

(2018) 09 DEL CK 0243

In the Delhi High Court

Case No : Civil Writ Petition No.8923 Of 2018 & C.M.Nos.34331, 34332, 34333
Of 2018

Dr. Tejinder Kaur

APPELLANT

Vs

Uoi & Anr

RESPONDENT

Date of Decision : 19-09-2018

Acts Referred:

Constitution of India, 1950 — Article 226
Sexual Harassment of Women at Work Place (Prevention, Prohibition & Redressal) Act,
2013 — Section 4(5)

Citation : (2018) 09 DEL CK 0243

Hon'ble Judges : Hima Kohli, J; Rekha Palli, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

REKHA PALLI, J

1. The present petition under Article 226 of the Constitution of India inter alia impugns an order dated 25.07.2018,

passed by the Tribunal partly allowing O.A. No.1110/2018 filed by the petitioner, by directing that she be paid salary

only w.e.f. 01.05.2017 to 12.12.2017 and that her absence from 12.12.2017, be treated as unauthorized absence, which

the respondents would be at liberty to deal with in accordance with law. The petitioner has also sought quashing of

order dated 25.05.2017, passed by the respondent no.2 directing its Regional Centre, Indore not to release any salary

to her in view of her unauthorized absence from 10.09.2016. Â

2. The facts as noted by the Tribunal are that the petitioner has been working in the respondent no.2/ National Institute

of Public Cooperation and Child Development since 27.09.1987. On her selection on a contract basis, the petitioner

joined the post of Joint Director on 10.06.2013. It may be noted that the respondent no.2/Institute has its headquarters

at New Delhi and has four regional centres at Bengaluru, Indore, Lucknow, and Gauhati, each of which is headed by a

Regional Director in the grade of Joint Director.

3. While the petitioner was posted at Delhi, respondent no.1/Secretary, Ministry of Women and Child Development,

who is also the Chairperson of the respondent No.2, received a complaint of sexual harassment from an employee.

Instead of referring the said complaint to the Internal Complaints Committee (in short ICC) of the respondent no.2

constituted under the "Sexual Harassment of Women at Work Place (Prevention, Prohibition & Redressal) Act,

2013 (here in after referred to as "the Act"), of which the petitioner was the Presiding Officer, the same was

considered by the Secretary himself. Feeling aggrieved on being bypassed like this, the petitioner approached this

Court by way of a writ petition [W.P.(C) No.5928/2016]. This Court while issuing notice in the aforesaid petition vide

its order dated 18.07.2016, restrained the respondents from reconstituting the ICC, in contravention of Section 4(5) of

the Act. Â

4. While the petitioner's aforesaid writ petition was pending before this Court, the respondents passed an order

dated 09.09.2016 transferring her from Delhi to respondent no. 2's Regional Centre at Indore and relieved her

from her post in Delhi on the very same date itself. Aggrieved by her transfer order dated 09.09.2016, the petitioner

filed a stay application in the aforesaid pending writ petition. The said application came up for hearing on 16.09.2016

and the learned Single Judge after considering the rival contentions of the parties, directed the respondents to not

enforce the transfer order dated 09.09.2016. However, it was clarified that in

view of the respondentsâ?? contention

that the petitioner stood relieved from her post in Delhi on 09.09.2016, she would not be required to report either at

the Delhi office or the Indore office and that her absence shall not be treated as absence without leave. Â

5. It appears that since the petitioner was not granted pay and allowances after 09.09.2016, she filed a contempt

petition, registered as Contempt Petition No.1141/2016 before this Court seeking inter alia release of her salary. As the

said relief was not maintainable in a contempt petition, the petitioner filed an application (CM No.44707/2016) in the

writ petition itself. On 22.12.2016, the learned Single Judge while noticing that the petitioner had already approached

the Tribunal by way of filing O.A. No.3582/2016 as the issue of transfer was a service matter and was subject to the

jurisdiction of the Central Administrative Tribunal, directed that the interim order granted to the petitioner by this Court

vide order dated 16.09.2016, would be subject to further orders that may be passed by the Tribunal in the aforesaid

Original Application. It was, however, clarified that till the order dated 16.09.2016 was modified or varied by the

Tribunal, the petitioner would be entitled to receive her salary from the respondents and it was open to them to decide

whether the same would be disbursed from the Indore Office or the Delhi Office. 6.Although, in terms of the order

passed by the learned Single Judge, the respondents released the salary to the petitioner by treating her as if she was

posted in Indore, she was not satisfied with the said order as she claimed that she was entitled to be paid HRA at the

rate of 30% as was applicable to Delhi, instead of HRA at the rate of 20%, as was applicable to Indore, during the

period when she was continuing to stay in Delhi. As noted hereinabove, thereafter, the respondents passed the order

dated 25.05.2017, stopping the payment of salary to the petitioner. Â

7. The petitioner made several representations seeking recall of the order dated

25.05.2017 as also release of her salary

but the same remained unanswered. At that stage, W.P.(C) No.5928/2016 filed by the petitioner was taken up for

hearing and vide order dated 12.12.2017 the same was dismissed with the following observations:-

â??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.â??

8. It may be noted that once the captioned writ petition was dismissed, the interim order dated 16.09.2017 whereunder

the petitioner had been granted interim protection from joining her post at Indore, also stood vacated. It also emerges

from the record that immediately upon the dismissal of the writ petition, the respondents issued an order dated

21.12.2017, once again directing the petitioner to assume her duties at the Regional Centre, Indore. Despite the stay on

the transfer order dated 09.09.2016 being lifted and issuance of another order dated 21.12.2017, directing her to

assume her duties in the Indore Office, the petitioner still did not report to the said Office and instead, chose to file

O.A. No.1110/2018 seeking inter alia, release of her pay and arrears of her salary w.e.f. 01.05.2017 along with

compound interest. Â

9. The Tribunal after considering the rival contentions of the parties, partly allowed the aforesaid Original Application

filed by the petitioner by holding that even though she had not worked from 10.09.2016 to 12.12.2017, in view of the

interim protection granted to her whereunder she was neither required to report to the Delhi Office nor the Indore

Office, there could be no doubt that she had to be paid her salary till 12.12.2017, the date when her writ petition was

dismissed and the interim protection granted to her stood vacated.

However, the Tribunal rejected the petitionerâ??s claim that she should be granted salary as payable at Delhi by

giving her HRA at the rate of 30% instead of the salary as payable at Indore with HRA at the rate of 20%, on the

ground that she stood relieved from the Delhi Office on 09.09.2016 itself. The Tribunal also found that there was no

justification for the petitioner to not report to the Regional Centre, Indore in compliance of the transfer order dated

09.09.2016 after 12.12.2017, when the interim protection granted to her stood vacated. Therefore, the Tribunal

observed that the period of the petitionerâ??s absence after 12.12.2017, had to be treated as unauthorized absence.

10. In view of the aforesaid findings, the Tribunal issued the following directions:-

â??10. In the conspectus of discussions in the foregoing paragraphs, this O.A. is disposed of with the following

directions:-

a) The applicant is entitled for receiving salary, even though she has not worked, from 10.09.2016 to 12.12.2017. She

is entitled to get the salary for this period as if she has worked at the Regional Centre, Indore. Since she has been paid

salary up to April, 2017, she is entitled for getting salary from 01.05.2017 to

12.12.2017.

b) The respondent No.2 shall ensure that the direction at (a) supra is complied with within four weeks from the date of

receipt of a copy of this order.

c) As noticed hereinabove, since the applicant has already challenged her transfer to Regional Centre, Indore in a

separate O.A. No.3582/2016 before this Tribunal, we refrain from making any comment on the issue of transfer as

such.

d) Any period of absence of the applicant from 12.12.2017 shall be treated as unauthorized absence and the

respondents are at liberty to deal with it in accordance with law.â??

11. Impugning the Tribunalâ??s aforesaid order before us, the petitioner who appeared in person contended that

after the dismissal of her writ petition, it was incumbent upon the respondents to again carry out the formalities of

relieving her from her post in Delhi. The respondents not having done so, she argued that the Tribunal has erred in

holding that she ought to have reported at the Regional Centre, Indore after 12.12.2017. Thus, the basic contention of

the petitioner is that in view of the fact that no fresh relieving order was passed by the respondents after the dismissal

of her writ petition, she could not be faulted for not joining the office at Indore and, therefore, the Tribunal has

wrongly held her to be unauthorisedly absent from duty since 12.12.2017. The petitioner further stated that she has

already challenged the order dated 12.12.2017 passed by the learned Single Judge dismissing her writ petition by filing

an appeal, registered as LPA No.72/2018, which is pending adjudication. She submits that in view of the above, the

interim order granted to her in the aforesaid writ petition should be treated as continuing to operate in her favour till the

disposal of her LPA.

12. The petitioner further submitted that the Tribunal has failed to appreciate that she could be declared entitled to

payment of salary at the rate admissible at Indore, including HRA at the rate of 20%, only after she had reported for

duty at Indore. In view of the admitted position that she has not assumed the charge of the post of Regional Director,

Indore till date, she was entitled to draw the salary as admissible at Delhi.

13. We have considered the submissions made by the petitioner as also by the learned counsel for the respondents,

and with their assistance, perused the record. The foremost fact which emerges from the record is that while the

petitioner was still at the Delhi Office, she was issued a relieving/transfer order dated 09.09.2016 by the respondents,

directing her to immediately join the Regional Centre at Indore. The petitioner admittedly did not comply with the

aforesaid transfer order and instead, moved an application in her pending writ petition seeking a stay of the operation

of the same.

14. Based on her stay application, vide order dated 16.09.2016 passed in W.P.(C) No. 5928/2016, the respondents

were directed not to enforce the transfer/relieving order dated 09.09.2016. However, it was specifically clarified that in

view of the respondents' contention that the petitioner stood relieved from the Delhi Office on 09.09.2016 itself,

she would not be required to report either to the Delhi Office or the Indore Office and that her absence shall not be

treated as absence without leave. It is therefore evident that the petitioner's relieving order dated 09.09.2016 was

not tinkered by the Court either at that preliminary stage, or at any subsequent stage, till her writ petition itself was

dismissed vide order dated 12.12.2017.

15. Needless to state that as a direct consequence of the dismissal of the petitioner's writ petition, not only did the

interim protection granted to her stand vacated, but the transfer/relieving order dated 09.09.2016 came back into

operation. In other words, after the dismissal of her writ petition, it was incumbent upon the petitioner to have

complied with the transfer/relieving order, since there was not legal impediment thereto. In these circumstances, we are

unable to find any fact or circumstance that warrants imposition of an obligation on the respondents to issue a fresh

relieving order to the petitioner to facilitate her transfer to the Indore Office. We are, thus, unable to accept the

petitioner's plea that even after the dismissal of her writ petition on 12.12.2017, she could have not joined the

Indore Office for want of a fresh relieving order.

16. On the contrary, we are of the opinion that once the respondents had issued yet another letter dated 21.12.2017

directing the petitioner to join the Indore Office immediately, at least then she should have reported at the Indore

Office without any further delay. However, as is evident from the record, the petitioner has still not complied with the

aforesaid transfer order and remains in Delhi.

17. Though the petitioner had voluntarily contended that she was fully justified in not joining her duties at Indore since

the LPA filed by her challenging the order dated 12.12.2017 is still pending, on a pointed query, she had conceded

that no interim protection was granted to her in the said LPA. We are, therefore, unable to see as to how pendency of

the LPA can justify the unilateral decision taken by the petitioner to continue not to discharge her duties. Similarly, no

interim protection has been granted to her in the Original Application filed by her before the Tribunal, impugning her

transfer order and, therefore, even the pendency of those proceedings cannot be of any assistance. She cannot plead

that the interim protection granted to her vide order dated 16.09.2016 passed in W.P.(C) No. 5928/2016 should be

extended till the disposal of the pending LPA filed by her.

18. In the aforesaid facts and circumstances, we do not find any infirmity in the conclusion arrived at by the Tribunal

that the petitioner has been unauthorizedly absenting from duty w.e.f 12.12.2017.

19. Now coming to the second issue raised by the petitioner that till the time she joins her post at Indore, she has to be

treated as an employee posted in Delhi and consequently, be paid salary as admissible at the Delhi Headquarters,

including H.R.A. at the rate of 30%. The petitioner's aforesaid submission appears to be attractive at the first

blush, but on a closer examination of the order dated 16.09.2016 passed in W.P. (C) No. 5928/2016, we find that it

was the consistent stand of the respondents from the very outset that the petitioner stood relieved from the Delhi

Office on 09.09.2016 itself and was, therefore, to be treated as an employee at the Indore Office. Merely because the

petitioner chose not to join the Indore Office and by way of an interim protection granted to her, not required to report

either at the Delhi Office or the Indore Office, it cannot be construed to mean that the petitioner had continued to

remain an employee of the Delhi Office and was therefore eligible to claim the salary as payable at that office.

20. In fact, vide order dated 22.12.2016 passed in W.P.(C) No. 5928/2016, the learned Single Judge had specifically

left it to the discretion of the respondents to decide as to which office would disburse the petitioner's salary.

Since even this order had never been stayed, we find nothing on record that could prevent the respondents from

exercising the discretion granted to them to treat the petitioner as an employee of the Indore Office.

21. What emerges from the above is that while not interfering with the discretion exercised by the respondents in

treating the petitioner as an employee of the Indore Office, the Tribunal had directed that she be paid her salary from

10.09.2016 to 12.12.2017, even though she was admittedly not working either at the Delhi Office or the Indore Office

during that period. In these circumstances, we see no reason to differ with the view taken by the Tribunal that the

respondents could not be faulted for paying her the salary as payable at the Indore Office, instead of that payable at

the Delhi Office. Â

22. For all the aforesaid reasons, we find no merit in the writ petition and the same is dismissed with no order as to

costs. The pending applications also stand disposed of.