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

+ **W.P.(C) 7502/2015**

SARITA VERMA

..... Petitioner

Through: **Mr. Sumit Jidani, Advocate.**

versus

**NEW DELHI MUNICIPAL CORPORATION
& ORS**

..... Respondents

Through: **Mr. Rajiv Bansal, Advocate with
Ms. Pooja Kalra and Ms. Arpita,
Advocate for NDMC.**

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Date of Decision : 22nd April, 2016.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The petitioner, by way of the present writ petition, has challenged the order dated 27th March, 2015 passed by respondent no. 1 whereby conclusive findings given on 21st December, 2012 by respondent no. 2, i.e., "Sexual Harassment Committee" have been ignored by respondent no. 1 and respondent no. 3 has been exonerated.

2. Mr. Sumit Jidani, learned counsel for the petitioner states that respondent no. 1 has passed the impugned order dated 27th March, 2015 after giving 'Benefit of Doubt' to the respondent no. 3 as if he was dealing with a

criminal trial and that too, after keeping the file pending for more than three years. He submits that the approach of respondent no. 1 is contrary to the judgment of Supreme Court in ***Apparel Export Promotion Council Vs. A.K. Chopra, 1999 SCC (L&S) 405*** wherein it has been held as under:-

“26. There is no gainsaying that each incident of sexual harassment at the place of work, results in violation of the fundamental right to gender equality and the right to life and liberty — the two most precious fundamental rights guaranteed by the Constitution of India. As early as in 1993, at the ILO Seminar held at Manila, it was recognized that sexual harassment of women at the workplace was a form of “gender discrimination against women”. In our opinion, the contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate. The message of international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (“CEDAW”) and the Beijing Declaration which directs all State parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women is loud and clear. The International Covenant on Economic, Social and Cultural Rights contains several provisions particularly important for women. Article 7 recognises her right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate the working environment. These international instruments cast an obligation on the Indian State to gender-sensitise its laws and the courts are under an obligation to see that the message of the international instruments is not allowed to be drowned. This Court has in numerous cases emphasised that while discussing constitutional

requirements, court and counsel must never forget the core principle embodied in the international conventions and instruments and as far as possible, give effect to the principles contained in those international instruments. The courts are under an obligation to give due regard to international conventions and norms for construing domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. (See with advantage — Prem Shankar Shukla v. Delhi Admn. [(1980) 3 SCC 526 : 1980 SCC (Cri) 815 : AIR 1980 SC 1535] ; Mackinnon Mackenzie and Co. Ltd. v. Audrey D' Costa [(1987) 2 SCC 469 : 1987 SCC (L&S) 100 : JT (1987) 2 SC 34] ; Sheela Barse v. Secy., Children's Aid Society [(1987) 3 SCC 50, 54 : 1987 SCC (Cri) 458] SCC at p. 54; Vishaka v. State of Rajasthan [(1997) 6 SCC 241 : 1997 SCC (Cri) 932 : JT (1997) 7 SC 384] ; People's Union for Civil Liberties v. Union of India [(1997) 3 SCC 433 : 1997 SCC (Cri) 434 : JT (1997) 2 SC 311] and D.K. Basu v. State of W.B. [(1997) 1 SCC 416, 438 : 1997 SCC (Cri) 92] SCC at p. 438.).

27. In cases involving violation of human rights, the courts must forever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field. In the instant case, the High Court appears to have totally ignored the intent and content of the international conventions and norms while dealing with the case.”

3. Mr. Sumit Jidani also states that the hearing and adjudication of the aforesaid matter is urgent as the respondent no. 3 is set to retire on 30th May, 2016 and if the present petition is not adjudicated prior thereto, the writ petition would be rendered infructuous and it would result in serious miscarriage of justice.

4. On the other hand, Mr. Rajiv Bansal, learned counsel for respondent-NDMC states that present writ petition is not maintainable as petitioner has

an alternate effective remedy by filing a petition before the Central Administrative Tribunal (for short "CAT").

5. Mr. Bansal states that the order dated 27th March, 2015 has been passed by the Chairperson, NDMC in accord with the CCS Rules. In support of his submission, he relies upon Section 13(3) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and Section 14(3) of the Administrative Tribunal Act, 1985. The relevant portion of the said Sections is reproduced hereinbelow:-

“A)Section 13(3) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:-

"13. Inquiry report.—

xxxx xxxx xxxx xxxx

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of Section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer."

B) Section 14(3) of the Administrative Tribunal Act, 1985 :-

"14. Jurisdiction, powers and authority of the Central Administrative Tribunal.—

xxxx xxxx xxxx xxxx

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to—

- (a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and*
- (b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs."*

6. Mr. Rajiv Bansal submits that in the present matter, CAT is the Court of first instance and the petitioner cannot approach this Court by way of a writ petition overlooking the jurisdiction of CAT. In support of his submission, he relies upon the Supreme Court judgment in ***Rajeev Kumar and Another Vs. Hemraj Singh Chauhan and Others, (2010) 4 SCC 554***

wherein it has been held as under:-

"8. This Court is of the view that the understanding of the ratio in L. Chandra Kumar by the learned counsel for the appellants in this case is not correct and the ratio in L. Chandra Kumar is just to the contrary.

9. The Constitution Bench in L. Chandra Kumar held that the power of the High Court under Articles 226 and 227 of the Constitution and of this Court under Article 32 of the Constitution is a part of the basic structure of our Constitution (see paras 78 and 79, pp. 301 and 302 of the Report). The Constitution Bench also held that various tribunals created under Articles 323-A and 323-B of the Constitution, will function as court of first instance and are subject to the power of judicial review of the High Court under Articles 226 and 227 of the Constitution. The Constitution Bench also held that these tribunals are empowered even to deal with constitutional questions and can also examine the vires of statutory legislation, except the vires of the legislation which creates the particular tribunal.

10. In para 93, at p. 309 of the Report, the Constitution Bench specifically held: (L. Chandra Kumar case [(1997) 3 SCC 261: 1997 SCC (L&S) 577])

"93. ... We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted."

(emphasis added)

The Constitution Bench explained the said statement of law by reiterating in the next sentence: (L. Chandra Kumar case [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] , SCC p. 309, para 93)

"93. ... By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the

legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned”

11. On a proper reading of the abovequoted two sentences, it is clear:

(a) The tribunals will function as the only court of first instance in respect of the areas of law for which they have been constituted.

(b) Even where any challenge is made to the vires of legislation, excepting the legislation under which tribunal has been set up, in such cases also, litigants will not be able to directly approach the High Court “overlooking the jurisdiction of the tribunal”.

12. The aforesaid propositions have been repeated again by the Constitution Bench (in L. Chandra Kumar case) in the penultimate para 99 at p. 311 of the Report in the following words:

“99. ... The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.”

13. In view of such repeated and authoritative pronouncement by the Constitution Bench of this Court, the approach made to the High Court for the first time by these appellants in respect of their service disputes over which CAT has jurisdiction, is not legally sustainable. The Division Bench of the High Court, with great respect, fell into an error by allowing the appellants to treat the High Court as a court of first instance in respect of their service disputes for adjudication of which CAT has been constituted.

14. The grievances of the appellants in this appeal are that they were not made parties in proceedings before the Tribunal. But in the impleadment application filed before the High Court it was not averred by them that they were not aware of the pendency of the proceedings before the Tribunal. Rather from the averments made in the impleadment petition it appears that they were aware of the pendency of the proceedings before the Tribunal. It was therefore, open for them to approach the Tribunal with their grievances. Not having done so, they cannot, in view of the clear law laid down by the Constitution Bench of this Court in L. Chandra Kumar , approach the High Court and treat it as the court of first instance in respect of their grievances by "overlooking the jurisdiction of the Tribunal". CAT also has the jurisdiction of review under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987. So, it cannot be said that the appellants were without any remedy."

7. In rejoinder, learned counsel for petitioner states that the matter at hand is not a service matter but has wide compass as the petitioner is seeking enforcement of her fundamental rights as enunciated by the Supreme Court in ***Vishaka and Others Vs. State of Rajasthan and Others***, AIR (1997) SC 3011.

8. Having heard learned counsel for the parties, this Court is of the opinion that the finding of Sexual Harassment Committee could not be ignored by respondent no. 1 on vague and general grounds, as has been done in the impugned order, without any discussion. In fact, the impugned order passed by respondent no. 1 is against the mandate of law as enunciated by the Supreme Court in ***Medha Kotwal Lele and Others Vs. Union of India and Others***, (2013) 1 SCC (CRI) 459 wherein it has been held as under:-

" 44.1. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their

respective Civil Services Conduct Rules (by whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings, etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent."

(emphasis supplied)

9. Though this Court is in agreement with the submission of learned counsel for respondent-NDMC that petitioner has an alternate remedy by filing a petition before CAT, yet it is of the opinion that the said remedy is not an effective one in the facts of the present case inasmuch as respondent no. 3 is set to retire on 30th May, 2016. If the petitioner is now relegated to CAT, it is highly unlikely that the matter would be disposed of by the said Tribunal prior to 30th May, 2016. It pertinent to mention that the bar of alternative effective remedy is a self-imposed restraint and not a constitutional bar.

10. Consequently, the present writ petition is allowed and the order dated 27th March, 2015 is set aside. Respondent No. 1 is directed to take a fresh decision within a period of four weeks after giving an opportunity of hearing to the petitioner as well as respondent No. 3. Needless to say that the Respondent No.1 shall take a decision in accordance with the law. The reasoned order shall be communicated to the petitioner and respondent No. 3

by registered AD post. It is clarified that this Court has not expressed any opinion on the merits of the controversy and the rights and contentions of all parties are left open.

MANMOHAN, J

APRIL 22, 2016
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