

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.9144/2009**

% **Date of Decision: 18.05.2010**

Dr.Salma Khatoon Petitioner
Through Mr.Arun Bhardwaj, Advocate.

Versus

Secretary, Govt. of India, Department of Ayush Respondents
& others

Through Ms.Meera Bhatia, Advocate for
respondent No.1/UOI.
Mr.Suman Chatterjee, Under Secretary
Department of Ayush, in person.
Mr.C.Hari Shankar, Advocate for
respondent Nos.2 & 3.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner has challenged the order dated 29th September, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.2059 of 2008, titled as 'Dr.Salma Khatoon v. Secretary of Government of India, Department of Ayush & others', whereby the original application of the petitioner seeking various reliefs, inter-alia, that the respondents be directed to constitute a proper sexual

harassment committee to enquire into sexual harassment complaints made by the petitioner in accordance with the guidelines made by Hon'ble Supreme Court in 'Vishakha v. State of Rajasthan & others' 1997 SCC (Cr1.) 932, and to direct the said committee to enquire into the conduct of respondent No.2 was dismissed.

The petitioner had filed an original application before the Central Administrative Tribunal, Principal Bench, New Delhi contending, inter-alia that she was appointed as Research Assistant (Unani Medicine) at Bhadrok (Orissa) in CCRUM, Department of Ayush, Ministry of Health, and was transferred from Bhadrok to Patna in 1989. In 1996, she was promoted as Research Officer.

The allegation of the petitioner is that on 13th June, 2000, one Sh.KHm Mohmad, the then Deputy Director, in charge caused sexual harassment to co-employee, and an enquiry was initiated and he was placed under suspension. The petitioner's allegation is that on 5th September, 2007 she was transferred from RRIM, Delhi under an officer who was junior in seniority to her. She was threatened on telephone of her husband either to settle all the disputes and mend her ways or face action.

In connection with the threats given to her, the petitioner contended that she visited the Director/accused, Sh.M.K.Siddiqui in his Chamber and during conversation, the Director/respondent No.3

molested and harassed her and stated that if she wants posting of her choice, she had to either pay money or please him. Consequently, thereto made a written complaint of sexual harassment to the Commissioner of Police and also to Secretary, Government of India, Ministry of Health.

Pursuant to the complaint made by the petitioner, she was informed that a Committee of Sexual Harassment has been formed and she was advised to appear on 30th April, 2008. The petitioner raised objections against the constitution of the Committee and its functioning as according to her, even her statement was not recorded properly. The objections raised by the petitioner were not accepted and decided entailing filing of petition under Section 19 of the Central Administrative Tribunal Act, 1985 being O.A.No.2059 of 2008, which was dismissed by the order dated 29th September, 2008 holding that the matter regarding constitution of the Sexual Harassment Committee and the objections raised by the petitioner will not fall under any of the Clause of Section 14 of the said Act.

It was further held that the ordering constitution of fresh Sexual Harassment Committee would not be a matter in relation to recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation. It was also held that it will also not be a service matters concerning a person appointed to any service or post other than a

person referred to in Clause (b) of Sub Section (1) of this Section. The Tribunal further held that apart from the cause of action will accrue to the petitioner only when some action is actually initiated against her on the basis of the report.

The petitioner filed the present petition challenging the order of the Tribunal dated 29th September, 2008 contending, inter-alia that the Tribunal will have jurisdiction under Section 14 to consider of this matter and grant her relief prayed by her in her original application before the Tribunal.

Besides the relief for re-constitution of the Sexual Harassment Committee, the petitioner had also sought a direction to transfer respondent No.3 out of the present Department or to place under suspension; quash and set aside the report dated 6th May, 2008 of the Committee for Sexual Harassment at work place CCRUM, Department of Ayush, Ministry of Health and to restrain respondent No.3 to threaten the witnesses directly or indirectly, or through agents, nominees, friends and restrain him from tampering with the evidence were also prayed before the Tribunal.

Learned counsel for the petitioner on instructions does not press his reliefs in respect of transfer of respondent No.3 out of the present department or to quash & set aside the report dated 6th May, 2008 of

the Committee as this report has been withdrawn and also does not press to restrain against respondent No.3.

Learned counsel for the petitioner only seeks relief in respect of constitution of the Sexual Harassment Committee. After the writ petition was filed by the petitioner, the Second Sexual Harassment Committee was re-constituted by the respondents, however, the Members of the Committee are the same who were in Sexual Harassment Committee which was constituted pursuant to order dated 1/2.07.2008.

The main objection of the learned counsel for the petitioner is about the Chairperson of the Committee being Ms.Meenakshi Negi, the Director who is not a Joint Secretary on the ground that she is junior to the accused who is the Director General.

Without going into the contentions of the petitioner that the Tribunal will have jurisdiction under Section 14 of the Act to direct the respondents regarding constitution of fresh Sexual Harassment Committee and in respect of the matters relating to the constitution of Sexual Harassment Committee and any directions given in this regard, since the Committee has been reconstituted and as no person senior to the accused is available in the department except the Secretary of the Department of Ayush, the petition can be disposed of because even the Tribunal had taken into consideration the fact that the objection raised

by the petitioner with regard to constitution of proper Sexual Harassment Committee had indeed been considered and new committee had been constituted, with the direction to have secretary in the sexual harassment committee as its Chairperson.

Even if the Tribunal does not have jurisdiction, as has been contended by the counsel for respondent Nos.2 & 3, this Court is not powerless to issue direction for the compliance of the order passed by the Supreme Court in the case of Vishakha (Supra). If the Tribunal does not have jurisdiction, it does not leave petitioner without any remedy and she would be entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. In the circumstances, it will be appropriate to direct the respondents to have Secretary Department of Ayush as Chairperson of sexual harassment committee in place of Ms.Meenakshi Negi as she is junior to the accused against whom allegation of sexual harassment has been made.

The learned counsel for the respondents have also not been able to show any cogent grounds against making the secretary of the Department of Ayush as the Chairperson of the sexual harassment committee in respect of the complaint of the petitioner.

In the circumstances, this Court directs the respondents to appoint Secretary, Government of India, Department of Ayush as the Chairperson of reconstituted sexual harassment committee in the

matter of complaint made by the petitioner. The said committee will consider the complaint of the petitioner in accordance with the guidelines and law laid down in the case of Vishakha (Supra).

With these directions the petition is disposed of and the parties are left to bear their own costs. It is however, clarified that this will not be precedent and this Court has not decided whether the Tribunal will have jurisdiction under Section 14 of the Central Administrative Tribunal Act, 1985 in the matter of constitution of the Sexual Harassment Committee.

With these directions, the present writ petition is disposed of.

ANIL KUMAR, J.

MAY 18, 2010

‘VK’

MOOL CHAND GARG, J.