreme Court held as under:

“15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood or bias as despite the fact that, the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee. This view gains strength from a decision of this Court in Manak Lal's case (Supra) where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver

against him. The following observations made therein are worth quoting:-

'9.....It seems dear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.'

31) In **P. D. Dinakaran vs. Judges Inquiry Committee**, (2011) 8 SCC 380, the Supreme Court, while dealing with an objection relating to appointment of a person as a member of the Committee, observed as under:

"86. In conclusion, we hold that belated raising of objection against inclusion of respondent No.3 in the Committee under Section 3(2) appears to be a calculated move on the petitioner's part. He is an intelligent person and knows that in terms of Rule 9(2)(c) of the Judges (Inquiry) Rules, 1969, the Presiding Officer of the Committee is required to forward the report to the Chairman within a period of three months from the date the charges framed under Section 3(3) of the Act were served upon him. Therefore, he wants to adopt every possible tactic to delay the submission of report which may in all probability compel the Committee to make a request to the Chairman to extend the time in terms of proviso to Rule 9(2)(c). This Court or, for that reason, no Court can render assistance to the petitioner in a petition filed with the sole object of delaying finalisation of the inquiry. "

32) The High Court of Bombay in the case of **Kishore vs. Joint Commissioner and Vice Chairman**, 2020 (6) Mh.L.J. 117, while considering challenge to the constitution of the Committee for the purposes of scrutinizing and verifying of caste and tribe claims, repelled the challenge laid by the petitioner by observing as under:

"6. We would have considered these objections had it been the case that the petitioner had not taken any part in the proceeding before the Scrutiny Committee in the present case. here, the petitioner participated in the proceedings

before the Scrutiny Committee and when he found that the Scrutiny Committee's decision was against him, it dawned upon the petitioner that the constitution of the Committee was improper. A person, who has taken a chance in this way, it is settled law, cannot be permitted to turn around and raise a challenge which ought to have been made before his participation in the process. Therefore, we are not inclined to entertain any challenge to the validity of section 6 of the Act of 2000 and Rule 9 of the Rules, 2003, raised herein. Similar is the view taken by another Division Bench of this Court in the case of Ajaykumajr Yadaorao Nikhare vs. State of Maharashtra and ors, 2011 Mh.L.J Online 92 = 2012(1) ALL MR 280. The view commends to us. Accordingly, the constitutional challenge is rejected."

33) In **ABP Private Limited and another vs. Union of India and others**, (2014) 3 SCC 327, the Supreme Court has observed as under:

"40) On perusal of the materials available, we are satisfied that the Wage Boards have functioned in a fully balanced manner. Besides, it is a fact that the petitioners had challenged the constitution of the Wage Board before the High Court of Delhi, admittedly, the High Court had declined to grant interim relief. The said order declining/refusing to grant interim relief attained finality as the petitioners did not choose to challenge it before this Court. Thereafter, the petitioners have participated in the proceedings and acquiesced themselves with the proceedings of the Board. In view of the fact that they have participated in the proceedings without seriously having challenged the constitution as well as the composition, the petitioners cannot now be allowed to challenge the same at this stage. More so, it is also pertinent to take note of the fact that the petitioners herein opted for challenging the independence of the nominated independent members only after the recommendations by the Wage Boards were notified by the Central Government.

41) Hence, the attack of the petitioners on the independence of the appointed independent members by saying that they were not sufficiently neutral, impartial or unbiased towards the petitioners herein, is incorrect in the light of factual matrix and cannot be raised at this point of time when they willfully conceded to the proceedings. Consequently, we are not inclined to accept this ground of challenge."

34) From the foregoing enunciation of law on the subject, it is clear that a person who participates in the enquiry proceedings or selection without any demur and later on challenges the constitution of the enquiry committee or the selection committee, as the case may be, after finding that the result of the enquiry/selection has gone against him, is not entitled to do so.

35) By participating in the enquiry proceedings without any demur, the petitioner has acquiesced in the constitution of the Complaints Committee and she has at no stage lodged any protest either regarding functioning of the Committee or regarding its constitution. She cannot be heard to challenge the constitution of the Committee once the result went against her. The judgments of the Supreme Court and Delhi High Court in the cases of **Punjab and Sind Bank and others vs. Durgesh Kuwar**, (2020) 19 SCC 46 and **Ruchikar Singh Chhabra vs. M/S AIR France and anr**, 2018 SCC Online Del 9340, relied upon by learned counsel for the petitioner in support of her contention that when constitution of the Committee is not in accordance with law, there can be no estoppel against the complainant, are misplaced for the reason that in both these cases the complainant had from the very beginning lodged her protest with regard to the constitution of the Committee and she had repeatedly raised her concern of not feeling comfortable with the manner in which the proceedings were being conducted. In the instant case, there is not even a whisper made in the writ petition that the petitioner had felt uncomfortable in participating in the proceedings

or she had raised any objection with regard to the constitution of the Committee. The ratio laid down in the aforesaid cases is, therefore, not applicable to the facts of the instant case.

36) For what has been discussed hereinbefore, it is clear that the petitioner has acquiesced in the constitution of the Complaints Committee by her conduct and has fully participated in the enquiry proceedings. She cannot be heard to question the constitution of the Complaints Committee at this stage when the result of the enquiry has gone against her, particularly when the enquiry proceedings have been conducted after observing the principles of natural justice and the findings of the Committee are based upon the material produced before it.

37) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed.

(Sanjay Dhar)
Judge

Srinagar
23.12.2022
"Bhat Altaf, PS"

<i>Whether the order is speaking:</i>	Yes/No
<i>Whether the order is reportable:</i>	Yes/No