
(2017) 02 DEL CK 0055
In the Delhi High Court
Case No : W.P.(C) No. 7371 of 2016

Ashok Kumar Singh

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)
Act, 2013 — Section 13(3)

Citation : (2017) 2 CLR 264 : (2017) 153 FLR 152 : (2017) LabLR 366 : (2017) 2 SCT 33

Hon'ble Judges : Valmiki J. Mehta, J.

Bench : Single Bench

Advocate : Ms. Vibha Mahajan Seth, Advocate, for the Respondent Nos. 3 to 5.; Rajiv B. Samaiyar, Advocate, for the Respondent No. 2.; M.J.S. Rupal and Ms. Simran Jeet, Advocates, for the Respondent No. 1/University of Delhi.; Amit Gupta and Mr. Anant A. Pavgi and Ms. Mansi Kukreja, Advocates, for the Appellant

Final Decision : Disposed Off

Judgement

Valmiki J. Mehta, J. (Oral) - By this writ petition under Article 226 of the Constitution of India the petitioner impugns the reports dated 30.6.2015 & 12.2.2016 submitted by the Internal Complaints Committee ('ICC') of the respondent no. 2/Dayal Singh Evening College. The ICC was constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'the Act'), on account of complaints against the petitioner of the respondent nos. 3 to 5 in this writ petition.

2. On behalf of the petitioner these reports are challenged on two counts. First count is that the report only gives a prima facie conclusion of the complaints having substance without the report actually giving a definite conclusion and holding the charges against the petitioner to be proved, and which aspects are very much required under Section 13(3) of the Act. The second count is that the

two reports dated 30.6.2015 as regards the complaints of respondent nos. 4 and 5, in such inquiry proceedings, the petitioner was not allowed to lead evidence in support of his defence. Also, it is argued that in none of the three inquiry committee proceedings, which resulted in the two reports dated 30.6.2015 and the third report dated 12.2.2016, the petitioner was given an opportunity to cross-examine the witnesses. Accordingly, for all such reasons it is argued that the Inquiry Reports are bad being violative of principles of natural justice, and thus have to be set aside.

3. On behalf of the respondent nos. 3 to 5 the contentions urged of the petitioner as regards denial of opportunity to the petitioner to lead evidence or denying opportunity to cross-examine witness, is emphatically disputed and denied.

4. In order to appreciate the first contention urged on behalf of the petitioner reference will have to be made to Section 2(n), Section 11, Section 13 and Section 18 of the Act and which Sections read as under:-

"Section 2(n). "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:-

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

Section 11. Inquiry into complaint.-(1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make

representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section(1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:--

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents; and
- (c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

Section 13. Inquiry report. (1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be---

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

Section 18. Appeal (1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or subsection (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations."

5. A reading of the aforesaid Sections show that whenever there is a complaint of sexual harassment under the Act an inquiry is conducted under Section 11 of the Act. This inquiry is of either an ICC or of the District Officer as provided under the Act. In the present case, it is not in dispute that we are dealing with an ICC which has been constituted by the respondent no. 2/Dayal Singh Evening College/ employer.

6. After a report is prepared under Section 11 of the Act, and for which purpose the ICC is empowered under sub-section (3) of Section 11 to enforce the attendance of any person for deposition etc, this Inquiry Report containing the findings is submitted to the employer under Section 13(1) of the Act. Under sub-section (3) of Section 13, the report is then put up in accordance with the service rules before the employer to take action for sexual harassment as a misconduct in accordance with the service rules i.e on the ICC arriving at a conclusion that the charges against the alleged guilty persons are proved, then, the employer takes action on the basis of the conclusions and findings of the ICC which gives the Inquiry Report under Section 11 of the Act. Really therefore the Inquiry Report of the ICC under Section 13(3) will be submitted to the disciplinary authority of the employer, and which disciplinary authority will take appropriate action under service rules, after following principles of natural justice, for deciding as to whether any punishment has to be imposed on the guilty person, and if so what punishment. The decision of the disciplinary authority under Section 13(3) of the Act is subject to appeal under Section 18 of the Act as provided under sub-section (1) of Section 18. Of course, it is seen that under sub-section(1) of Section 18 the expression `recommendations' is found but that expression is used with action which is to be taken under Section 13(3)(i)

and (ii) and therefore these `recommendations" are actually nothing but the order of the disciplinary authority which decides to impose punishment on the guilty person.

7. At this stage to decide the validity of the challenge to the three reports submitted by the ICC, it will be relevant to refer to operative portions of the two reports dated 30.6.2015 and one dated 12.2.2016, and which reports have been submitted on account of complaints of respondent nos.3 to 5. The relevant portions of the three reports read as under:-

"1. Report dated 30.6.2015

D. Concluding Observations and Recommendations of the Committee

After deliberating on the above aspects the committee is of the considered opinion that prima facie, the complaint Dr. Brati Biswas has some substance. An appropriate action, if any, may be taken.

Dayal Singh College is an educational institution where students, teachers and other staff come from different social, cultural and academic backgrounds and work together. The objective is not only to provide meaningful and relevant learning experience but also an amicable environment full of trust, safety and security to all the concerned parties be it students, teachers or office staff.

sd/-

sd/-

Dr. Poonam Gupta

Shri C.S. Pant

Presiding Officer

Member

sd/-

sd/-

Ms. Manju

Mrs. Nargis Raj Kumar

Member

Member"

2. Report dated 30.6.2015

D. Concluding Observations and Recommendations of the Committee:

After deliberating on the above aspects the committee is of the considered opinion that prima facie the complaint of Mrs. Madhuri Chawla has some

substance. An appropriate action, if any, may be taken.

Dayal Singh College is an educational institution where students, teachers and other staff come from different social, cultural and academic backgrounds and work together. Therefore, the objective is not only to provide meaningful and relevant learning experience but also an amicable environment full of trust, safety and security to all the concerned parties be it students, teachers or office staff.

sd/-

sd/-

Dr. Poonam Gupta

Shri C.S. Pant

Presiding Officer

Member

sd/-

sd/-

Ms. Manju

Mrs. Nargis Raj Kumar

Member

Member"

3. Report dated 12.2.2016

C. Concluding Observations and Recommendations of the Committee:

Irrespective of the time it takes to come forward the allegations of Dr. Sumita Puri remain serious, the consequences for the college reputation are potential damaging. It is unfortunate that the work environment has worsened in the college and has become hostile which majority of the witnesses have supported. There is an absence of mutual trust and harmony among teachers. Therefore after due deliberations and careful discussion, the committee is of the considered opinion that the complaint of Dr. Sumita Puri has some merit and appropriate action (if any) may be taken by college authorities.

The Honorable Supreme Court in the case of Vishakha Judgment has already held that each incident of sexual harassment of women at work place results in violation of the fundamental rights of Gender Equality and the Right to Life and Liberty. Gender Equality included protection from sexual harassment and right to work with dignity.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and

Redressal) Act 2013 also states that every employer shall provide a safe working environment at the work place which shall include safety from the persons coming into contact at the work-place. Keeping in view the safety and security at work place, the committee also recommends the following:

- a) CCTV cameras should be installed at all public places including staff room, seminar room, library and classrooms.
- b) `Code of Conduct" should be strictly implemented in the college.
- c) As the college runs into evening hours, proper lighting arrangements should be made at all places including grounds, corridors, parking, pathways and so on.
- d) Counselling sessions/orientation programmes/workshops/seminars should be organized on regular basis for staff and students for harmonizing the relationship"s and improving security and safety standards in the college.

Note:

- a) 12 Statements of witnesses of Dr. Sumita Puri are enclosed as Annexure 13
- b) 12 Statements of witnesses of Shri A.K. Singh are enclosed as Annexure 14

sd/-

sd/-

Dr. Poonam Gupta

Shri C.S. Pant

Presiding Officer

Member

sd/-

sd/-

Ms. Manju

Mrs. Nargis Raj Kumar

Member

Member"

(underlining added)

8. A reading of the operative portions of the two reports dated 30.6.2015 shows that ICC holds `prima facie" i.e the conclusions which have been arrived at, are not final but only prima facie conclusions. Also, there is no final conclusion of guilt being found of the petitioner for his being indicted as such, inasmuch as, the expression used is `has some substance" i.e there is no definitive and final conclusion of guilt of the petitioner. In the report dated 12.2.2016 which has

been submitted on account of the complaint filed by the respondent no.3, it is seen that once again it is said that the complaint of Dr. Sumita Puri "has some substance" i.e. once again there is no definitive conclusion arrived at by the disciplinary authority. Section 13(1) of the Act uses the expression "findings" and thereafter subsection (3) of the Act uses the expressions "conclusion" and "has been proved". Therefore, the findings of the ICC must also be along with a definitive conclusion and by holding that the facts alleged in the complaint have been proved against the guilty person, being the petitioner in the present case. As against the requirement of the Inquiry Report which has to be given in terms of Section 13 of the Act and its sub-sections (1) and (3), the Inquiry Reports in the present case no doubt contains the findings, but yet, no definitive conclusion is found of guilt of the petitioner for his being indicted and nor it is found that the ICC/inquiry authority holds that the facts as stated in the complaint have been proved. Therefore, all the three reports; two dated 30.6.2015 and the third dated 12.2.2016, fall foul of the requirements of subsection (3) of Section 13 of the Act because there is no definitive conclusion of petitioner being held guilty and also that there is no finding that the charges against the petitioner have been proved. The operative portions of the reports, therefore, being in violation of subsection (3) of Section 13 of the Act are liable to be set aside, and accordingly, set aside. The issue then is that what follows.

9. It is seen in the present case that the ICC gave its three reports; two dated 30.6.2015 and third dated 12.2.2016, after following a particular procedure. Once, a procedure is followed, and only the operative portion of the report falls foul of the requirements in terms of sub-section (3) of Section 13 of the Act, in my opinion, though a fresh report will have to be given by the ICC, but ICC is at complete liberty to rely upon and arrive at the same conclusions in terms of reasoning and discussion given in reports dated 30.6.2015 and 12.2.2016, if the ICC so wants to do so. It also needs to be observed that the three reports are detailed reports referring to the complaints, response of the petitioner, details of the proceedings in the various hearings and thereafter the findings of the ICC which are stated in paras 21 and 22 of the reports dated 30.6.2015 and 12.2.2016 with respect to complaints of respondent nos. 3 to 5. Of course, I may hasten to add that the reports have to be read as a whole because findings which are given necessarily have co-relation to all other aspects and facts which are stated in the earlier portions of the reports.

10. In view of the above discussion, since the two reports dated 30.6.2015, given on account of complaints of respondent nos.4 and 5, and the report dated 12.2.2016 on account of complaint of respondent no.3, being not in accordance so far as its operative portions are concerned as required by Section 13(3) of the Act, the same are accordingly set aside and liberty given to the ICC to prepare and submit fresh reports, and for which purpose it is clarified that ICC need not have any fresh proceedings conducted and ICC will proceed ahead on the basis of the existing record of the ICC in the three complaints of the respondent nos. 3 to 5.

11. I cannot agree with the second argument urged on behalf of the petitioner that Inquiry Reports are to be faulted on account of petitioner being not granted sufficient opportunities either for cross-examination of witnesses or leading of evidence of the petitioner etc etc., inasmuch as, assuming for the sake of arguments if arguments are proved, but which arguments are emphatically denied by the respondent nos.3 to 5, yet, assuming that there are valid grievances of the petitioner, such grievances will have to be addressed, not to this Court, but to the disciplinary authority to whom the Inquiry Reports will be submitted under Section 13(3) of the Act, and which disciplinary authority as per the service rules will necessarily hear the petitioner before passing any order of punishment against the petitioner, assuming that the Inquiry Reports which will now be given would in its operative portions, after giving findings, indict the petitioner on the complaints of the respondent nos.3 to 5. At this stage, this Court cannot enter into the controversy of principles of natural justice having not been complied with or not because this issue will only arise if the disciplinary authority under Section 13(3) of the Act accepts the reports of the ICC after considering the objections of the petitioner. Also, as already noted above, the order of the disciplinary authority which would be passed under Section 13(3) of the Act would be subject to appeal under Section 18 of the Act.

12. In view of the long pendency of the subject proceedings, and which neither helps the petitioner nor the respondent nos.3 to 5, the respondent no.2/college is directed to ensure that proceedings before the ICC, including the submitting of the reports are expedited, and all such steps be taken so that there is no delay of giving of the reports by the ICC. I may note that since I have set aside the two reports dated 30.6.2015 and 12.2.2016, any consequential action which may be taken by the respondent no.2/college on the basis of these reports would also lapse.

13. Writ petition is accordingly disposed of in terms of aforesaid observations with the direction to the ICC to give fresh Inquiry Reports on the subject complaints of the respondent nos.3 to 5 of this writ petition. Parties are left to bear their own costs.