

## HR Law Hotline

January 31, 2017

### WORKPLACE SEXUAL HARASSMENT COMPLAINT: COURT DECIDES NOT TO INTERFERE WITH DECISION OF INTERNAL COMMITTEE SET UP BY EMPLOYER

- Court does not interfere with the order of punishment by Disciplinary Authority unless it is shockingly disproportionate to the act of misconduct.
- Court does not re-appreciate evidence once the Committee has conducted a domestic enquiry.
- Employer to have proper mechanism for prevention and redressal of sexual harassment complaints and to create greater awareness regarding gender sensitization at workplaces.

The Bombay High Court ("**Court**") ruled that it would not interfere with an order of punishment passed by the Internal Complaints Committee ("**ICC**") in relation to a sexual harassment complaint, unless the order is shockingly disproportionate.

The Court passed this judgment in the case of *Vidya Akhave* ("**Petitioner**") v. *Union of India and Ors*<sup>1</sup> in relation to the new Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 of India ("**Sexual Harassment Act**").

The Court observed that the employer must sufficiently comply with the duties cast upon it under the Sexual Harassment Act. The Court also stated that (a) an employer must provide for an effective mechanism for prevention of sexual harassment of women at workplace; (b) male employees must be sensitized towards the concerns of female employees and (c) the ICC must deal with complaints of sexual harassment in an expedited manner.

#### FACTS:

The employee (petitioner) was employed with an Indian government owned development bank. She had filed a complaint of sexual harassment against the General Manager, who was her immediate superior officer ("**Supervisor**"). However, no action was taken by the employer. Thereafter, the employee filed another complaint seeking establishment of an ICC as was necessary to be set up, as per the law laid down by the Supreme Court of India in the case of *Vishakha v. State of Rajasthan*<sup>2</sup>.

As for the incidents that took place before February/March 2012, the limitation period of three months prescribed under the Sexual Harassment Act had expired and thus, were not taken into account by the ICC. However, the Human Resource department could take separate action based on those instances, which would be beyond the scope of the Sexual Harassment Act. Based on the ICC's report, the Disciplinary Authority passed an order, by which the Supervisor was (a) demoted to a lower rank by two ranks; (b) transferred to another city and (c) received a pay cut as per his lower rank ("**Order**").

#### CONTENTIONS:

The employee however challenged the validity of the Order before the Court under Article 226 of the Constitution of India ("**Constitution**"). The employee contended that a higher punishment should be imposed on the Supervisor. Also, the employee challenged the validity of the observations of the ICC as it had not adequately taken on record all evidences. Also, the Supervisor had not been declared guilty under the Sexual Harassment Act and a mere condemnatory statement was made by the Disciplinary Authority against the Supervisor. As for expiration of the period of limitation, the employee argued that because the Supervisor was her immediate superior, she was under reasonable apprehension to file a complaint as it would endanger her career.

The Supervisor argued that the penalty imposed was harsh enough as a result of which the Supervisor had suffered psychologically and financially. It was contended that the Supervisor had to stay apart from his family, as he had to shift to another city. It was further contended that it was not open to the Court to re-appreciate the evidence once the Disciplinary Committee had considered it and ruled over it. Lastly, it was contended that the Court cannot look into the proportionality of the Order passed by a Disciplinary Committee.

#### JUDGMENT:

The Court referred to its decision in *Om Kumar v Union of India*<sup>3</sup> and reaffirmed the principles of judicial restraint to be exercised by courts under Article 226 of the Constitution. The Court held that unless the Order is shockingly disproportionate to the act of the delinquent employee, it will be circumspect in interfering with the Order. Reiterating the decision of *Om Kumar*, the Court held that interference is warranted only when there is non-compliance of the principles of administrative law, Wednesbury Principles and doctrine of proportionality by the Disciplinary Authority.

As for compliance with the Wednesbury Principles, interference was held to be not permissible unless any of the

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following conditions were satisfied: (a) the Order was contrary to law, (b) relevant factors were not considered, (c) irrelevant factors were considered and (d) no reasonable person would have taken such a decision.

Under the principle of proportionality, the Court stated that it would have to be seen whether the legislature and administrative authority maintained a proper balance between the adverse effects which the legislation or order may have on the rights, liberties or interests of persons, keeping in mind the purpose which they were intended to serve. The Court also observed that the inquiry by the Disciplinary Authority was conducted dispassionately and all evidences were appropriately considered and ruled upon in a fair and proper manner. Therefore, the Court was not entitled to give a second opinion merely because it had the discretion to do so.

However, the Court felt that there was a need to have an effective mechanism in place at workplaces for addressing issues of sexual harassment of women. The Court also observed that male employees must be made aware of concerns of female employees by undertaking an exercise of gender sensitization as more and more women were becoming part of the national workforce and contributing to the national economy. The Court also remarked as to how many companies, corporations and government undertakings have not complied with the Sexual Harassment Act and do not have an adequate mechanism to deal with issues of sexual harassment.

#### ANALYSIS:

This judgment reaffirms the importance and powers of the ICC that is required to be formed under the Sexual Harassment Act. Given the sensitivities surrounding sexual harassment allegations, it is important that the ICC is trained to deal with such cases in a fair, proper and dispassionate manner and based on the principles of natural justice. It is also necessary for the ICC to ensure that it completes the investigation and issues its order within the time frame set under the law.

The judgment also clarifies the already enshrined principles of judicial restraint by the courts. The interference of the courts should be limited to ensuring that there are no procedural irregularities or violations of principles of natural justice. Once the ICC has adequately and appropriately addressed a complaint of sexual harassment, it is not open to the courts to look into the merits of the matter.

– Arjun Gupta & Vikram Shroff

You can direct your queries or comments to the authors

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<sup>1</sup> Writ Petition 796 of 2015

<sup>2</sup> AIR 1996 SC 1

<sup>3</sup> (2001) 2 SCC 386

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