

(2016) 07 DEL CK 0183

In the Delhi High Court

Case No : W.P.(C) No. 6549 of 2016 and C.M. No. 26858 of 2016

Rupesh Hari

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)
Act, 2013 — Section 12

Citation : (2016) 232 DLT 12

Hon'ble Judges : Mr. G.S. Sistani and Mr. I.S. Mehta, JJ.

Bench : Division Bench

Advocate : Mr. Jawahar Singh, Advocate, for the Petitioner; Mr. Sanjib K. Mohanty, Senior Panel Counsel, for the Respondent Nos. 1 to 5

Final Decision : Dismissed

Judgement

Mr. G.S. Sistani, J.(Oral)—C.M. No. 26858/2016 (Exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 6549/2016

The petitioner joined the service as a Junior Engineer (Quality Assurance) in the year 2012. A complaint was lodged against him by a lady colleague on 15.04.2015 alleging that SMSs were sent by the petitioner to her on 02.04.2015, 04.04.2015 and 11.4.2015. A Memorandum dated 07.06.2015 was served on the petitioner. On 08.06.2015, the complaint was forwarded to the Complaint Committee. The petitioner submitted his response to the Complaint Committee. He also participated in the inquiry in which he claimed innocence. However, the grievance raised by the petitioner in this writ petition is that he has been transferred from New Delhi to Jabalpur. An O.A. filed by the petitioner, challenging the order of transfer, stands rejected by the Tribunal on 25.4.2016. A

review filed also stands rejected on 23.05.2016 which has led to the filing of the present writ petition.

2. Learned counsel for the petitioner submits that the order of the Tribunal is arbitrary and the Tribunal has failed to take into consideration the various grounds raised by the petitioner including the ground of acute hardship on account of the old age of his parents, the petitioner being the only son in Delhi to look after them.

3. Learned counsel for the petitioner further submits that the order is liable to be quashed as the transfer is in lieu of punishment. Counsel further submits that the Tribunal has failed to consider that the complaint made by the lady was motivated as she was keen to get herself transferred out of Delhi. Counsel also contends that the order of transfer and rejection of the representation of the petitioner dated 07.09.2015 is a mechanical order and has been passed without any application of mind. It is further contended that the petitioner is under a legal obligation to look after his old parents.

4. Learned counsel for the respondents enters appearance on an advance copy and submits that there is no infirmity in the order passed by the Tribunal. Counsel further contends that the complaint was made by the lady alleging sexual harassment, pursuant to which a Committee was set up and pending enquiry under Section 12 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Committee was well within its right to recommend the transfer of the aggrieved woman or the respondent (the petitioner in the present case).

5. We have heard learned counsel for the parties. In this case, a complaint was made by the lady regarding sexual harassment by the petitioner. The Committee has made the following observation:

"The Committee, after going through the oral and written evidence, has arrived at the conclusion that, the behaviour of Mr. Rupesh Hari, JE(QA) in incessantly messaging Ms Kusumlata, AE (QA) on her phone with inappropriate contents, against her wish is an unwelcome gesture and hence can be termed as Sexual Harassment within the meaning of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. While arriving at this conclusion, the Committee takes into cognizance the impact which the behaviour of Mr. Rupesh Hari, has caused on the mental frame of Ms Kusumlata having the potential to interfere with her work environment creating an intimidating/offensive/hostile work environment as she was repeatedly humiliated by receiving messages from Mr. Rupsh Hari, that too late in the night."

6. After the observations of the Committee, the petitioner herein stands transferred from New Delhi to Jabalpur.

7. It would be useful to reproduce Section 12 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:

"12. (1) During the pendency of an inquiry on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to-

(a) Transfer the aggrieved woman or the respondent to any other workplace, or

(b) Grant leave to the aggrieved woman up to a period of three months, or

(c) Grant such other relief to the aggrieved woman as may be prescribed.

(2)

(3) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be."

8. In view of the finding of the Committee and taking into consideration Rule 12 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, we find that the Tribunal has correctly applied the law to the facts of the present case. Consequently we find no infirmity in the orders dated 25.04.2016 and 23.05.2016 passed by the learned Tribunal.

9. At this stage, learned counsel for the petitioner submits that he may be permitted to make one last representation to the respondents setting out the ground of acute hardship, more particularly with regard to the old age of his parents, who are solely dependent on him.

10. The writ petition is accordingly dismissed as not pressed. Leave is granted to the petitioner to make a representation, as aforesaid. It is, however, made clear that rejection of the representation of the petitioner will not give any fresh cause of action to him.