

**W.A. No. 01/2021**

SILAJIT GUHA

PETITIONER (S)

VERSUS

SIKKIM UNIVERSITY AND ORS.

RESPONDENT (S)

For Petitioner : Ms. Kalol Basu, Advocate.  
Mr. Suman Banerjee, Advocate.  
Mr. Ranjit Prasad, Advocate.

For Respondent nos.1 to 4 : Mr. Karma Thinlay, Sr. Advocate with  
Mr. Karma Thinlay Gyatso, Advocate.

For Respondent no.5 : Ex-Parte.

**Date: 03/07/2021**

**CORAM :**

**HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ.  
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, J.**

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**ORDER (ORAL)**

*Per J.K Maheshwari, CJ*

1. Challenging the Judgment dated 08.12.2020 passed in WP(C) No.30 of 2019 (***Silajit Guha vs. Sikkim University &Ors.***) by learned Single Bench, partly dismissing the petition deciding the issue of jurisdiction with certain observations this intra Court appeal has been preferred under Section 148 of the Sikkim High Court (Practice & Procedure) Rules, 2011.

2. The appellant who was a Professor in the department of respondent no.1, Sikkim University (hereinafter referred as the University). The respondent no.5, a student of the department made a complaint of sexual harassment against the appellant to the Internal Complaint Committee (in short ICC). The ICC conducted an inquiry and the report dated 08.06.2019 was submitted to the Executive

Council of the University i.e. respondent no.3. The appellant was served with show cause notice dated 10.06.2019 enclosing report of inquiry which was replied by him.

3. The Registrar of the University issued the office order bearing no.201/2019 dated 28.06.2019, terminating the services as per the 33<sup>rd</sup> Meeting of the Executive Council. Relying upon the inquiry report and while considering the representation of the petitioner under clause 8(6) of the University Grant Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulation, 2015 (hereinafter in short referred as UGC regulations) Council was of the opinion that the appellant is not fit to be retained in the service of the University, however, terminated his service with immediate effect. The petitioner preferred a statutory appeal on 01.07.2019 which was pending. In the meantime, the Writ petition seeking quashment of show cause notice dated 10.06.2019, the inquiry report dated 08.06.2019 and the order of termination dated 28.06.2019 and various other consequential reliefs was filed.

4. Learned single Judge observed and proceeded to decide the question of jurisdiction of ICC looking to the definition of 'workplace' specified in Section 2(o) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter to be referred as the Act). While deciding the said issue the Court proceeded to see the allegations made in the complaint statement of the complainant dated 12.05.2019 and also of the student before the ICC and observed that the definition of the 'workplace' is inclusive one. Therefore, looking to the nature of the allegations came in the statement *prima facie* ICC has jurisdiction. It is further observed in the same paragraph that the Executive Authority

before whom the appeal is pending may examine the issue of sexual harassment at 'workplace' looking to the definition of the 'workplace', in view of the Section (9) of the Act, Therefore, looking to the said contradictory observation appellant came before this Court assailing the same.

5. Learned Counsel for the appellant contends that at one place learned Single Judge proceeded to decide the scope of the definition of the 'workplace' observing that it is inclusive definition but simultaneously the same question was left open to decide by the Executive Authority in terms of Section 9 of the Act, which cannot be decided exceeding to the observations of the Court.

6. It is further urged that the premises on which observation has been made by the Court is the statement of the Complainant as well as the co-students. If it has been dealt with by the Court now on this count nothing remain to be decided by the Executive Authority, therefore, the decision taken by the Court on the point of the jurisdiction explaining the ambit and scope of workplace is not justifiable, more so the said question cannot be left open for decision by the Executive Authority.

7. After having heard learned Counsel for the appellant as well as learned Counsel for the respondent, we find much substance in the argument of the learned Counsel for the appellant. It is to observe that in the facts of the case the ambit and scope of workplace as specified in the Section 2(o) of the Act can be decided after appreciation of the evidence brought before ICC, as considered by learned Single Bench. In Case, the ambit and scope is decided by the Court then nothing remain to adjudicate for the Executive Authority in an appeal. In the said context, in our considered opinion, observation of the learned Single Judge referring section 2(o) of the Act i.e.

'workplace' its ambit and scope is not proper in particularly when the same question is permitted to be decided by the Executive Authority. Therefore, the finding on the point of jurisdiction explaining the definition of 'workplace' is inclusive one, stands set aside to such extent and the liberty is granted to the appellant to raise the said question before the Executive Authority who shall decide the same in accordance with law.

8. Learned Single Judge has further proceeded to refer UGC Regulations no.8 and held that because the appeal is pending before the Executive Authority, therefore, order of termination would be kept in abeyance and appeal shall be decided by the Authority on all issues and the questions, as raised. The said finding of learned single Judge would remain intact and it does not warrant any interference.

9. Accordingly, this appeal is hereby allowed in part, in view of the foregoing observation. It is directed that the Executive Authority shall decide the appeal as observed by the learned Single Judge without influencing with the observation recorded in the Judgment on the point of jurisdiction or on the point of ambit and scope on the definition of 'workplace'. The said issue be decided by the Executive Authority independently. The remaining part of the impugned order would continue to operate. The Executive Authority shall decide the appeal as expeditiously as possible not later than three months.

**Judge**

**Chief Justice**