ARE THE RECOMMENDATIONS OF THE IC BINDING ON THE EMPLOYER?

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With the recent directions issued by the Hon'ble Supreme Court in ***Aureliano Fernandes v. State of Goa and Others***[1] along with many State Governments making it mandatory for establishments along with their Internal Complaints Committee's ("**IC**", hereinafter) to register themselves with the SHe-Box portal, compliance enforcement under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**PoSH Act**", hereinafter) is today more robust than ever. Constitution of ICs at all establishments in which the threshold of 10 employees is met has assumed significant importance. The IC, after conducting a full-fledged inquiry in accordance with the establishment's service rules/principles of natural justice, submits to the management a report containing its recommendation on the action required to be taken in the matter concerned. In this regard, the powers of the IC - being a statutorily empowered body of sorts - is distinct from the powers of an inquiry officer conducting a domestic/disciplinary inquiry as the latter can only give a fact-finding report but not recommend any action(s) to be taken by the employer or the disciplinary authority.[2] The question that, thus, assumes significance is that whether the IC's recommendations are binding upon the employer or can the employer deviate entirely from its recommendations?

The answer to this question, at least with respect to an ordinary domestic/disciplinary enquiry is well-settled. If the enquiry officer does not find the charges proved against the employee, then the punishment order cannot be passed by the employer without any notice of disagreement. An additional opportunity must also be afforded to delinquent employee by the employer before imposing any punishment.[3] In fact, even if the inquiry officer finds the employee to be guilty and the report of the inquiry officer is not accepted by the employer, a *de novo* inquiry is to be conducted by appointing a new inquiry officer.[4] As with the IC, section 13(4) of the PoSH Act provides that, "*the employer shall act upon the recommendation within sixty days of its receipt by him*". The term "shall", in general legal parlance, means "must".[5] Even section 18 of the PoSH Act says that an appeal can be made against the recommendation of the IC or against the non-implementation of the recommendation; the section does not talk about any appeal against the implementation of the recommendation but against the recommendation itself. The appeal is provided in cases where the recommendations of the IC itself are final, and they are *ipso facto* binding and enforceable under Section 13(4) of the PoSH Act. Thus, Section 18 of the PoSH Act, which though prescribes that an appeal may be preferred to a Court or Tribunal as per the service rules, the same would kick in, only in the eventuality when the recommendation of the committee itself is

1. CA No.2482/2014 dated 12.05.2023 (SC).

2. State of Uttaranchal & Ors vs Kharak Singh, CA No. 4531 OF 2007 dated 13.08.2008 (SC).

3. See Punjab National Bank and Ors. v. Kunj Behari Misra, (1998) 5 SCC 548 (SC).

4. Durgesh v. Gondia District Central Co-operative Bank, WP No.2498/2024 dated 08.08.2025 (Bom. HC).

5. See State of U.P. v. Manbodhan Lal Srivastava, 1958 (2) LLJ 273 (SC).

final, *ipso facto* binding and enforceable under Section 13(4) of the PoSH Act.[6]

Judicial authorities, on this point, are spersed. The Hon'ble Supreme Court in ***Medha Kotwal Lele & Ors. v. UOI & Ors.***[7] ("**Medha Kotwal**" hereinafter) has held that the findings and the report of the IC shall not be treated as a mere preliminary investigation or an inquiry leading to a disciplinary action, but should be treated as a finding/report in an enquiry into the misconduct of the delinquent in sexual harassment cases. While following ***Medha Kotwal***, the Kerala High Court in ***L.S. Sibu v. Air India Limited*****,**[8] held that when the inquiry is concluded, what is left to the discretion of the employer to take action in accordance with service rules for the proven misconduct. The choice left to the employer is to impose penalty in accordance with the service rules on a proven misconduct. If the service rule provides any punishment for such misconduct, the punishment can be imposed based on such findings. A division bench of the Kerala High Court in ***Air India Limited v. L.S. Sibu***[9], upheld the said judgment. The Special Leave Petition against the judgment of the division bench of the Kerala High Court was dismissed by the Supreme Court.[10] According to the Karnataka High Court in ***Suman Saurabh v. Internal Complaints Committee, Sexual Harassment of Women at Workplace and others***[11], until and unless, the recommendation is implemented in accordance with law, it is not permissible for the employer to initiate fresh inquiry.

This aspect has been dealt with in a more direct manner by the Madras, Kerala and Calcutta High Courts. The Madras High Court has stated in ***Management of Christian Medical College and Hospital v. S.G. Dhamodharan***[12], that once the IC makes a recommendation by giving a report against the employee concerned, the Management has no choice except to take action. The Madras High Court, however, does not specify as to whether taking "action" is same as imposing the same punishment as has been recommended by the IC in the inquiry report. Different benches of the Calcutta High Court have also expressed slightly divergent opinions on this subject matter, with the earliest judgment being that of **Pradip Mandal v. Union of India & Ors.**[13]. In this judgment, it was held that Section 13(4) of the PoSH Act making the recommendation of the IC binding on the employer and Section 18 thereof providing an appellate remedy against the findings or recommendation of the IC under Section 13, the final recommendation cannot be tinkered with by the employer or its disciplinary authority or regular appellate authority. The findings become binding and the only exercise that is to be undertaken by a disciplinary authority is to consider the quantum of punishment that is warranted in a given set of circumstances. In a later judgment of ***Debjani Sengupta v. The Institute of Cost Accountants of India & Ors.***[14]**,** the Calcutta High Court made similar observations by stating that the report of IC is a fact finding enquiry report with regard to the allegation of sexual harassment and the employer was bound to then proceed under the service rules, before imposing any penalty. The employer, on the said recommendation, was mandated to initiate a disciplinary proceeding in terms of the service

6. Khajan Singh v. Union of India And Ors., CWP No. 15201/2023 dated 09.05.2024 (Del. HC).

7. (2013) 1 SCC 297 (SC).

8. WP(C) No. 4001/2016 (A) dated 25.09.2014 (Ker. HC).

9. WA No.1713/2016 dated 12.10.2025 (Ker. HC).

10. SLP(C) Diary No(s). 38916/2018.

11. 2020(2) LLN 191 (Karn. HC).

12. 2019 LLR 769 (Mad. HC).

13. W.P. 2991(W)/2016 with C.A.N. 4169/2016 dt/-09.06.2016 (Cal. HC).

14. RVW 128 of 2019 dated 04.07.2023 (Cal. HC).

rules of the employee and only in cases where there were no rules, the IC was empowered to recommend punishment. This was upheld by a division bench of the Calcutta High Court in ***Debjani Sengupta v. The Institute of Cost Accountants of India and Ors.***[15]

Significant clarity, in this regard, was provided by another division bench of the Calcutta High Court in ***Institute of Hotel Management, Catering Technology and Applied Nutrition & ors. v. Suddhasil Dey & Anr***.[16] It was held, in a somewhat contrary sense to the previous judgments of the Calcutta High Court, that the language employed in section 13(4) does not make it imperative for the disciplinary authority to act on the recommendations of the IC by accepting it. The expression "*act upon the recommendation*" would mean either accept or reject the recommendation, for reasons to be recorded in writing. If the recommendation was binding, it would cease to be a recommendation and partake the character of a command which obviously is not the legislative intent. The recommendation of the IC has to be seen and understood as a recommendation, nothing more nothing less. It is entirely for the disciplinary authority to decide its next course of action upon giving the recommendation due consideration. The division bench of the Kerala High Court in ***Kerala State Electricity Board Ltd. & Ors. v. Vinukumar S.***[17], went to the extent of stating that the disciplinary authority can impose a punishment over and above what the IC had recommended by holding an independent inquiry in accordance with the principles of natural justice.

An upheaval of the above discussion is as follows:

1. The IC can recommend the employer, in cases where the misconduct of sexual harassment is proved, to take action against the respondent as per service rules. If there are no service rules, actions can be recommended as provided under Rule 9 of the PoSH Rules, such as written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments terminating the weapon from service or undergoing a counselling session or carrying out community service.
2. It is mandatory for the employer to act upon the recommendation of the IC i.e. to either accept or reject the recommendation.
3. If there are service rules of the establishment, then punishment is to be imposed in the manner as prescribed, which may involve the disciplinary authority to provide a separate hearing on the quantum/type of the punishment etc.
4. If there are no service rules and the IC has recommended a punishment, any deviation from the same with respect to reduction or waiving off the punishment, disagreement is to be expressed in writing by the employer against the IC's recommendation and ideally a hearing is to be afforded to the parties.
5. If there are no service rules and the IC has recommended a punishment, any deviation from the same with respect to imposing a punishment over and above to what the IC has recommended, another inquiry in accordance with the principles of natural justice is to be held. The scope of this inquiry is to be confined to the type/quantum of punishment and nothing else.

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15. MAT 1539 of 2023 dated 05.12.2024 (Cal. HC).
16. WPCT 137 of 2019 dated 13.03.2020 (Cal. HC).
17. 2024 LLR 263 (Ker. HC).