

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 31.10.2017

+ **W.P.(C) 8149/2010**

SHANTA KUMAR

..... Petitioner

Versus

**COUNCIL OF SCIENTIFIC AND
INDUSTRIAL RESEARCH (CSIR) & ORS**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Rakesh Kumar.

For the Respondent : Mr Praveen for R-1 & R-2.

Mr Arun Bhardwaj with Mr Nikhil Bhardwaj
for R-3.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, challenging the proceedings conducted by the Complaint Committee constituted in terms of the Office Memorandum (hereinafter 'the OM') dated 29.08.2006, to examine the charges of sexual harassment levelled by the petitioner against respondent no.3. The Complaint Committee had exonerated respondent no.3 of all the charges of sexual harassment levelled against him and its report was same accepted by the Disciplinary Authority. Consequently, the Disciplinary Authority passed an order dated 12.10.2009 (hereinafter 'the impugned order') exonerating respondent no.3 from the

charges of sexual harassment. The petitioner has also impugned the aforesaid order passed by the Disciplinary Authority.

2. The petitioner had made a complaint regarding incident that occurred on 29.04.2005. The petitioner had alleged that while she was working at the laboratory, respondent no.3 had entered the laboratory and stopped the machine and snatched the samples from the petitioner and had thrown the materials. He had, thereafter, pushed the petitioner out of the laboratory and had locked the laboratory. The petitioner also alleged that he was shouting and using derogatory language against one Dr Sood and Scheduled Castes Community (as she was married to a person belonging to the SC category). However, it appears that the said complaint was not forwarded to the concerned authorities at the relevant time.

3. Subsequently, the petitioner was requested to complete the formalities relating to certain equipment of HEM division before leaving the same as the said division had been dissolved. In this connection, the petitioner made a noting alleging that respondent no.3 had been harsh in his behaviour and had threatened her not to enter the laboratory, while abusing Dr Jain, Dr Sood as well as the petitioner. She also stated that this was reported by her.

4. The said complaint was forwarded by Dr P. K. Jain under cover of his note dated 03.03.2006 "*for further investigation of sexual harassment*" of the petitioner by respondent no.3, who was at the material time holding the designation of HoD (FPD).

5. Since the expression 'sexual harassment' had not been used by the petitioner in her noting, the concerned officer of Central Road Research

Institute (hereinafter 'the CRRI') forwarded Dr P. K. Jain's note to the petitioner inquiring whether she desired to pursue the aforesaid complaint. By a further memo dated 14.08.2006, the concerned officer also requested the petitioner to submit a clarification whether the complaint involved harassment of a sexual nature. In response thereto, the petitioner sent a letter dated 18.08.2006 now alleging that she had been subjected to "*all kinds of harassment including sexual harassment*" by respondent no.3. She further requested that all complaints made against respondent no.3 be perused in totality.

6. In view of the above, the Director, CRRI constituted a Complaint Committee under the Chairmanship of Dr Usha Sharma, Emeritus Scientist, Indian Agricultural Research Institute. The Complaint Committee constituted of five persons including one member from a non-government organization. The petitioner objected to inclusion of one of the members (Shri G. K. Vij) who was replaced by Dr S. Gangopadhyay. One of the members, Dr Saroj Gupta, was appointed as a convenor of the Complaint Committee.

7. The Committee examined the complaint made by the petitioner, *inter alia*, concluding that the complaint was not of any sexual harassment but was a case of altercation in the background of the uncongenial environment prevailing in the division. The Complaint Committee also found that respondent no.3 had indulged in using un-parliamentary language with his colleagues and juniors which was deplorable. The Complaint Committee submitted its report. The relevant extract indicating the Committee's conclusion is set out below:-

- “a. Mrs Shanta Kumar faced difficulties in carrying out her work in F.P. Division. She felt aggrieved as
- i) an incident of Dr Bose holding her arm occurred on 29.04.2005.
 - ii) She was placed in the common pool and transferred.
 - iii) she was prevented from marking her attendance in the P. F. Division.
 - iv) She was not allowed to transfer the equipments in her name after her transfer.
- b. Dr. P. K. Jain, did not provide evidence to substantiate the ‘sexual harassment’ aspect of the incidence as mentioned by him in the complaint forwarded by him on 03.03.2006.
- c. The complaint is associated with a number of administrative and managerial issues and inter-personal conflicts.
- d. The complaint is not a sexual harassment case but it was case of altercation in the background of the uncongenial environment prevailing in the Division.
- e. Dr Sunil Bose appears to be a short tempered persons and occasionally indulged in using up-parliamentary language with colleagues and juniors, which is deplorable.”

8. Mr Rakesh Kumar, learned counsel for the petitioner has assailed the proceedings before the Complaint Committee as well as the impugned order passed by the Disciplinary Authority, essentially, on three grounds. First, he submitted that the Complaint Committee was not constituted in

accordance with the instructions of Government of India issued by the DoPT vide OM No.11013/10/97 Estt.(A) dated 13.07.1999 inasmuch as most of the members of the Complaint Committee were subordinate to respondent no.3. Second, he submitted that an *ad hoc* Disciplinary Authority had been appointed even though a regular Disciplinary Authority was present and this was done only to exonerate respondent no.3 of the charges made against him. And third, that the report of the Complaint Committee and the impugned order passed suffered from lack of application of mind.

9. It was contended that a plain reading of the report of the Complaint Committee clearly established that the petitioner had suffered sexual harassment at the hand of respondent no.3. The Complaint Committee had found that the allegations made by the petitioner with regard to incident on 29.04.2005 were correct and yet no action had been taken against respondent no.3. The petitioner's allegation that respondent no.3 had held her hand and pushed her out of the laboratory was substantiated, yet the Complaint Committee had exonerated respondent no.3 of the said charges. The learned counsel submitted that any unwelcome physical contact would amount to sexual harassment and the Complaint Committee had erred in not appreciating the same.

10. Mr Bhardwaj, learned counsel for respondent no.3 submitted that the findings of the Complaint Committee regarding incident of 29.04.2005 were incorrect and no such incident had occurred. He further submitted that the real genesis of the controversy was the rivalry between respondent no.3 and one Dr P. K. Jain; the complaint made by the petitioner was used as a device by Dr P. K. Jain for ulterior purposes. He further submitted

that respondent no.3 had retired from services several years ago and yet was being unjustifiably hounded by the petitioner.

11. Mr Praveen, learned counsel for respondent nos.1 & 2 also countered the submissions made on behalf of the petitioner. He submitted that the *ad hoc* Disciplinary Authority had been constituted since Dr. Vikram Kumar, Director, CRRRI had demitted office on 02.09.2008 and Dr. Gangopadhyay had taken over the charge as an Acting Director, CRRRI but was not discharging the function as a Disciplinary Authority. Consequently, respondent no.1 was requested for nominating an *ad hoc* Disciplinary Authority and, accordingly, by an order dated 10.11.2008, the President, CSIR nominated Dr Girish Sahni, Director, IMT as the *ad hoc* Disciplinary Authority. He submitted that the said decision could not be faulted.

12. The first and foremost issue to be addressed is whether the report of the Complaint Committee and the impugned order are *ex facie* without application of mind as contended on behalf of the petitioner. It was contended on behalf of the petitioner that the findings of the Complaint Committee had established the case of sexual harassment as the Complaint Committee had accepted that respondent no.3 had held petitioner's arm on 29.04.2005 as was alleged by the petitioner. According to the petitioner, since physical contact by respondent no.3 had been accepted, the conclusion that respondent no.3 sexually harassed the petitioner would necessarily have to follow.

13. The Supreme Court in the case of ***Vishakha & Ors. v. State of Rajasthan and Ors.: (1997) 6 SCC 241*** had set out the guidelines and norms for due observance at work places. The said guidelines provided an

inclusive definition of the expression 'sexual harassment', which is set out below:-

“2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- a) physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical verbal or non-verbal conduct of sexual nature.”

14. The above definition was also adopted under the Central Civil Services (Conduct) Rules, 1964 (hereinafter 'the CCS Rules'). The Rule 3C of the aforesaid Rules reads as under:-

3C. Prohibition of sexual harassment of working women, - (1) No Government servant shall indulge in any act of sexual harassment of any woman at any work place.

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

Explanation. - (I) For the purpose of this rule, -

(a) "sexual harassment" includes any one or more of the following 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
- (vi) any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.

(b) the following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:-

- (i) implied or explicit promise of preferential treatment in employment; or
- (ii) implied or explicit threat of detrimental treatment in employment; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

(c) "workplace" includes,-

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government;

(ii) hospitals or nursing homes;

(iii) any 'sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

- (iv) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
- (v) a dwelling place or a house.”

15. Undoubtedly, physical contact or advances would constitute sexual harassment provided such physical contact is a part of the sexually determined behaviour. Such physical contact must be in the context of a behaviour which is sexually oriented. Plainly, a mere accidental physical contact, even though unwelcome, would not amount to sexual harassment. Similarly, a physical contact which has no undertone of a sexual nature and is not occasioned by the gender of the complainant may not necessarily amount to sexual harassment.

16. In the present case, although the Complaint Committee had accepted that there was evidence to show that respondent no.3 had held the arm of the petitioner, it had concluded that the same was not a sexually determined behaviour but was in the nature of the altercation. The Complaint Committee concluded that respondent no.3 might have held the petitioner's arm and thrown the material in her hand in a fit of anger; although, the said incident may be a case of harassment and is deplorable, the same would not qualify as a sexual harassment. Plainly, all physical contact cannot be termed as sexual harassment and only a physical contact or advances which are in the nature of an “*unwelcome sexually determined behaviour*” would amount to sexual harassment.

17. It is also relevant to note that the petitioner in her complaint regarding the incident that occurred on 29.04.2005 had reported as under:-

“Thereafter while I was working, Dr Sunil Bose, Scientist entered the laboratory, stopped the machine, snatched sample from undersigned, threw the materials and then pushed me out of the laboratory and placed lock, while shouting and using derogatory remarks against Dr Sood and SC Community (as I am married to SC).”

18. Plainly, no allegation of any unwelcome sexually oriented behaviour was alleged in the petitioner’s note of 16.08.2005, the petitioner had, *inter alia*, also alleged as under:-

“Dr Sunil Bose was harsh in his behaviour and asked me rather threatened me not to enter in the labs and FP Block while abusing yourself, Dr V. K. Sood and the undersigned, Matter was reported to DRRI in person.”

19. Plainly, none of the above two complaints had mentioned any allegation of any sexually oriented behaviour on the part of respondent no.3. The Complaint Committee had examined the evidence on record and had accepted that a charge of sexual harassment was not made out against respondent no.3. This Court does not find that the said conclusion to be perverse or without application of mind as was contended on behalf of the petitioner. The Disciplinary Authority also accepted the said report and this Court finds no infirmity with the impugned order passed by the Disciplinary Authority.

20. The contention that the Complaint Committee was not constituted in terms of the DoPT vide OM No. 11013/10/97-Estt.(A) dated 13.07.1999 is also unmerited. The OM dated 13.07.1999 is set out below:-

"Subject:- Prevention of sexual harassment of working women-Supreme Court judgement in the case of Vishaka vs. State of Rajasthan.

1. The undersigned is directed to refer to this Department's office Memorandum of even number dated 13.2.98 vide which guidelines and norms to be observed to prevent sexual harassment of working women were issued in pursuance of the judgement of the Supreme Court in the case of Vishaka & Ors. vs. State of Rajasthan and Ors. (JT 1997 (7) SC 384).

2. The above guidelines inter-alia stipulate for the creation of an appropriate complaint mechanism in every organisation for redressal of the complaints made by the victims. It has come to the notice of this Department that in one of the Central Government Offices, the Committee constituted for the purpose was headed by an official of the rank of Upper Division Clerk. As an official not sufficiently higher in rank may not be able to express views independently/freely especially when the perpetrator is holding an higher position, the arrangement makes mockery of the system. It is therefore, requested that the Committee constituted for redressal of the complaints by the victims of sexual harassment should be headed by an officer sufficiently higher in rank, so as to lend credibility to the investigations.

3. The Ministries/Departments are requested to note the above instructions for strict compliance.

(Smt. S. Bandopadhyay)
DIRECTOR"

21. A plain reading of the aforesaid OM indicates that the Complaint Committee is required to be headed by *“an officer sufficiently higher in rank so to lend credibility to the investigation.”* In the present case, there

is no dispute that the Chairman of the Complaint Committee was higher in rank than respondent no.3. Further, two of the members of the Complaint Committee were Scientists, one was a Technical Officer. In addition, the Committee also included a member from a non-government organization.

22. In view of the above, this Court finds no infirmity with the constitution of the said Complaint Committee and the contention that the said constitution is not in accordance with the OM dated 13.07.1999 is unmerited.

23. The contention that an *ad hoc* Disciplinary Authority had been constituted to exonerate respondent no.3 is also unfounded. It has been explained by the respondent nos. 1 and 2 that Dr Vikram Kumar, who was the Director, CRRI had demitted the office on 02.09.2008 and the officer who had taken charge as an Acting Director, CRRI was not functioning as a Disciplinary Authority. Accordingly, an *ad hoc* Disciplinary Authority had been appointed. The petitioner had made a representation against the appointment of the *ad hoc* Disciplinary Authority. In her representation, the petitioner had requested that Dr Vikram Kumar be requested to continue as a Disciplinary Authority until disposal of the case. She had further requested that since appointment of a regular Director was in process, status quo be maintained till such time as the Director (Disciplinary Authority) is appointed. It is seen from the representation that the only ground urged by the petitioner was that her previous representation was pending before Dr Vikram Kumar. However, no other apprehension regarding appointment of Dr Girish Sahni as an *ad hoc* Disciplinary Authority was raised by the petitioner. Since Dr Vikram Kumar had demitted office on 02.09.2008, the decision of the respondent

to appoint an *ad hoc* Disciplinary Authority cannot be faulted. The petitioner did not express any apprehension regarding the impartiality or independence of Dr Sahni as an *ad hoc* Disciplinary Authority and thus, cannot be heard to challenge his independence at this stage.

24. In view of the above, this Court finds no merit in the present petition. The same is, accordingly, dismissed.

OCTOBER 31, 2017/MK

VIBHU BAKHRU, J

