
(2014) 02 MP CK 0101
In the Madhya Pradesh High Court
Case No : Writ Petition No. 9086 of 2013

Ramesh Pal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14 14(2)
Constitution of India, 1950 — Article 14 15(1) 15(3) 16 19
Penal Code, 1860 (IPC) — Section 509
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)
Act, 2013 — Section 10 11 11(1) 13 13(1)

Citation : (2014) 1 JLJ 396 : (2014) 2 MPHT 137 : (2014) 2 MPLJ 500

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Prashant Sharma, for the Appellant; Anil Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—The petitioner, by invoking jurisdiction of this Court under Article 226 of the Constitution has challenged the enquiry report of Internal Complaint Committee (Probation and redressal of Complaints against Sexual Harassment of Women in Workplace). The consequential show cause notice dated 10.12.2013 (Annexure P-7) based on enquiry report Annexure P-1 is also called in question. The admitted facts between the parties are that the petitioner is an employee (substantively holding the post of Professor) in respondent No. 2-Organization viz., Laxmibai National Institute of Physical Education, Gwalior. At the relevant point of time, the petitioner was working as Incharge Vice-Chancellor. In this W.P., the respondents have filed an application for dismissal of the petition for want of jurisdiction of this Court. This application is based on the notification of Ministry of Personnel, Public Grievances & Pensions (Department of Personnel and Training) notification dated 31.10.2008 published in Gazette of India Extraordinary Part 3(ii). By this notification, in exercise of powers conferred by sub-section (2) of Section 14 of the Administrative Tribunals Act, 1985 (1985

Act), the Government has notified that respondent No. 2 will fall within the jurisdiction of Central Administrative Tribunal. The preliminary objection is raised regarding jurisdiction of this Court to grant the relief desired by the petitioner. It is contended by the employer that the grievance of the petitioner amounts to "service matter" and in view of notification u/s 14(2) of the Act, the proper forum is the Central Administrative Tribunal. The Tribunal being the Court of first instance for the purpose of adjudication of service matters, this Court cannot entertain this petition.

2. With the consent, matter was heard on the question of maintainability of this petition. The Apex Court in *Vishaka and others Vs. State of Rajasthan and Others*, issued directions with a view to ensure that cases of sexual harassment of women at work place are properly dealt with and guilty are punished. After the said judgment, Central Government inserted proviso to Rule 14(2) of CCS (CCA) Rules, 1965. The said amendment reads as under:--

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 harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

3. The amendment was also made by Central Government in CCS (Conduct Rules). This amendment reads as under:--

3-C. Prohibition of sexual harassment of working women

(1) No Government servant shall indulge in any act of sexual harassment of any woman at her work place.

(2) Every Government servant who is in-charge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

Explanation.--For the purpose of this rule, "sexual harassment" includes such unwelcome sexually determined behaviour, whether directly or otherwise, as--

(a) physical contact and advances;

(b) demand or request for sexual favours;

(c) sexually coloured remarks;

(d) showing any pornography; or

(e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

4. The Apex Court in subsequent judgments reiterated its view and expressed immediate need to create mechanism to deal with the cases of sexual harassment with a view to ensure that Article 21, 16, 14, 19, 15(1), 15(3), 42, 51A(a) & 51A(c), become reality.

5. In *Medha Kotwal Lele and Others Vs. Union of India (UOI) and Others*, , the Apex Court had taken into account the amendments made by Central Government in CCA Rules and in Conduct Rules. It was directed that similar amendments are required to be made in other statutes including Industrial Employment (Standing Orders) etc. the Apex Court opined that existing law, if necessary, should be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect. This judgment in *Medha Kotwal* (supra) was delivered by Supreme Court on October 19, 2012. Thereafter, the new act viz., The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (No. 14 of 2013) (for brevity this Act is called as "Act of 2013") came into being.

6. The Act of 2013 in section 2(a) defines "aggrieved woman". The woman who is allegedly subjected to sexual harassment is defined as "aggrieved woman". The person against whom aggrieved woman made complaint is defined as "respondent" in section 2(m). The definition of working place mentioned in section 2(o) is very wide. Section 4 deals with constitution of internal complaint committee. Section 6 deals with Constitution and jurisdiction of Local Complaints Committee. The method of preferring complaint is mentioned in Section 9 of the Act. Section 11 deals with methodology by which complaint needs to be inquired. Section 11(1) reads as under:--

(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 u/s 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

7. Section 13 deals with the methodology to deal with enquiry report. Section 13(1) and (3)(i) reads as under:--

(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.

(3) Whether 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;

8. Section 18 provides about appeal, which reads as under:--

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 sub-section (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.

9. Chapter VI of Section 19 defines duties of the employer. 19(i) reads as under:--

(i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

10. The bone of contention of Shri Prashant Sharma, learned counsel for the petitioner is that Annexure P-1 is an enquiry report submitted by Internal Committee and, therefore, this cannot be challenged before the Tribunal. He submits that if action is taken as per section 13(3)(i) and employer decides to proceed against the petitioner, then only the jurisdiction of the Tribunal can be invoked. In other words, it is submitted that the Tribunal will have no jurisdiction to deal with the findings of report Annexure P-1 and Constitution of the Committee which submitted the report. He placed reliance on the judgment of Supreme Court reported in Union of India (UOI) Vs. Rasila Ram and Others, .

11. In the considered opinion of this Court, the provisions of 2013 Act are to be read with the provisions of C.C.A. and Conduct Rules. After the judgment of Vishakha (supra) as noticed above, the Central Government amended the Conduct and CCA Rules. Sexual harassment was brought within the ambit of "misconduct" and the methodology to punish the employee was also introduced by way of amendment in Rule 14(2) of the C.C.A. Rules, 1965. In addition, 2013 Act was brought into force. In Rasila Ram (supra), the Apex Court decided against a full bench judgment of the Central Administrative Tribunal. In the said case, the employee continued to occupy the accommodation unauthorizedly. The proceedings against him were initiated and the order was passed by the competent authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for his eviction. The Tribunal opined that it being a "service matter", Tribunal has jurisdiction to entertain the O.A. The Apex Court opined

that once a Government servant is held to be in occupation of a public premise as an unauthorised occupant within the meaning of the Eviction Act, and appropriate order is passed thereunder, the remedy to such occupants lies, as provided under the said Act. Thus, the ratio of the said judgment is that if a particular act provides a particular remedy, it must be availed and Tribunal will have no jurisdiction in this regard.

12. The judgment of Rasila Ram (supra) is of no assistance to the petitioner. In the said judgment, the provision of P.P. Act were taken into account. The said act provided a different mechanism of adjudication whereas 2013 Act read with Conduct and CCA Rules makes it clear that only one mechanism is prescribed. "Sexual harassment" is treated as misconduct. Report of internal committee is to be treated by the employer as enquiry report and action needs to be taken as per Service Rules. Thus, as per provisions applicable herein, remedy is not elsewhere. In other words, internal enquiry has to be treated as a service matter. 2013 Act makes it clear that intention of law makers is to treat the action on sexual harassment as service matter. As per this Act, the employee has to avail the remedy under the service Rules. This further shows that remedy available for "service matter" shall be the appropriate remedy for the petitioner.

13. Section 11 of 2013 Act makes it clear that where respondent is an employee and internal committee proceeds to make enquiry into the complaint, it will be an enquiry in accordance with the provisions of service rules. Thus, the intention of the Legislature was to make an enquiry into the complaint in accordance with the provisions of the service rules. The enquiry report Annexure P-1 on the face of it shows that the committee has taken into account the service rules i.e. CCA and Conduct Rules. Section 13(3)(i) also makes it clear that the action on sexual harassment needs to be taken in accordance with the provisions of the service rules. Section 19(i) makes it clear that employer is duty bound to treat sexual harassment as a "misconduct" under the service rules and initiate action for such misconduct. A conjoint reading of the aforesaid provision of the Act makes it clear that the proceedings and report of internal committee has to be treated as a service matter. More-so, when respondent is an employee of respondent No. 2.

14. Section 18 which provides provision of appeal also shows the intention of law makers to bring it within the ambit of service rules for a "respondent" who is an employee and, therefore, it is mentioned that he may prefer an appeal under the Service Rules. Petitioner who is aggrieved by the recommendation Annexure P-1 can always challenge the recommendation by questioning the constitution of the committee also which gave the recommendations before the appropriate forum. Putting it differently, the petitioner if aggrieved by the recommendation, can very well assail it on merits as well as on the question of the constitution of the committee. The ancillary question is whether this grievance can be redressed here or before the Central Administrative Tribunal?

15. The jurisdiction of Central Administrative Tribunal can be traced from section 14 of the Administrative Tribunals Act. Relevant portion of Section 14 reads as

under:--

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to--

xxxx

xxxx

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Government for such appointment.

[Explanation.--For, the removal of doubts, it is hereby declare that references to "Union" in this subsection shall be construed as including references also to a Union territory.].

16. A bare perusal of this provision makes it clear that all service matters pertaining to service in connection with the affairs of the Union can be decided by the Tribunal. The service matter is defined in Section 3(q) which reads as under:--

3. Definitions.--In this Act, unless the context otherwise requires,--

(q) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, or any corporation (or society) owned or controlled by the Government, as respects--

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;

17. Section 3(q) within its ambit takes disciplinary matters. As noticed above, a conjoint reading of sections 11, 13, 18 and 19 of 2013 Act makes it clear that incident of sexual harassment amounts to misconduct and the enquiry on the complaint has to be made as per Service Rules. The definition of "service matter" in the A.T. Act, 1985 includes disciplinary matters.

18. On the basis of aforesaid analysis, it is clear that the internal enquiry against the petitioner falls within the ambit of "service matter". Thus, the Tribunal will have jurisdiction to decide the said aspect.

19. At the cost of repetition, in the considered opinion of this Court, the petitioner aggrieved by the recommendation of the committee can challenge it before the appropriate forum on merits as well as on the constitution of the committee which has ultimately given the recommendation.

20. A constitution bench of Supreme Court in L. Chandra Kumar Vs. Union of India and others, , opined that Tribunal is the Court of first instance and it will not be open for the litigant to approach the High Court as a Court of first instance (para 93).

21. In the considered opinion of this Court, since it is not in dispute that Tribunal has jurisdiction to deal with service matters of respondent-Organization, the proper remedy for the petitioner is to file an application u/s 19 of the Act before the Tribunal. In view of L. Chandra Kumar (supra), this petition cannot be entertained. The grievance of the petitioner falls within the ambit of "service matter". For these cumulative reasons, this petition is not maintainable before this Court. Petition is accordingly, dismissed by reserving liberty to the petitioner to avail the said remedy. No cost.