

Delhi High Court

Tejinder Kaur vs Union Of India & Ors. on 12 December, 2017

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 12.12.2017

+ W.P.(C) 5928/2016

TEJINDER KAUR

..... Petitioner

Versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Petitioner in person.

For the Respondents : Mrs Bharathi Raju, CGSC for R-1/UOI.

Mr S.M. Srivastava, Mr Sanjiv Joshi, Ms

Meenakshi for Respondent No. 2/NIPCCI.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, inter alia, impugning a "status report" dated 08.09.2015 (hereafter the impugned report) prepared by respondent no.5, inter alia, holding that the complaint of sexual harassment made by one Ms X (the real name is not mentioned to avoid any ignominy to the person concerned) was time barred.

2. The petitioner - who is the Presiding Officer of the Internal Complaints Committee (hereafter ICC) of respondent no.2 at the Headquarters at Delhi - claims that the impugned report is wholly contrary to the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereafter the Act).

According to her, the said report could only have been generated by ICC constituted under Section 4 of the Act.

3. It is also the petitioners grievance that the provisions of the Act are not being followed by respondent no.2 inasmuch as respondent no.2 has consistently failed to display at a conspicuous place the forms and the penal consequences of sexual harassment as well as the order(s) constituting the ICC. The petitioner also claims that the act of respondent no.5 in submitting the impugned report rejecting the complaint of Ms X as time barred is malafide and was submitted with the sole object of protecting the officer (who was at the material time holding the post of Regional Director at Indore) accused of harassing Ms X.

4. Briefly stated, the relevant facts necessary to address the controversy are as under:-

5. Respondent no.2, National Institute of Public Co-operation & Child Development (hereafter the Institute) is an autonomous organisation, which is administratively controlled by the Ministry of Women and Child Development (hereafter MWCD), Government of India. The Minister Incharge of MWCD is the ex officio Chairman of the Executive Council and the President of the Governing Body of the Institute.

6. The Institute has constituted ICCs at its Headquarters in Delhi as well as at the four regional centres at Bengaluru, Guwahati, Indore and Lucknow.

7. One Ms X who was engaged as a resource person for occasional work with the Regional Centre of the Institute at Indore sent an email dated 16.07.2015 complaining against the then Regional Director (Indore) of the Institute.

8. The said complaint was forwarded to respondent no.4 (Director of the Institute) for appropriate action and to furnish a status report / comments to respondent no.1 (MWCD). The said complaint was thereafter forwarded to respondent no.5.

9. Respondent no.5 sought the comments of the officer accused and thereafter forwarded his report - the impugned report - inter alia stating that the complaint was time barred and no further action was taken pursuant to the said complaint.

10. The petitioner who appeared in person contended that the procedure adopted in dealing with the complaint of sexual harassment was wholly contrary to the provisions of the Act. She pointed out that in terms of second proviso to Section 9(1) of the Act, the ICC was empowered to extend the period of limitation. Thus, respondent no. 5 could not have rejected the complaint of Ms X as time barred.

11. Mrs Bharathi Raju, learned counsel appearing for the Institute submitted that the Central Civil Services (Classification, Control and Appeal) Rules, 1965 were applicable to the Institute. She contended that under Rule 14 of the CCS(CCA) Rules, 1965, the Disciplinary Authority was required to form an opinion as to whether there were any grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government Servant, with a view to proceed with the disciplinary proceedings. She submitted that in cases of complaints of sexual harassment, the ICC would necessarily have to be the Inquiring Authority.

However, in the present case, the Disciplinary Authority had not formed any opinion to commence the disciplinary proceedings and the report submitted by respondent no.5 was only a preliminary report to aid the Disciplinary Authority in forming an opinion as to whether there were grounds to inquire into the matter.

12. The learned counsel for the respondents also earnestly contended that the present petition was not maintainable as the petitioner was not an "aggrieved woman" within the meaning of Section 2(a) of the Act and, therefore, had no locus to file the present petition.

13. Section 9(1) of the Act provides for making a complaint of sexual harassment at workplace to the ICC or the Local Committee. Section 10(1) of the Act empowers the ICC or the Local Committee to take steps to settle the matter between the aggrieved woman and the respondent through conciliation prior to commencing an inquiry.

14. Admittedly, in the present case, no complaint was made to the ICC by Ms X. There is also no dispute that ICC would be the inquiring authority in cases of complaints of sexual harassment. The only question to be addressed is whether it is necessary for the ICC to also act as the initial fact finding authority.

15. At this stage, it is relevant to refer to Rule 14 of the CCS(CCA) Rules, 1965, which reads as under:-

"14. PROCEDURE FOR IMPOSING MAJOR PENALTIES :

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the complaints Committee established in each ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules."

16. Concededly, the complaints of sexual harassment and disciplinary proceedings pursuant thereto have to be conducted in the manner as specified under the CCS(CCA) Rules, 1965. Insofar as the Inquiring Authority is concerned, there is no dispute that the inquiry has to be conducted by the ICC. However, there is no specific provision in the CCS(CCA) Rules, 1965 that indicates the manner as to how the Disciplinary Authority has to proceed on receipt of the complaint.

17. The opening sentence of Rule 14(2) of the CCS(CCA) Rules, 1965 makes it clear that an inquiry would commence only when the Disciplinary Authority is of the opinion that there are grounds to enquire into the matter.

Thus, if the Disciplinary Authority is of the opinion that no inquiry is warranted, the question of referring the matter to the ICC for inquiry would not arise.

18. In order to form an opinion whether there are grounds to inquire into the matter, the Disciplinary Authority would necessarily have to examine the material produced and may also require to conduct a preliminary investigation. The limited controversy is whether it is necessary for the Disciplinary Authority to seek assistance of the ICC for forming such opinion.

19. At this stage, it would be relevant to refer to the guide on "Steps for conduct of Inquiry in complaints of Sexual Harassment", which was circulated under the cover of the Office Memorandum bearing F. No. 11013/2/2014-Estt (A-III) dated 16.07.2015 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions Department of Personnel & Training. Paragraphs 6 to 13 of the said guide are relevant and are set out below:-

"Complaints Committee to be Inquiring Authority

6. As per Proviso to Rule 14(2) of CCS (CCA) Rules, 1965, in case of complaints of sexual harassment, the Complaints Committee set up in each Ministry or Department etc. for inquiring into such complaints shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules. Complaints Committee, unless a separate procedure has been prescribed, shall hold the inquiry as far as practicable in accordance with the procedure laid down in the Rule 14.

Need for investigation

7. The Complaints Committees may act on complaints of sexual harassment when they receive them directly or through administrative authorities etc, or when they take cognizance of the same suo-moto. As per Section 9(1) of the Act, the aggrieved woman or complainant is required to make a complaint within three months of the incident and in case there has been a series of incidents, three months of the last incident. The Complaints Committee may however extend the time limit for reasons to be recorded in writing, if it is satisfied that the circumstances were such which prevented the complainant from filing a complaint within the stipulated period.

8. As mentioned above, the complaints of sexual harassment are required to be handled by Complaints Committee. On receipt of a complaint, facts of the allegation are required to be verified. This is called preliminary enquiry/fact finding enquiry or investigation. The Complaints Committee conducts the investigation. They may then try to ascertain the truth of the allegations by collecting the documentary evidence as well as recording statements of any possible witnesses including the complainant. If it becomes necessary to issue a Charge Sheet, disciplinary authority relies on the investigation for drafting the imputations, as well as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation.

Dual Role

9. In the light of the Proviso to the Rule 14 (2) mentioned above, the Complaints Committee would normally be involved at two stages. The first stage is investigation already discussed in the preceding para. The second stage is when they act as Inquiring Authority. It is necessary that the two roles are clearly understood and the inquiry is conducted as far as practicable as per Rule 14 of CCS (CCA) Rules, 1965. Failure to observe the procedure may result in the inquiry getting vitiated.

10. As the Complaints Committees also act as Inquiring Authority in terms of Rule 14(2) mentioned above, care has to be taken that at the investigation stage that impartiality is maintained. Any failure on this account may invite allegations of bias when conducting the inquiry and may result in the inquiry getting vitiated. As per the instructions, when allegations of bias are received against an Inquiring Authority, such Inquiring Authority is required to stay the inquiry till the Disciplinary Authority takes a decision on the allegations of bias. Further, if allegations of bias are established against one member of the Committee on this basis, that Committee may not be allowed to conduct the inquiry.

11. In view of the above, the Complaints Committee when investigating the allegations should make recommendations on whether there is a prima facie substance in the allegations which calls for conducting a formal inquiry.

They should avoid making any judgmental recommendations or expressing views which may be construed to have prejudiced their views while conducting such inquiry.

Decision to issue Charge sheet, and conducting Inquiry

12. On receipt of the Investigation Report, the Disciplinary Authority should examine the report with a view to see as to whether a formal Charge Sheet needs to be issued to the Charged Officer. As per Rule 14(3), Charge Sheet is to be drawn by or on behalf of the Disciplinary Authority. In case the Disciplinary Authority decides on that course, the Charged Officer should be given an opportunity of replying to the Charge sheet. As per Rule 14(5), a decision on conducting the inquiry has to be taken after consideration of the reply of the charged officer.

13. If the Charged Officer admits the charges clearly and unconditionally, there will be no need for a formal inquiry against him and further action may be taken as per Rule 15 of the CCS (CCA) Rules."

20. It is apparent from the above that ICC has a dual role. It has to act as an investigation agency in the first stage and as an Inquiring Authority, if the Disciplinary Authority is of the opinion that disciplinary proceedings be initiated against the officer accused. However, it is also necessary to

bear in mind that the above steps are only to serve as a guide and does not replace the statutory provisions of the Act or the CCS(CCA) Rules, 1965.

21. Having stated the above, this court is of the view that ICC having been specifically set up for examining the complaints of sexual harassment, it would have been apposite to refer the complaint of Ms X to the concerned ICC for a preliminary investigation rather than respondent no.5.

22. It is also apparent that the failure to refer the complaint of Ms X to the concerned ICC was not in accordance with the guide on "Steps for conduct of Inquiry in complaints of Sexual Harassment" circulated under the aforementioned OM dated 16.07.2015.

23. Before proceeding further, it would be relevant to examine the complaint made by Ms X. She stated that she was associated with the accused officer since 2012 and he had made her apply for various posts that were advertised and had assured her that she would be selected. She alleges that "Slowly he started getting personal and exclaimed how much he cares for me. Emotionally I was assaulted for the same till Feb 2015".

24. As is apparent, the complaint does not contain any specifics. Ms. X has also not made any grievance of her complaint not being entertained; she has taken no steps to pursue the matter. Apparently, Ms X was last hired as a resource person at the Regional Centre of the Institute at Indore in 2012. The officer accused has also unequivocally stated that Ms X last visited the centre in 2013. Thus, indisputably, the complaint made by Ms X would be highly belated.

25. Undoubtedly, in terms of the second proviso to Section 9(1) of the Act, the ICC or the Local Committee may for the reasons recorded in writing, extend the time limit, if it is satisfied that there were circumstances, which prevented the woman from filing a complaint. However, such period can only be extended for a further period of three months. Thus, notwithstanding that the complaint ought to have been forwarded to the concerned ICC, there does not appear to be any infirmity with the view that the complaint was belated.

26. Clearly, there is no provision under the Act which would entitle the petitioner to pursue the complaint on behalf of Ms X.

27. In view of the above, this Court is of the view that no interference with the impugned report would be warranted at this stage.

28. The petitioner had also filed an application (CM No. 33866/2016) staying the operation of the decision of the Secretary (WCD) cum Vice- Chairperson of the Institute dated 09.09.2016 transferring the petitioner out of Delhi to the Regional Centre at Indore. The petitioner has contended that the said decision has been taken to frustrate the interim orders passed by this Court on 18.07.2016, whereby the respondents were restrained from changing the constitution of the ICC. The petitioner has also sought to challenge her transfer orders on various other grounds. Clearly, the petitioner cannot claim any right to continue in Delhi only because the complaint of Ms X was not referred to the ICC. Even if, it is assumed that the Institute has not been following the provisions of

the Act in its letter and spirit, the petitioner cannot insist on being continued to be posted in Delhi. This Court is refraining from making any further observations with regard to the averments made by the petitioner in this regard and it would be open for the petitioner to pursue her remedies with regard to the service matter with the Central Administrative Tribunal.

29. The petition is accordingly dismissed. All interim orders are vacated and the pending applications are disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J DECEMBER 12, 2017 RK