

(2020) 12 DEL CK 0132

In the Delhi High Court

Case No : Letter Patent Appeal No. 527 Of 2019

MS (X)

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 17-12-2020

Acts Referred:

Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Rules, 2013 — Rule 13

Citation : (2020) 12 DEL CK 0132

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Kamna Vohra, Anil Dabas, Yakesh Anand

Final Decision : Allowed

Judgement

Asha Menon, J

CM APPLN. No.285602020 (Exemption from filing certified copies/originals of the annexures/orders)

1. Allowed, subject to just exceptions and as per extant rules.

2. The application is disposed of.

LPA 527/2019, CM APPLN. Nos.36839/2019 (of the appellant for stay of the impugned order dated 9th July, 2019), 28559/2020 (of the

appellant for directions and/or appropriate orders staying the deposit of costs)

3. The appellant has filed this appeal being aggrieved with the order of the learned Single Judge dated 9th July, 2019 dismissing her writ petition and

also imposing exemplary costs of Rs.50,000/-upon her while granting liberty to the respondent No.2 to initiate appropriate action against her for filing a

false complaint against the respondent No.3/ O.P.Verma.

4. We have heard the learned counsel for the petitioner, Ms.Kamna Vohra, Mr.Anil Dabas, the learned counsel for the respondent No. 1 and Mr.

Yakesh Anand, the learned counsel for the respondents No. 2, 4 and 5 and have carefully perused the record. At the outset, we may note that the

inquiry into the complaint of sexual harassment filed by the appellant against the respondent No.3/O.P.Verma was conducted before the enactment of

the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (the "Act", for short) and was under the

"Vishaka Guidelines" issued by the Supreme Court in Vishaka and Ors. vs. State of Rajasthan and Ors. (1997) 6 SCC 241.

5. The petitioner was working, at the relevant time, as an Assistant Director (Fin.) with the ESI Hospital at Manesar, Gurgaon. The respondent

No.3/O.P.Verma at that time was posted as Deputy Director in the same hospital. The appellant had complained that he was repeatedly subjecting

her to sexual harassment by using inappropriate language with sexual overtones.

On 7th July, 2011, according to the appellant, she was distributing housekeeping material among the nursing staff at the ESI Hospital when the

respondent No.3/O.P.Verma told her to accompany him to the male toilet using words that were indicative of sexual advances. She felt deeply

humiliated. On a previous occasion, the respondent No.3/O.P.Verma had commented on her dress saying if another button of her shirt were to open

what would be the result that would follow. On yet another occasion, when the appellant commented to other Staff that Saturdays should be a half day

as there was less work and during the rest of the time they were only playing hide and seek, the respondent No.3/O.P.Verma remarked that neither

had he caught the appellant nor had the appellant caught him. Such incidents had caused great anguish to the appellant.

6. It was in this background that on the 7th July, 2011, the appellant went to Ms. Rashmi Kapoor (OS) and reported the incident of 7th July, 2011 to

her and broke down. On her encouragement, both of them went to the Medical Superintendent of the ESI Hospital, who sympathized with her and

asked her to make a written complaint which she did on 8th July, 2011. A Complaints Committee (now known as "Internal Complaints

Committee" under the Act) was duly constituted. The Complaints Committee examined all witnesses and submitted a report on 20th January, 2012

that the incident of 7th July, 2011 had actually happened even though the content of the communication could not be established. It also concluded that

the other incidents could not be established in the absence of substantive evidence as there were no direct witnesses. Therefore, the Complaints

Committee granted benefit of doubt to the respondent No.3/O.P.Verma. The Complaints Committee further recommended that both the officers, i.e.

the complainant as well as respondent No.3/O.P.Verma be re-located with immediate effect to protect and maintain the healthy and congenial

working environment at the ESI Hospital, Manesar, Gurgaon.

7. According to the appellant, this decision was not communicated to her and it was only on 3rd July, 2013 in response to an RTI query that she learnt

of the decision. She filed an appeal but was also not again communicated the result of that appeal. In the meanwhile, the respondent No.3/O.P.Verma

retired. She, therefore, filed the writ petition challenging the recommendation of 20th January, 2012 with the following prayers:-

â??(a) To set aside the order dated 20th January, 2012 by the committee and direct Respondent No.1 to hold the retirement benefits of

Respondent No.3 and initiate independent internal departmental inquiry against Respondent No.3 and

(b) Criminal prosecution may be initiated against Respondent No.3 for being engaged in illegal acts like harming the modesty and dignity of

a women in working place and further forcing the Petitioner to withdraw her complaint.

(c) Pass such other order or further orders as this Honâ??ble may deem fit and proper in the facts and circumstances of the present

case.â??

8. This writ petition was dismissed by the learned Single Judge vide the impugned order holding as follows:

â??17. On careful consideration of the record of the inquiry proceedings, this Court is of the view that the complaint dated 8th July,

2011of the petitioner appears to be false. The complaint dated 8th July, 2011 contains two incidents out of which the first incident was in

the presence of the petitionerâ??s colleagues whereas the second incident was in the presence of the staff and other members. During the

inquiry proceedings, the petitioner could not give the name of any person

present at the time of the incidents. The petitioner was shown the record of the staff persons present on duty on the date of the incident but still she could not recollect the names of any colleague/staff member. It is not believable that the petitioner would not remember the names of any colleague/staff member. The Committee examined all the persons who were on duty on that day but no persons supported the allegations of the petitioner. The petitioner has not mentioned the alleged comments of respondent No.3 in the complaint on the ground of modesty. The petitioner did not even disclose the alleged comments before the Committee. No reason or justification was been given by the petitioner for not disclosing the same before the Committee. The entire complaint of the petitioner appears to be false and has been filed with some ulterior motive.â??

9. The learned counsel for the petitioner has drawn our attention to the report of the Complaints Committee as submitted to the Medical

Superintendent, ESI Hospital, Manesar, Gurgaon, placed as Annexure C to the appeal (at Page No.120 of the electronic file). The Complaints

Committee, after investigating into the matter and on the basis of the statements of the staff and witnesses, concluded that the incident as complained

by the appellant had actually taken place on 7th July, 2011. In fact, the respondent No.3/O.P.Verma has himself admitted to the occurrence of the

incident that had taken place on 7th July, 2011, but it was his defence that his words had been misunderstood. What the Complaints Committee meant

by â??content of communicationâ? can only be that it was not able to determine what were the exact words spoken by the respondent

No.3/O.P.Verma, which was why it granted him the benefit of doubt. Yet it found the need to transfer him to maintain the â??congenial working

environmentâ?. The Complaints Committee seems to have been keen to seek corroboration of a high degree. Nevertheless, it only gave the benefit of

doubt and not an honourable discharge to the respondent No.3/O.P.Verma which would indicate that the Complaints Committee did find some

justification in the complaint made by the appellant but could not recommend serious action against the respondent No.3/O.P.Verma in the absence of

corroborative evidence but, at the same time, found that his presence in the office did not result in a congenial working environment and recommended

his transfer. Why they should have recommended the transfer of the appellant is uncertain as no one has alleged that she had vitiated the atmosphere.

10. In the counter-affidavit filed to the writ petition, the respondent No.3/O.P.Verma had not questioned the conclusion of the Complaints Committee

that the incident had taken place but the exact words of communication were not clear. Rather, he averred that it was a fair conclusion! He did not

challenge his transfer on the recommendations of the Complaints Committee before any Forum. He did not whisper a word about any reason for the

appellant to have falsely implicated him. He only claimed that he had not committed any "offence" as per the "Vishakha Guidelines". In the

circumstances, the learned Single Judge was not justified in labelling the complaint false and made with ulterior motives.

11. Furthermore, there really was no need for the court to enter into a re-appraisal of the evidence recorded by the Complaints Committee in view of

its clear conclusions. Though we too are not required to re-appreciate the evidence, the question being one of the dignity of the complainant being a

lady, we feel compelled to record that the statements made before the Complaints Committee and placed on the electronic file at pages 151-172

clearly establish that the respondent No.3/O.P.Verma had been misbehaving with the appellant by making statements with sexual overtones. For the

same reason, we do not wish to reproduce those details here.

12. Moreover, when a woman complains against her male colleague for sexual harassment, her own efficiency or inefficiency or temperament or the

fact that disciplinary proceedings were initiated or are pending against her, are completely irrelevant and extraneous to the inquiry. Her credibility is

not diminished because of such pending disciplinary proceedings against her. Even if she was subjected to penalties, so long as there is nothing to

show that the officer who imposed the punishment has been targeted by her by filing a complaint of sexual harassment against him, such punishments

or proceedings cannot have any bearing on the inquiry into a sexual harassment complaint. It appears that the learned Single Judge was prevailed upon

by these factors to proceed further and impose costs of Rs.50,000/- upon the appellant and also direct the respondent No.2 to initiate proceedings

against her.

13. We have no hesitation in setting aside both these directions, particularly in

the light of the finding of the Complaints Committee that the incident complained of had actually taken place and had, therefore, recommended transfer of both the appellant as well as the respondent No.3/O.P.Verma. The appellant had questioned this transfer by means of the writ petition filed by her and had also sought an independent internal departmental inquiry against the respondent No.3/O.P.Verma as well as directions for criminal prosecution against him instead of the transfer. The question that presents itself is whether such relief could be granted or not.

14. In the light of the fact that the respondent No.3/O.P.Verma has since retired almost five years back, we do not consider it expedient to grant such relief to the appellant of directing an independent departmental inquiry against him. With regard to the criminal prosecution, nothing prevented the appellant from initiating any such action against the respondent No.3/O.P.Verma since the date of the incident or even since the date of the report of the Complaints Committee. She did not seek such a relief from the Internal Complaints Committee even after the Act came into force in 2013. We also do not find the facts of this case to be such that require us to overlook delay and direct criminal prosecution of the respondent No.3/O.P.Verma, and therefore, decline this prayer made by her.

15. Before parting, we find it necessary to underline that sexual harassment is a serious issue that needs to be addressed at all work places urgently and sensitively. Women are valuable human resource. Their contribution in all spheres of life can never be belittled, whether at the home and hearth or away from it, in more impersonal office spaces. In either sphere, they are entitled to a congenial and dignified environment to live their life fully and attain their full potentiality. Gender conditioning where the man develops a superiority complex, while the woman doubts her own capacity, starts very early in life. It need not be in the form of a tutorial, but certainly as subtle data to the minds of young children, about their privileges or lack of it. The privileges also come in the opportunities to develop personality, confidence, intelligence and skills. It is impossible not to notice all around us, how easily the 'common woman' is put down by the 'common man'. Less said the better of what happens to the Third Gender!

16. There is no gainsaying that it is this gender conditioning that leads men to abuse, ill-treat or become violent towards women and TGs or treat them

disparagingly and with condescension. The Protection of Women from Domestic Violence Act, 2005 has provided a shield against an unhealthy and

oppressive domestic environment. But for some reasons, though the â??Vishakha Guidelinesâ? came in 1999, the Act took a long time in coming, that

is, in 2013. Every institution and organization must declare zero tolerance for Gender insensitivity. Now that there is a statute to protect women from

sexual harassment at work place the law must be complied in letter and spirit.

17. But worse still, is the complete lack of information with women about the Act, intended for their protection. This very appeal seems to showcase

this problem. It is apparent from the record of the Complaints Committee that the appellant did not know about the appropriate authority before whom

to file her initial complaint. When asked by it as to why she had lodged the complaint directly to the headquarters, she answered (placed at Page

No.157 of the electronic file) that she did not know the address of the â??Woman Cellâ? at the ESI Hospital and had made an enquiry from Ms.

Manju Swaminathan and submitted her complaint to the Complaints Committee. The order dated 20th January, 2012 nowhere mentions that a copy

had been sent to the appellant or for that matter, to the respondent No.3/ O.P.Verma, indicating to them that they could appeal to a specified authority.

It is incumbent under the Act for an organization to set out these details and information at prominent places so that any woman who requires help can

easily approach the concerned person to submit her complaint and/or appeal.

18. Secondly, it cannot be overlooked that the Internal Complaints Committee is intended as a platform to provide an environment of confidence to the

complainant. It is not to doubt the veracity of the complaint or view the complainant with suspicion. It is to believe her and not compel her to name

witnesses to seek corroboration, as has happened in the instant case. In response to the queries of the Complaints Committee as to where the

incidents had happened, the appellant had responded (Page 158 of the electronic file) that the incident of the shirt (about its opening) and the incident

of diesel (where sexually suggestive statements were made) had taken place in chamber. This is usually true as the perpetrator seeks out his target

without putting himself in danger of being caught and preserving a â??your word against mineâ? situation, which the woman would possibly find

difficult to surmount before an inquiry committee. The absence of eyewitnesses

to the incident cannot detract from the credibility of the complainant

as her statement is to be considered independently to determine whether it has a ring of truth or not.

19. That is why, the Internal Complaints Committee has so many members, including an out-sider, to enable a joint application of minds to evaluate the statement made by a complainant and assess its credibility. It is also a safeguard for men, as false complaints are very much possible (though not in this case) and for which the Act has also made clear provisions, including to punish such a complainant for false and malicious complaints and false evidence.

20. Gender sensitivity also requires an understanding of what a woman feels when she is sexually harassed. Though stereo-typing is itself

unwarranted, it has been noticed that just as in other sexual offences, she goes through a lot of soul-searching (again due to gender-conditioning), she

tries to adopt measures of self-protection, by avoiding the perpetrator, may be even by taking leave! It is unlikely that she shares her torment with

other colleagues, though in the present case, the appellant confided in Ms. Rashmi Kapoor (OS) who was also examined by the Complaints

Committee and who supported the version of the appellant. That is why the Internal Complaints Committee has to be set up in every workplace and

every woman employee informed as to the person she can contact in the Internal Complaints Committee when faced with any unsavoury or

unacceptable conduct by a male colleague.

21. Thirdly, the standard of proof, so to speak, in an inquiry by the Internal Complaints Committee is as for a domestic inquiry. Under the Act, the

Report of the Internal Complaints Committee can be taken by the employer for disciplinary action against the delinquent official. Nevertheless, the

high standard of proof required in criminal trials is not called for during an inquiry by the Internal Complaints Committee under the Act. It must always

be borne in mind, that a woman who is perturbed by an action of a male colleague, either through words, gestures or action, cannot be expected to

have such clarity of thought, to know who all were present at the time of the incident, and who all may have witnessed the incident and remember

their names and faces. The mere inability of a woman to name such witnesses cannot suffice to falsify her complaint. As the protection of the Act is

available to women who may have come to avail of services provided by an institution or organization such as the Banks, Government Offices, Hospitals, etc. she may not know anyone by name or face to vouch for her. Therefore, there can be no insistence on production of witnesses by the complainant to corroborate her statement. In the present case, the Complaints Committee did misdirect itself in insisting on corroboration and testimonies of other witnesses.

22. Fourthly, upon conclusion of the inquiry by the Internal Complaints Committee, there must be some sensitivity shown by it while recommending action, keeping in mind the dignity of the complainant. In the present case, the Internal Complaints Committee had recommended transfer of both, the complainant i.e. the appellant and the perpetrator, i.e. the respondent No.3/ O.P.Verma) adding that, this was to preserve harmony in the working environment. This is unfortunate, as it may reflect negatively about the complainant, to the transferring authority and other colleagues in the office.

The transfer of the complainant should be only if she seeks it or when she has been found to have filed a false complaint. It would be adding insult to injury, if a woman who has been wronged, is sought to be transferred for making a genuine complaint and that too, to ensure a congenial and harmonious environment. The ripple effect of such action could be that, other suffering women, would hesitate to file complaints, fearing a transfer from the existing office, department or organization, which they may not prefer, for various reasons, including location nearer to home and responsibilities of children and elderly or invalid relatives.

23. It is thus not enough to merely constitute Internal Complaints Committees, but it is also important that the purpose for having such a Committee and in fact for making such a law must always remain uppermost in the minds of all at the workplace. Probably, if that had been fully given effect to by the Complaints Committee in the present case, a more salutary process may have been adopted to come to a more firm conclusion.

24. The Act, provides for ‘‘Duties of Employer’’ in Chapter VI, the foremost ones being, among several others, to provide a safe working environment and display prominently the penal consequences of sexual harassment and the constitution of the Internal Complaints Committee. Rule 13 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and

Redressal) Rules, 2013 framed under the Act, has made it obligatory upon the employer to do the following:-

13. Manner to organise workshops, etc." Subject to the provisions of section 19, every employer shall-

(a) formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of

sexual harassment at the workplace intended to promote gender sensitive safe spaces and remove underlying factors that contribute

towards a hostile work environment against women;

(b) carry out orientation programmes and seminars for the Members of the Internal Committee;

(c) carry out employees awareness programmes and create forum for dialogues which may involve Panchayati Raj Institutions,

Gram Sabha, women's groups, mothers' committee, adolescent groups, urban local bodies and any other body as may be

considered necessary;

(d) conduct capacity building and skill building programmes for the Members of the Internal Committee;

(e) declare the names and contact details of all the Members of the Internal Committee;

(f) use modules developed by the State Governments to conduct workshops and awareness programmes for sensitising the employees with

the provisions of the Act.

14. Preparation of annual report.- The annual report which the Complaints Committee shall prepare under Section 21, shall have the

following details:-

(a) number of complaints of sexual harassment received in the year;

(b) number of complaints disposed off during the year;

(c) number of cases pending for more than ninety days;

(d) number of workshops or awareness programme against sexual harassment carried out;

(e) nature of action taken by the employer or District Officer.

25. It will not be excessive to re-iterate that all employers are required to sensitize all employees who work in the organization to deal with a woman,

whether a colleague or a visitor or a beneficiary of services provided to the public, always remaining acutely aware of her dignity. When a person speaks, the words have an impact and the speaker must be conscious of such impact when speaking to a woman whether from the public or a colleague. It is imperative to have a strong redressal system in the organization as that would also protect the male workforce and officials from vexatious complaints and also give them the opportunity to explain their conduct and action before a more restricted and confidential Forum. To this end, all activities as reproduced hereinabove and prescribed under the Act and Rules must be strictly performed by all organizations. Greater understanding leads to greater mutual regard and respect and greater harmony leads to greater efficiency and productivity, ennuring to the benefit of all.

26. The impugned judgement to the extent it concludes that the complaint of the appellant was false, and imposes costs of Rs.50,000/- and recommends to the respondent No.2 initiation of disciplinary action against the appellant, is set aside. The appeal is accordingly allowed.