
(2021) 03 P&H CK 0377

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 32707, 32708, 32712 Of 2019(O&M)

Vivek Tyagi

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 22-03-2021

Acts Referred:

Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal Act, 2013 — Section 2(n), 4, 6, 9, 16

Citation : (2021) 03 P&H CK 0377

Hon'ble Judges : Anil Kshetarpal, J

Bench : Single Bench

Advocate : Lakhwinder Singh Sidhu, Shailender Singh Momi, R.S.Rai, Rubina Virmani, Rajinder Singh, Digvijay Singh, Kirti Singh, Manish Singla

Final Decision : Allowed

Judgement

Anil Kshetarpal, J

Through this judgment, CWP nos.32707, 32708 and 32712 of 2019 shall stand disposed of.

All these writ petitions have arisen from a complaint made to the Local Committee constituted under Section 6 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act, 2013) (hereinafter referred to as 'the Act of 2013'). Learned counsel for the parties are ad idem that these three writ petitions can be conveniently disposed of by a common judgment.

Detailed facts are not required to be given, however, to understand the dispute, some skeleton facts are being narrated. Respondent no. 4 filed a complaint with the Local Committee on 18.09.2019 alleging sexual harassment at the hands of certain officers of the petitioner company in one of the writ petition. As per the complaint, the last incident of sexual harassment is alleged to have happened on 03.11.2018. After her resignation from the job on 16.01.2019, her full and final settlement took place on 11.06.2019.

At this stage, it would be appropriate to notice Section 2 (n), 4, 6 and 9 of the Act of 2013, which are extracted 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;

4. Constitution of Internal Complaints Committee.-(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committee shall consist of the following members to be nominated by the employer, namely-

(A) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1): Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(B) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(C) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee,-

(A) contravenes the provisions of Section 16; or

(B) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(C) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(D) has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

6. Constitution and jurisdiction of 3[Local Committee].-(1) Every District Officer shall constitute in the district concerned, a committee to be known as the "4[Local Committee]" to receive complaints of sexual harassment from establishments where the 5[Internal Committee] has not been constituted due to having less than ten workers or if the complaint is against the employer himself. (2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned 6[Local Committee] within a period of seven days.

(3) The jurisdiction of the 7[Local Committee] shall extend to the areas of the district where it is constituted.

9. Complaint of sexual harassment.-(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section."

On a careful perusal of the definition of sexual harassment, it is apparent that the definition is not exhaustive, however, the acts of the sexual harassment have been defined in broad. Section 4 of the Act of 2013 mandates that the every employer of a workplace shall constitute a committee to be known as the Internal Complaints Committee. Sub Section 2 of Section 4 enlists the persons who are required to be members of such a committee. Section 6 mandates every District Officer to constitute in the District concerned a committee to be known as Local Committee to receive the complaints of sexual harassment. From the reading of Section 6, it becomes apparent that the Local Committee is an alternative forum for lodging such complaints where either the Internal Complaints Committee has not been constituted owing to the fact that the establishment has less than 10 workers or if the complaint is against the employer himself. The word 'employer' has been defined in Section 2(g) of the Act of 2013.

Going further, Section 9 makes a provision for lodging a complaint by the aggrieved woman to the Internal Complaints Committee, if so constituted, or the local Committee in case, the Internal Committee is not so constituted. Thus, the Local Committee gets jurisdiction only in two eventualities; first if there is no Internal Complaints Committee or if there is one but the complaint is against the employer himself.

Still further, the Act grants three months' time to the aggrieved woman to file a complaint from the date of incident. In case of series of such incidents, the complaint can be filed within a period of three months from the date of the last incident. Second proviso to Section 9 enables the Internal Complaints Committee or the Local Committee, as the case may be, to extend the time limit for another period not exceeding three months from the date of expiry of 3 months of the date of incident or in case of series of incidents, the date when the last incident took place. Thus, the outer limit for extending the time to file a complaint is three months after the elapse of the original period of three months. In other words, the maximum period for lodging a complaint under the Act is six months from the date of incident and in case of series of incident from the date of the last incident. Thereafter, the Internal Complaints Committee or the Local Committee is barred from entertaining the complaint under the Act.

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper books of all the writ petitions. Learned senior counsel ably assisted by other learned counsels has contended that the complaint was entertained by the Committee even after the maximum extended period had elapsed. He, hence, contended that the Local Committee had thus, no jurisdiction to entertain the complaint being barred by limitation. He further contended that the complaint as per Section 9 should have been lodged with the

Internal Complaints Committee which is in place and therefore, the Local Committee erred in entertaining the complaint. Learned counsel appearing in the connected petitions have also reiterated the same arguments.

On the other hand, learned counsel appearing for the complainant has submitted that the respondent was thrown out of job on 16.01.2019 and still her accounts were not settled for a considerable period. He contended that the accounts were ultimately settled on 11.06.2019 and the tone and tenor of communication of the full and final settlement itself reflects that the complainant was being pressurized. He, hence submitted that the complaint falls within the limitation prescribed. He further submitted that this Court should not entertain such writ petitions, particularly when only a show cause notice has been issued by the Committee.

After having heard learned counsel for the parties at length, this Court is of the considered view that now at this stage, it would not be appropriate to relegate the petitioners before the Local Committee, particularly when while entertaining the writ petitions, further proceedings before the Local Committee were stayed and the parties have already filed their detailed pleadings. Further, this Bench is of the considered view that it would not be appropriate to go into the other issues except the period of limitation. Hence, this Bench proceeds to examine whether the complaint was within the time prescribed or not?

In the present case, the last incident is alleged to have taken place on 03.11.2018. The respondent remained in job till 16.01.2019. She did not file any complaint during that period to the Committee. On 16.01.2019, she resigned from the company. Even thereafter, she did not file any complaint to the committee. It is not her allegation that she made a complaint to the Internal Complaints Committee or to the Local Committee. No doubt, she has pleaded in the written statement that she was in touch with the Management and some sort of inquiry was being held, however, that would not result in extending the period of limitation, particularly, when the language used in Section 9 is clear. The period of three months have been prescribed from the date of incident and in case of a series of incidents, within a period of three months from the date of the last incident. The last incident is alleged to have taken place on 03.11.2019. This Bench has also examined the communication dated 12.06.2019 which is with respect to the full and final settlement. From the reading of the aforesaid communication, it is not possible to conclude that it can be treated as an act of sexual harassment. The employer has only intimated her that there was an internal investigation and certain discrepancies including financial irregularities have been found against her. Such communication as noticed above, does not fall within the four corners of sexual harassment, which can give fresh cause of action to the respondent to extend the limitation period to file a complaint.

Keeping in view the aforesaid facts, it will not be appropriate for the Court to go into the second issue raised by the learned senior counsel that the complaint was required to be first filed with the Internal Complaints Committee. It may be

noted here that learned counsel for the parties do not dispute that on the complaint of the respondent an FIR has been registered which is under investigation of the police.

Keeping in view the aforesaid facts, the writ petitions are allowed.

The complaint as well as the proceedings before the Local Committee are hence, quashed. No costs.