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Amendments concerning GSCASH rules

Rautray & Co. <mail@rautray.com>

Wed, May 25, 2016 at 6:34 PM

To: Legal Cell <abhalcjni@gmail.com>, legalcell@mail.jnu.ac.in

Dear Sir,

Please find attached herewith scanned copy of the legal opinion dated 25.05.2016 in the above-captioned matter.

Warm Regards,

Ashok Gugliya

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2 attachments



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Date: 25.05.2016

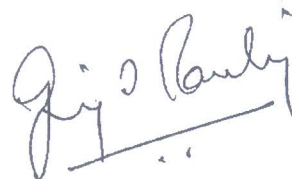
Opinion

We have been instructed by Jawaharlal Nehru University vide letter dated 19.05.2016, and our opinion has been sought with regard to the issue that whether the proposed amendments concerning GSCASH are legally in order and in the line with GSCASH norms enacted by the Hon'ble Courts.

We have also perused the proposed revision in tandem with The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013 (hereinafter referred as 'The Act') and verified that no revision is made in contravention of the statute.

FACTS:

- Gender Sensitisation Committee against Sexual Harassment (GSCASH) is the body constituted by Jawaharlal Nehru University, New Delhi (vide the Notification dated 16 April 1999). The Executive Council vide Resolution 5.1 approved the revised rules and procedure of GSCASH. The revised GSCASH rules and regulation was effective from 18.09.2015.



- The Vice-Chancellor constituted a Committee to look into the revised rules and Regulations concerning GSCASH. The members of the Committee are:-
 1. Prof. Sonajharia Minz, SC&SS, Chairperson
 2. Prof. Umesh Ashok Kadam, CHS/SSS, Member
 3. Dr. K.B. Usha, CR&CAS/SIS, Member
- The Committee was constituted to examine and recommend necessary changes vide Notification No. Acad. II/(U)/1 (10) dated April 8, 2016.

STATUTORY PROVISIONS:-

V. COMPOSITION AND PROCEDURES OF GSCASH

V.1. Composition and Infrastructure GSCASH shall have a membership of twenty-three persons, of which at **least half the members** shall be women.

V.2. The Process for Formation of GSCASH

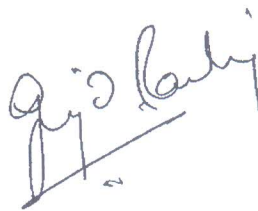
V.2 (i) The election for the specially elected representatives of students, teachers, staff, and officers (those referred to in Sections V.1 (i) – (iii) above) shall be conducted by an independent four members EC set up by GSCASH. The elections should be held simultaneously with the respective unions each year. The nomination of the elected members (teachers, staff and students) will be vested with the Vice Chancellor of the University **from among the pool of elected representatives.**

PROPOSED AMENDMENTS

1. V. COMPOSITION AND PROCEDURES OF GSCASH

V.1. Composition and Infrastructure GSCASH shall have a membership of twenty-three persons, of which at least **thirteen** members shall be women.

V.2. The Process for Formation of GSCASH

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V.2 (i) The election for the specially elected representatives of students, teachers, staff, and officers (those referred to in Sections V.1 (i) – (iii) above) shall be conducted by an independent four members **Election Commission** set up by GSCASH. The elections should be held simultaneously with the respective unions each year **and the Election Commission must ensure representation from SC/ST/OBC/Minority/Differently Abled/Third Gender**. The nomination of the elected members (teachers, staff and students) will be vested with the Vice Chancellor of the University.

2. The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013

CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE

4. (2) The internal Committee shall consist of the following members to be nominated by the employer, namely:-

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment: Provided that at least one-half of the total members so nominated shall be women.

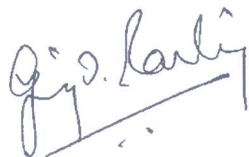
(5) Where the Presiding Officer or any Member of the internal Committee:-

(a) contravenes the provisions of section 16; or

b) has been convicted for an offence or an inquiry into an offence under any law for that time being in force is pending against him: or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.



Clause 10: Conciliation

(1) The Internal Committee or as the case may be, the Local committee may, before initiating an enquiry under Section 11 and at the request of the aggrieved women takes step to settle the matter between her and the respondent through conciliation.

(2) Where a settlement has been arrived at under subsection (1) the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

(4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

Clause 26: Penalty for noncompliance with provisions of Act

(1) Where the employer fails to:-

(a) Constitute an internal Committee under sub-section(1) of section 4;

(b) take action under sections 13, 14 and 22; and

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder.

he shall be punishable with fine which may extend to fifty thousand rupees.

(2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to:-

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(i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

(ii) cancellation of his license or withdrawal or non-renewal or approval or cancellation of the registration, as the case may be, by the Government or Local authority required for carrying on his business or activity.

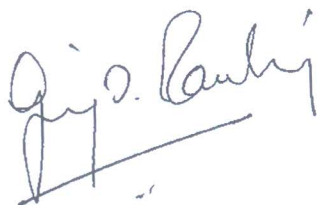
3. The written guidelines for constituting the Election Commission and for the conduct of elections of GSCASH members may consider the following:

- a. Independent four member- Election Commission to be set up by GSCASH- The associations/ unions after approval of the respective general bodies may forward the names to GSCASH for constituting the Election Commission.
- b. One member from GSCASH must be nominated as Observer to oversee the conduct and proceedings of election for GSCASH members.
- c. Representation of every section SC/ST/OBC/Minority/Differently Abled/Third Gender must be ensured.
- d. An NGO with religious and /or political affiliation will not be eligible for empanelment.

ANALYSIS & CONCLUSION

A. With respect to point no. 1 the above stated amendments recommended by the Committee can be made and there is no embargo on this.

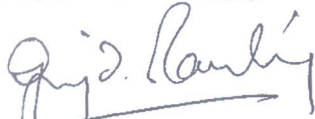
B. By adding definitions mentioned under The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013 in the revised draft report



of committee about Rules and Procedures of GSCASH there is no ambiguity or scope for misinterpretation of the terms of the Rules.

C. With respect to the recommendation no. 3 for constituting the Election Commission it is noted that 'The Act' does not prescribe for election and only prescribe for nomination of the members of ICC. GSCASH rules in its wisdom has chosen to create a pool of elected members from whom the Vice- chancellor would nominate the members for inclusion in Inquiry Committee. Therefore, the guidelines for constituting of Election Committee would not contravene with any provisions of 'The Act' and the suggested guidelines, therefore, be considered for approval by the Executive Council.

It is opined accordingly.



Ganay J. Rautray . .

Advocate