

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**

**ORIGINAL APPLICATION NO. 762/2015**

**DISTRICT: - SOLAPUR**

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Shri Abdul Hamid Abdul Wahab Perampalli,  
Age : 46 years, Occu. : Nil (Ex. Police Naik)  
(Buckle No.1324), Natepute Police Station,  
Malshiras, Dist. Solapur,  
R/o. Block No.29, Kavita Nagar,  
Solapur.

...APPLICANT

**V E R S U S**

- 1) The Superintendent of Police,  
Solapur (Rural), Solapur.
- 2) The Special Inspector General of Police,  
Kolhapur Range, Kolhapur,  
Having office at Tarabai Park, Kolhapur.
- 3) The Director General and  
Inspector General of Police,  
(M.S.), Mumbai,  
Having office at Old Council Hall,  
Shahid Bhagatsinh Marg,  
Mumbai-400 039.
- 4) The State of Maharashtra,  
Through Principal Secretary,  
Home Department,  
Having Office at Mantralaya,  
Mumbai - 400 032.

...RESPONDENTS

Shri A.V.Bandiwadekar advocate for the applicant.

Shri K.B.Bhise, learned Presenting Officer for the respondents.

**CORAM : Shri Justice A.H. Joshi, (Chairman)**  
**Shri P.N Dixit, Member (A)**

**Reserved on : 8<sup>th</sup> June, 2018.**

**Pronounced on : 31<sup>st</sup> July, 2018.**

**PER :**        **Shri Justice A.H. Joshi, (Chairman)**

**J U D G M E N T**

1.        Heard Shri A.V.Bandiwadekar, Advocate for the Applicant and Shri K.B.Bhise, Presenting Officer for the respondents.

2.        An enquiry was held against the applicant herein who was found guilty of the misconduct. He was served with order of dismissal dated 7<sup>th</sup> December, 2013. Applicant preferred a statutory appeal which he lost. The order of punishment under appeal has been confirmed by the appellate authority by order dated nil-04-2014, copy whereof is at Exhibit-B (paper book page 31-32). Applicant's revision application is also dismissed by order dated 12-06-2015.

3.        The misconduct for which the applicant was dealt with is reproduced in the enquiry report-cum-show cause notice, copy whereof is on record at page nos 38 to 45 of the paper book of OA.

The text of charge reads as follows:

“६) अपचारी यांचेवर ठेवण्यांत आलेला दोषारोप-

तुम्ही पोलीस नाईक/१३२४ अब्दूल हमीद अ. वहाब पेरमपल्ली,(निलंबित) ने. पोलीस मुख्यालय, सोलापूर ग्रामिण येथे कर्तव्यपालन करित आताना खालीलप्रमाणे कसूरी केलेली आहे.

पोलीस मुख्यालय, सोलापूर ग्रामिण येथे नेमणूकीस असलेल्या नवप्रविष्ट मपोशि/५३४१ शबाना नादर कोतवाल या भरती झाल्यापासून तुम्ही त्यांचेशी जवळीक साधून, वार्डेट हेतूने प्रेरित होवून, स्वतः विवाहीत असतानाही, त्यांचेबरोबर लग्न करण्यासाठी दमदाटी करून अनैतिक छळवादाचे कृत्य केलेले आहे. त्या अनुषंगाने तुमचेवर खालील प्रमाणे दोषारोप ठेवण्यांत येत आहे.

१. दिनांक ६/१०/२०११ रोजी नवप्रविष्ट मपोशि/५३४१ एस.एन. कोतवाल या पोलीस मुख्यालयाच्या आवारातून मेसकडे जात होता, त्या वेळी तुम्ही मुख्यालयाचे आवारातील किल्ल्याचे दाराजवळ त्यांना एकटे काढून, त्यांचा हात धरून त्यांना अशिल्ल शब्दात शिक्काळ करून, बेशिस्त व धृणास्पद वर्तन केलेले आहे.

२. तुम्ही मपोशि कोतवाल हिचे बरोबर वर नमूद प्रमाणे, कामाच्या ठिकाणी, कामकरी महिलेचा छळवाद करून महाराष्ट्र नागरी सेवा वर्तणूक नियम १९७९ मधील उपनियम २२-अ मधील तरतुदीचे उल्लंघन करून शासकीय नियमांची पायमल्ली केलेली आहे.

अशा प्रकारे तुम्ही एक जबाबदार पोलीस अंमलदार म्हणून कर्तव्यपालन करीत असताना, कर्तव्याच्या ठिकाणी कर्मचारी महिलेसोबत बेशिस्त, गलीच्छ व धृणास्पद गैरवर्तन करून पोलीस खात्यास काळीमा फासणारे कृत्य केलेले आहे. वर नमूद प्रमाणे दोषारोप ठेवण्यांत येवून तुमच्या विरुद्ध विभागीय चौकशील आदेशित करण्यांत येत आहे.”

(Quoted from pages 38 & 39 of Paper Book of O.A)

4. It shall be convenient to have a look at the dates and incidents, which are arranged in tabular form as follows:

Sr. No.	Date	Incident
1	06-10-2011	Most of the incidents are prior to this date, and last incident is said to have occurred on this date.
2	27-11-2012	The date on which the enquiry was ordered.
3	29-11-2012	Enquiry was initiated.
4	07-12-2012	Memorandum of charge, statement of facts/accusations, list of witnesses and copies of documents were furnished to the delinquent.
5	07-12-2012	Delinquent prayed for time for engaging defence representatives and for preparation.
6	12-12-2012	Intimation was sent to the delinquent for remaining present for enquiry.
7	18-12-2012	Enquiry proceedings commenced.
8	26-12-2012	Department's Witnesses, namely:-

		(1) Shri Prashant Niwrutti Gadsing, (2) Sau. Zubeda Saheb Kotwal, (3) Shri Nadar Hussain Kotwal, (4) Sau. Shahida Nadar Kotwal, were examined.
9	04-12-2012	Department's Witness Shri Khajnur Nadar Kotwal was examined.
10	25-01-2013	Department's Witness Sau. Savita Sunil Sarwade was examined.
11	11-02-2013	Department's Witness Sau. Shabana Nadar Kotwal was examined.
12	11-02-2013	Second defence statement of delinquent was recorded.
13	26-02-2013	Delinquent submitted list of witnesses.
14	07-03-2013	Delinquent examined 5 witnesses, namely:- (1) Shri Lala Chindhu Hemade, (2) Smt. Punam Pratapsing Rajput, (3) Smt. Bharati Saugar Dangare, (4) Shri Anwar Mohammad Sharif Shaikh and (5) Shri Shivanand Apparao Mhetre.
15	11-03-2013	Delinquent examined witness, namely, Shri S. A. Katakdhond,
16	19-03-2013	Delinquent failed to secure attendance of 7 witnesses as per his list. Enquiry Officer fixed next date on 23-03-2013.
17	23-03-2013	Delinquent did not remain present before Enquiry Officer. His further statement could not be recorded.
18	26-03-2013	By order dated 26-03-2013 delinquent was called upon to furnish his defence statement, if any, on or before 30-03-2013.

19	23-04-2013	Enquiry Officer Smt. Manisha Dubule, Sub Divisional Police Officer, Solapur Rural Division, Solapur submitted report of enquiry. Copy whereof is at page 38 to 45 of paper book.
20	07-05-2013	Date of notice of show cause of dismissal.
21	11-05-2013	Notice of show cause of dismissal was served on the delinquent.
22	11-06-2013	Delinquent submitted his reply to the show cause notice.
23	07-12-2013	Order of punishment passed.
24	10-01-2014	Delinquent preferred appeal.
25	Date is not traceable from paper book of O.A.	Applicant's appeal was dismissed
26	05-06-2014	Applicant preferred revision.
27	12-06-2015	Revision application dismissed.

5. Applicant's reply and response to the allegation/imputation of misconduct has to be noted or perceived from:-

- (a) cross examination of department witness,
- (b) defence statement to the show cause notice,
- (c) Memo of appeal, and;
- (d) memo of revision etc.

6. Applicant has not placed on record copy of memorandum of appeal and memorandum of revision. Therefore, applicant's plea/defence has to be perceived from the observations narrating

delinquent's plea in the order passed in appeal as well as the order passed in revision.

7. The charge towards which the delinquent was dealt with which is quoted in foregoing paragraph no.03. Same text is summarized in English, for convenience and ready reference as below:

*(a) Applicant tried to establish proximity with the newly recruited lady Police Constable Smt. Shabana Nadar Kotwal, buckle no.5341 with suspicious motives and though married, used said proximity to pursue and/or pressurize said LPC to marry him.*

*(b) On 06-10-2011, he caught hold of the arm of Smt. S.N. Kotwal, LPC-5341, abused her in obscene language, and he has tried to pressurize said Smt. S.N.Kotwal, LPC-5341 with ill-intention of pursuing her to agree to marry him, and committed an act of misconduct of sexual harassment of female co-worker at the place of work and committed an improper act of indiscipline.*

*(c) Applicant's conduct with Smt. S.N. Kotwal, LPC-5341 amounts to misconduct under Rule 22-A of Maharashtra Civil Services (Conduct) Rules, 1979.*

8. In this Original Application, the applicant has used as his trump card and has described in various paragraphs of O.A., his plea, summary whereof is narrated below:-

By virtue of judgment in Vishakha's case, summary of applicant's defence mandatory provisions contained in the *Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013* ("Act of 2013" for short) are to be followed and various rules by virtue of various circulars of the Government that in the matter complaint of sexual harassment, **it is mandatory to conduct enquiry through internal committee or local committee** ( as the case may be) and hence disciplinary proceedings without recourse to internal committee is not justified.

9. Sum total of the evidence adduced by the department as well as by the delinquent are akin to concurrence and are coherent, which is summarized as below:

- (1) Delinquent/applicant and Smt. S.N.Kotwal, *LPC-5341*, were intimately associated.
- (2) Delinquent had paid huge amounts, articles and amenities to the said Smt. S.N.Kotwal, *LPC-5341* and her family members.
- (3) Delinquent was regularly visiting the family and members of family of Smt. S.N. Kotwal, *LPC-5341*.
- (4) Few witnesses say about some ill-treatment by delinquent to Smt. Kotwal, *LPC-5341*.
- (5) Remaining witnesses do not support the story of ill-treatment.
- (6) Few defence witnesses have reiterated /confirmed payment of money, gift, motor cycle etc. by delinquent to Smt. Kotwal, *LPC* and intimacy between them.

10. Pertinently enough from the documents from which the defence of the accused has to be perceived which are noted in the foregoing paragraph 5, what unambiguously surfaces and emerges is as follows:

*The delinquent has not even suggested, much less, denied unambiguous language the imputation contained in charge namely:-.*

“पोलीस मुख्यालय, सोलापूर ग्रामिण येथे नेमणूकीस असलेल्या नवप्रविष्ट मपोशि/५३४१ शबाना नादर कोतवाल या भरती झाल्यापासून तुम्ही त्यांचेशी जवळीक साधून, वार्डट हेतूने प्रेरित होवून, स्वतः विवाहित असतानाही, त्यांचेबरोबर लग्न करण्यासाठी दमदाटी करून अनैतिक छळादाचे कृत्य केलेले आहे. त्या अनुषंगाने तुमचेवर खालील प्रमाणे दोषारोप ठेवण्यांत येत आहे.”

11. From the narration of the applicant's plea as can be identified from the line of cross-examination of witnesses and from statement of defence witnesses and grounds of appeal and revision as were noticed by the appellate as well as the revisional authority, it is unambiguous that the applicant did not even challenge what was imputed against him as his acts, and whatever he had done with the sole intention of pursuing Smt. S.N. Kotwal, LPC-5341 to engage herself and to agree to marry the delinquent.

12. Clear or even suggestive denial of the imputation contained in the first part of charge, is not done which ought in ordinary parlance amount to admission.



13. The approach of the delinquent in dealing with the applicant for misconduct in relation to Rule 22-A of the Maharashtra Civil Services (Conduct) Rules, 1979 is a byproduct of the main object of applicant's act of developing intimacy and proximity with said LPC Smt. Kotwal and thereby pursuing his intention to secure assent of Smt. S.N. Kotwal, LPC-5341 to marry the delinquent.

14. Applicant's thrust on Vishakha's case sounds legally perfect. However, the question involved is not act of sexual harassment of a woman at workplace, as a misconduct in isolation, rather present is a case of misconduct of immoral behavior of engaging in act of developing intimacy with fellow woman employee, paying her huge money, gifts or alms and thereby maneuvering and soliciting for second marriage of delinquent with her.

15. The evidence led by the applicant proves that even according to him, when the benefitting to LPC Smt. Kotwal by delinquent was stopped, her involvement in the delinquent appears to have got reduced and she became indifferent and her repulsion got culminated in act of evasion, by said LPC Smt. S.N.Kotwal.

16. Morality and integrity are inseparable ingredients of discipline in employment, particularly of uniformed force.

17. It would be hard to believe that one can continue to possess high integrity, yet one can depart from elementary need of high morality. Loss or departure from morality creates a locus of dereliction from integrity.

18. Sparing lakhs of rupees for benefit of an unrelated woman may be possible for a saint or in platonic situation but certainly it is not a normal conduct for a Police Naik whose salary may be barely adequate to support one family, that too if none in the family have vices. That salary can never cater to cope up with the luxury of being a magnanimous donor to support a woman who is herself well supported and may be craving for more support than what law and morality do recognize as socially worth and proper, whether legal or not.

19. In present case, the immoral approach and attitude, which is the subject matter, relates to misconduct in the employment, and could be segregated and dealt with.

20. Competent authority shall if it considers necessary still continue enquiry through local committee as contemplated by statute i.e. the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 and rules made thereunder and various Government circulars, orders etc.

21. In this peculiar situation, if the aspect of non-observance of Vishakha principle, and non-observance of mandatory provisions contained in the Act of 2013, is to weigh as a mandatory provision, comparatively weighing higher in the balance of justice, the result would be of perpetrating and accelerating technical justice. Moreover, we expect as recorded in foregoing paragraph no. 20 that competent authority/employer must refer the matter of sexual harassment to local committee at the earliest after verifying from Smt. S.N.Kotwal, her desire to pursue the cause.

22. The fact that the delinquent has not denied the allegation that he had developed intimacy with LPC Smt. Kotwal, for pursuing her to agree to marry him in second marriage being an indirect/tacit admission, all other aspects of ill-treatment and describing those as sexual harassment of woman employee at the place of work would turn out to be a separate act of misconduct.

23. Had it been that it is a case, primarily of sexual harassment, recourse to Vishakha's principle and procedure is mandatory and optionless.

24. As in the present case, relevance of Vishakha, rule in present case is an off-shoot, than the main issue.

25. The main issue ought not be diluted by using the veil of Vishakha rule, as a device or shield to distract side track main issue or charge of soliciting own second marriage by influence of monetary help and intimacy including family friendship.

26. Therefore, first charge can be separately dealt with, as has happened knowing or unknowingly in present case.

27. The findings as regards sexual harassment at the place of work whatever may be appearing in Enquiry Officer's report be regarded as per incuriam and without authority and be ignored.

28. Had it been that injustice was done to the victim and she claims that, she has been met with injustice due to failure to follow Vishakha's judgment, such objection has to be upheld by giving requisite mandatory weightage. However, application of said principle, vice-versa, for the benefit of delinquent who wants to use situation as lever to cover his misconduct which is apart from Vishakha's case needs to be discouraged and deprecated.

29. We seriously record that seeking to quash findings and an enquiry of a general misconduct by taking shelter of Vishakha's principle is promoting an act of arm-twisting of the law which ought never be endured and/or promoted. This type of circuitous

or circumventing argument is abhorred and ought never to be promoted.

30. We are, therefore, satisfied that the impugned order which is very well supported by admitted facts and additional proof by the witnesses of the department, cannot be watered down by falling pray to the intelligent legal submissions of bringing to one's own unfair motives the mandatory provisions of law. Law ought not to be allowed to be abused by an unscrupulous delinquent.

31. We are, therefore, satisfied that the Original Application has no merit and deserves to be dismissed. O.A. is hereby dismissed.

32. We cannot part away from this judgment without observing the following:

(A) The officer of the rank of Superintendent of Police ought to have fathomed the real issue involved in the matter and ought to have segregated the charge sheet as regards first charge of immoral behavior of developing intimacy with the fellow worker with an intention of engaging in second marriage and offering her gratification which was in fact proof of immoral gains and assets which could be disproportionate, which results in failure to maintain absolute morality and integrity in the work. The officer ought never hush up enquiry towards sexual harassment without reference to local committee.

(B) This case is an exhibit of total lack of proficiency in the matter of dealing with serious matters, and matters requiring serious attention and scrupulous observance of law. While dealing with the matters arising out of various disciplinary proceedings, we have noticed that requisite degree of respect to scrupulous and meticulous observance of rules and principles of natural justice is not seen.

(C) One more glaring thing seen in the present case is that if the alleged deficiencies in the process of enquiry relating to follow the "Vishakha route" is not segregated, uncompoundable and undenied misconduct may get compounded.

33. Copy of this order be sent to (1) Secretary, Home Department, Mantralaya, Mumbai and (2) Director General of Police, State of Maharashtra, Mumbai for study and issue of necessary directions to subordinate down the line, to ensure such recurrence.

34. There shall be no order as to costs.

**Sd/-**  
**(P.N.Dixit)**  
**Member (A)**

**Sd/-**  
**(A.H Joshi, J.)**  
**Chairman.**

**Dictation taken by : A.K Nair**  
**Place : Mumbai**  
**Date : 31-07-2018.**