Apparel Export Promotion Council vs A.K. Chopra on 20 January, 1999

Supreme Court of India
Apparel Export Promotion Council vs A.K. Chopra on 20 January, 1999
Author: D Anand
Bench: V.N.Khare

PETITIONER: APPAREL EXPORT PROMOTION COUNCIL Vs.

RESPONDENT: A.K. CHOPRA

DATE OF JUDGMENT: 20/01/1999
BENCH:
V.N.Khare

JUDGMENT:

DR. ANAND, CJI :

Special Leave granted. Does an action of the superior against a female employee which is against moral sanctions and does not withstand test of decency and modesty not amount to sexual harassment? Is physical contact with the female employee an essential ingredient of such a charge? Does the allegation that the superior tried to molest a female employee at the place of work, not constitute an act unbecoming of good conduct and behaviour expected from the superior? These are some of the questions besides the nature of approach expected from the law courts to cases involving sexual harassment which come to the forefront and require our consideration. Reference to the facts giving rise to the filing of the present Appeal by Special Leave at this stage is appropriate : The respondent was working as a Private Secretary to the Chairman of the Apparel Export Promotion Council, the appellant herein. It was alleged that on 12.8.1988, he tried to molest a woman employee of the Council, Miss X (name withheld by us) who was at the relevant time working as a Clerk-cum-Typist. She was not competent or trained to take dictations. The

respondent, however, insisted that she go with him to the Business Centre at Taj Palace Hotel for taking dictation from the Chairman and type out the matter. Under the pressure of the respondent, she went to take the dictation from the Chairman. While Miss X was waiting for the Director in the room, the respondent tried to sit too close to her and despite her objection did not give up his objectionable behaviour. She later on took dictation from the Director. The respondent told her to type it at the Business Centre of the Taj Palace Hotel, which is located in the Basement of the Hotel. He offered to help her so that her typing was not found fault with by the Director. He volunteered to show her the Business Centre for getting the matter typed and taking advantage of the isolated place, again tried to sit close to her and touch her despite her objections. The draft typed matter was corrected by Director (Finance) who asked Miss X to retype the same. The respondent again went with her to the Business Centre and repeated his overtures. Miss X told the respondent that she would leave the place if he continued to behave like that. The respondent did not stop. Though he went out from the Business Centre for a while, he again came back and resumed his objectionable acts. According to Miss X, the respondent had tried to molest her physically in the lift also while coming to the basement but she saved herself by pressing the emergency button, which made the door of the lift to open. On the next day, that is on 16th August, 1988 Miss X was unable to meet the Director (Personnel) for lodging her complaint against the respondent as he was busy. She succeeded in meeting him only on 17th August, 1988 and apart from narrating the whole incident to him orally submitted a written complaint also. The respondent was placed under suspension vide an order dated 18th August, 1988. A charge-sheet was served on him to which he gave a reply denying the allegations and asserting that the allegations were imaginary and motivated. Shri J.D. Giri, a Director of the Council, was appointed as an Enquiry Officer to enquire into the charges framed against the respondent. On behalf of the management with a view to prove the charges as many as six witnesses were examined including Miss X. The respondent also examined seven witnesses. The Enquiry Officer after considering the documentary and oral evidence and the circumstances of the case arrived at the conclusion that the respondent had acted against moral sanctions and that his acts against Miss X did not withstand the test of decency and modesty. He, therefore, held the charges levelled against the respondent as proved. The Enquiry Officer in his report recorded the following, amongst other, findings : 8.1. Intentions of Shri A.K. Chopra were ostensibly manifested in his actions and behaviour; Despite reprimands from Miss X he continued to act against moral sanctions; 8.2. Dictation and subsequent typing of

the matter provided Shri A.K. Chopra necessary opportunity to take Miss X to the Business Centre a secluded place. Privacy in the Business Centre room made his ulterior motive explicit and clear; 8.3. Any other conclusion on technical niceties which Shri A.K. Chopra tried to purport did not withstand the test of decency and modesty.

The Enquiry Officer concluded that Miss X was molested by the respondent at Taj Palace Hotel on 12th August, 1988 and that the respondent had tried to touch her person in the Business Centre with ulterior motives despite reprimands by her. The Disciplinary Authority agreeing with the report of the Enquiry Officer, imposed the penalty of removing him from service with immediate effect on 28th June, 1989. Aggrieved, by an order of removal from service, the respondent filed a departmental appeal before the Staff Committee of the appellant. It appears that there was some difference of opinion between the Members of the Staff Committee and the Chairman of the Staff Committee during the hearing, but before any decision could be arrived at by the Staff Committee, the respondent, on the basis of some unconfirmed minutes of the Staff Committee meeting, filed a Writ Petition in the High Court inter alia challenging his removal from service. On January 30, 1992, the Writ Petition was allowed and respondent Nos. 1 and 3, therein, were directed to act upon the decision of the Staff Committee, assuming as if the decision, as alleged, had been taken at the 34th Meeting of the Staff Committee on 25th July, 1990. The appellant challenged the judgment and order of the High Court dated 30th January, 1992, through Special Leave Petition (Civil) No.3204 of 1992 in this Court. While setting aside the judgment and order of the High Court dated 30th January, 1992, a Division Bench of this Court opined : We have been taken through the proceedings of the meeting starting from 33rd meeting upto 38th meeting by both the learned Counsel appearing for the respective parties. Considering the same it appears to us that the alleged decision taken on the said Agenda No.5 in the 33rd and 34th meeting is in dispute and final decision on the same has not yet been taken and the alleged resolution on the said Item No.5 still awaits ratification. In that view of the matter, the High Court was wrong in deciding the disputed question of fact in favour of Respondent No.1. We, therefore set aside the impugned order of the Delhi High Court as according to us the final decision on the resolution taken on the said Agenda No.5 has not yet been finally ratified. We are not inclined to consider the other questions sought to be raised in this appeal and the said questions are kept open. In view of the pendency of the matter for a long time, we direct the appellantcompany to convene the meeting of Staff Committee as early as practicable but not exceeding two months from today so that the question of ratification

of the resolution on the said Agenda No.5 taken in the meeting of the Staff Committee is finally decided.

Pursuant to the above directions, the Staff Committee met again and considered the entire issue and came to the conclusion that the order passed by the Director General terminating the services of the respondent on 28th June, 1989 was legal, proper and valid. The appeal was dismissed and the removal of the respondent for causing sexual harassment to Miss X was upheld. The respondent, thereupon, filed Writ Petition No.352 of 1995 in the High Court, challenging his removal from service as well as the decision of the Staff Committee dismissing his departmental appeal. The learned Single Judge allowing the Writ Petition opined that ... the petitioner tried to molest and not that the petitioner had in fact molested the complainant. The learned Single Judge, therefore, disposed of the Writ Petition with a direction that the respondent be reinstated in service but that he would not be entitled to receive any back wages. The appellant was directed to consider the period between the date of removal of the respondent from service and the date of reinstatement as the period spent on duty and to give him consequential promotion and all other benefits. It was, however, directed that the respondent be posted in any other office outside Delhi, at least for a period of two years. The appellant being aggrieved by the order of reinstatement filed Letters Patent Appeal No.27 of 1997 before the Division Bench of the High Court. The respondent also filed Letters Patent Appeal No.79 of 1997 claiming back wages and appropriate posting. Some of the lady employees of the appellant on coming to know about the judgment of the learned Single Judge, directing the reinstatement of the respondent, felt agitated and filed an application seeking intervention in the pending L.P.A. The Division Bench vide judgment and order dated 15th July, 1997, dismissed the L.P.A. filed by the appellant against the reinstatement of the respondent. The Division Bench agreed with the findings recorded by the learned Single Judge that the respondent had tried to molest and that he had not actually molested Miss X and that he had not managed to make the slightest physical contact with the lady and went on to hold that such an act of the respondent was not a sufficient ground for his dismissal from service. Commenting upon the evidence, the Division Bench observed:

We have been taken in detail through the evidence/deposition of Miss X. No part of that evidence discloses that A.K. Chopra even managed to make the slightest physical contact with the lady. The entire deposition relates that A.K. Chopra tried to touch her. As we have said that no attempts made, allegedly by A.K. Chopra, succeeded in making physical contact with Miss X, even in the

narrow confines of a Hotel lift. To our mind, on such evidence as that was produced before the Enquiry Officer, it is not even possible to come to a conclusion that there is an attempt to molest as there have been no physical contact. There being no physical contact between A.K. Chopra and Miss X, there cannot be any attempt to tried to molest on the part of A.K. Chopra. (Emphasis ours) Aggrieved by the judgment of the Division Bench, the employer- appellant has filed this appeal by special leave. We have heard learned counsel for the parties and perused the record. The Enquiry Officer has found the charges established against the respondent. He has concluded that the respondent was guilty of molestation and had tried to physically assault Miss X. The findings recorded by the Enquiry Officer and the Disciplinary Authority had been confirmed by the Appellate Authority (the Staff Committee) which admittedly had co-extensive powers to re-appreciate the evidence as regards the guilt as well as about the nature of punishment to be imposed on the respondent. The Staff Committee while dealing with the question of punishment has observed : Shri Chopra has also mentioned in his appeal that the penalty on him was harsh and disproportionate to the charge levelled against him. On this, the Staff Committee observed that no lenient view would be justified in a case of molestation of a woman employee when the charge was fully proved. Any lenient action in such a case would have a demoralizing effect on the working women. The Staff Committee, therefore, did not accept the plea of Shri Chopra that a lenient view be taken in his case.

The learned Single Judge, did not doubt the correctness of the occurrence. He did not disbelieve the complainant. On a re- appreciation of the evidence on the record, the learned Single Judge, however, drew his own inference and found that the respondent had tried to molest but since he had not actually molested the complainant, therefore, the action of the respondent did not warrant removal from service. The learned Single Judge while directing the reinstatement of the respondent observed : 15. In the totality of facts and circumstances, ends of justice would meet if the petitioner is reinstated in service but he would not be entitled to any back wages. The Council shall consider this period as on duty and would give him consequential promotion to the petitioner. He shall be entitled to all benefits except back wages. The petitioner shall be posted in any other office outside Delhi, at least for a period of two years." (Emphasis ours) The Division Bench of the High Court also while dismissing the L.P.A. filed by the appellant did not doubt the correctness of the occurrence. It also concluded that since the respondent had not actually molested Miss X and had only tried to assault her and had not managed to make any physical contact with her, a case of his

removal from service was not made out. Both the learned Single Judge and the Division Bench did not doubt the correctness of the following facts : 1. That Miss X was a subordinate employee while the respondent was the superior officer in the organization; 2. That Miss X was not qualified to take any dictation and had so told the respondent; 3. That the respondent pressurized her to come with him to Taj Palace Hotel to take dictation despite her protestation, with an ulterior design; 4. That the respondent taking advantage of his position, tried to molest Miss X and in spite of her protestation,continued with his activities which were against the moral sanctions and did not withstand the test of decency and modesty; 5. That the respondent tried to sit too close to Miss X with ulterior motives and all along Miss X kept reprimanding him but to no avail; 6. That the respondent was repeating his implicit unwelcome sexual advances and Miss X told him that if he continued to behave in that fashion, she would leave that place; 7. That the respondent acted in a manner which demonstrated unwelcome sexual advances, both directly and by implication; 8. That action of the respondent created an intimidated and hostile working environment in so far as Miss X is concerned.

The above facts are borne out from the evidence on the record and on the basis of these facts, the departmental authorities keeping in view the fact that the actions of the respondent were considered to be subversive of good discipline and not conducive to proper working in the appellant Organization where there were a number of female employees, took action against the respondent and removed him from service. The High Court appears to have over-looked the settled position that in departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by

the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though Judicial Review of administrative action must remain flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial Review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Haltom in Chief Constable of the North Wales Police v. Evans, (1982) 3 All ER 141, observed : The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court.

Judicial Review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court while exercising the power of Judicial Review must remain conscious of the fact that if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority. It is useful to note the following observations of this Court in Union of India v. Sardar Bahadur, (1972) 4 SCC 618 : Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court.

Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer or Competent Authority where they are not arbitrary or utterly perverse. It is appropriate to remember

that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of Legislature or Rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter of exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

In B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749, this Court opined : The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate them evidence or the nature of punishment. In a Disciplinary Enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal.

Further it was held :

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

(Emphasis supplied) Again in Government of Tamil Nadu and another v. A. Rajapandian, 1995(1) SCC 216, this Court opined : It has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal cannot sit as a court of appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. The

Administrative Tribunal, in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by re-appreciating the evidence and reaching a finding different than that of the inquiring authority. (Emphasis ours) In the established facts and circumstances of this case, we have no hesitation to hold, at the outset, that both the learned Single Judge and the Division Bench of the High Court fell into patent error in interfering with findings of fact recorded by the departmental authorities and interfering with the quantum of punishment, as if the High Court was sitting in appellate jurisdiction. From the judgments of the learned Single Judge as well as the Division Bench, it is quite obvious that the findings with regard to an unbecoming act committed by the respondent, as found by the Departmental Authorities, were not found fault with even on re-appreciation of evidence. The High Court did not find that the occurrence as alleged by the complainant had not taken place. Neither the learned Single Judge nor the Division Bench found that findings recorded by the Enquiry Officer or the Departmental Appellate Authority were either arbitrary or even perverse. As a matter of fact, the High Court found no fault whatsoever with the conduct of Enquiry. The direction of the learned Single Judge to the effect that the respondent was not entitled to back wages and was to be posted outside the city for at least two years, which was upheld by the Division Bench, itself demonstrates that the High Court believed the complainants case fully for otherwise neither the withholding of back wages nor a direction to post the respondent outside the city for at least two years was necessary. The High Court in our opinion fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct. To hold that since the respondent had not actually molested Miss X and that he had only tried to molest her and had not managed to make physical contact with her, the punishment of removal from service was not justified was erroneous. The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone. But there is another aspect of the case which is fundamental and goes to the root of the case and concerns the approach of the Court while dealing with cases of sexual harassment at the place of work of female employees. The High Court was examining disciplinary proceedings against the respondent and was not dealing with criminal trial of the respondent. The High Court

did not find that there was no evidence at all of any kind of molestation or assault on the person of Miss X. It appears that the High Court re-appreciated the evidence while exercising power of judicial review and gave meaning to the expression molestation as if it was dealing with a finding in a criminal trial. Miss X had used the expression molestation in her complaint in a general sense and during her evidence she has explained what she meant. Assuming for the sake of argument that the respondent did not manage to establish any physical contact with Miss X, though the statement of management witness Suba Singh shows that the respondent had put his hand on the hand of Miss X when he surprised them in the Business Centre, it did not mean that the respondent had not made any objectionable overtures with sexual overtones. From the entire tenor of the cross-examination to which Miss X was subjected to by the respondent, running into about 17 typed pages and containing more than one hundred & forty questions and answers in cross-examinations, it appears that the effort of respondent was only to play with the use of the expressions molestation and physical assault by her and confuse her. It was not the dictionary meaning of the word molestation or physical assault which was relevant. The statement of Miss X before the Enquiry Officer as well as in her complaint unambiguously conveyed in no uncertain terms as to what her complaint was. The entire episode reveals that the respondent had harassed, pestered and subjected Miss X, by a conduct which is against moral sanctions and which did not withstand the test of decency and modesty and which projected unwelcome sexual advances. Such an action on the part of the respondent would be squarely covered by the term sexual harassment. The following statement made by Miss X at the enquiry : When I was there in the Chairmans room I told Mr. Chopra that this was wrong and he should not do such things. He tried to persuade me by talking. ..... I tried to type the material but there were so many mistakes. He helped me in typing. There he tried to blackmail me. ..... He tried to sit with me. In between he tried to touch me..... Mr. Chopra again took me to the Business Centre. Thereafter again he tried. I told him I will go out if he does like this. Then he went out. Again he came back. In between he tried. (Emphasis supplied) unmistakably shows that the conduct of the respondent constituted an act unbecoming of good behaviour, expected from the superior officer. Repeatedly, did Miss X state before the Enquiry Officer that the respondent tried to sit close to her and touch her and that she reprimanded him by asking that he should not do these things. The statement of Miss Rama Kanwar, the management witness to the effect that when on 16th August she saw Miss X and asked her the reason for being upset, Miss X kept on weeping and told her she could not tell being

unmarried, she could not explain what had happened to her. The material on the record, thus, clearly establishes an unwelcome sexually determined behaviour on the part of the respondent against Miss X which was also an attempt to outrage her modesty. Any action or gesture, whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee, must fall under the general concept of the definition of sexual harassment. The evidence on the record clearly establishes that the respondent caused sexual harassment to Miss X, taking advantage of his superior position in the Council. Against the growing social menace of sexual harassment of women at the work place, a three Judge Bench of this Court by a rather innovative judicial law making process issued certain guidelines in Vishaka v. State of Rajasthan, (1997) 6 SCC 241, after taking note of the fact that the present civil and penal laws in the country do not adequately provide for specific protection of woman from sexual harassment at places of work and that enactment of such a legislation would take a considerable time. In Vishakas case (supra), a definition of sexual harassment was suggested. Verma, J., (as the former Chief Justice then was), speaking for the three-Judge Bench opined : 2. Definition : For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as : (a) physical contact and advances; (b) a demand or request for sexual favours; (c) sexually-coloured remarks; (d) showing pornography; (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victims employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

An analysis of the above definition, shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work

performance and had the effect of creating an intimidating or hostile working environment for her. There is no gainsaying that each incident of sexual harassment, at the place of work, results in violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty the two most precious Fundamental Rights guaranteed by the Constitution of India. As early as in 1993 at the ILO Seminar held at Manila, it was recognized that sexual harassment of woman at the work place was a form of gender discrimination against woman. In our opinion, the contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate. The message of international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) and the Beijing Declaration which directs all State parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women is loud and clear. The International Covenant on Economic, Social and Cultural Rights contains several provisions particularly important for women. Article 7 recognises her right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate working environment. These international instruments cast an obligation on the Indian State to gender sensitise its laws and the Courts are under an obligation to see that the message of the international instruments is not allowed to be drowned. This Court has in numerous cases emphasised that while discussing constitutional requirements, court and counsel must never forget the core principle embodied in the International Conventions and Instruments and as far as possible give effect to the principles contained in those international instruments. The Courts are under an obligation to give due regard to International Conventions and Norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law. [See with advantage Prem Sankar v. Delhi Administration, AIR 1980 SC 1535; Mackninnon Mackenzie and Co. v. Audrey D Costa, (1987) 2 SCC 469 JT 1987 (2) SC 34; Sheela Barse v. Secretary, Childrens Aid Society, (1987) 3 SCC 50 at p.54; Vishaka & others v. State of Rajasthan & Ors., JT 1997 (7) SC 392; Peoples Union for Civil Liberties v. Union of India & Anr., JT 1997 (2) SC 311 and D.K. Basu & Anr. v. State of West Bengal & Anr., (1997) 1 SCC 416 at p.438]. In

cases involving violation of human rights, the Courts must for ever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field. In the instant case, the High Court appears to have totally ignored the intent and content of the International Conventions and Norms while dealing with the case. The observations made by the High Court to the effect that since the respondent did not actually molest Miss X but only tried to molest her and, therefore, his removal from service was not warranted rebel against realism and lose their sanctity and credibility. In the instant case, the behaviour of respondent did not cease to be outrageous for want of an actual assault or touch by the superior officer. In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or dictionary meaning of the expression molestation. They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance. The High Court overlooked the ground realities and ignored the fact that the conduct of the respondent against his junior female employee, Miss X, was wholly against moral sanctions, decency and was offensive to her modesty. Reduction of punishment in a case like this is bound to have demoralizing effect on the women employees and is a retrograde step. There was no justification for the High Court to interfere with the punishment imposed by the departmental authorities. The act of the respondent was unbecoming of good conduct and behaviour expected from a superior officer and undoubtedly amounted to sexual harassment of Miss X and the punishment imposed by the appellant, was, thus, commensurate with the gravity of his objectionable behaviour and did not warrant any interference by the High Court in exercise of its power of judicial review. At the conclusion of the hearing, learned counsel for the respondent submitted that the respondent was repentant of his actions and that he tenders an unqualified apology and that he was willing to also go and to apologize to Miss X. We are afraid, it is too late in the day to show any sympathy to the respondent in such a case. Any lenient action in such a case is bound to have demoralizing effect on working women. Sympathy in such cases is uncalled for and mercy is misplaced. Thus, for what we have said above the impugned order of the High

Court is set aside and the punishment as imposed by the Disciplinary Authority and upheld by the Departmental Appellate Authority of removal of the respondent from service is upheld and restored. The, appeals, thus succeed and are allowed. We, however, make no order as to costs.