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

+ LPA 72/2018, CM Nos. 7076/2018, 7077/2018, 7078/2018 &
22310/2018

DR TEJINDER KAUR

..... Appellant

Through: In person.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mrs. Bharathi Raju, CGSC for
R1/UIO.

Mr. Mukul Gupta, Sr. Adv. with
Ms. Meenakshi Mohan and Mr. Sumit
Kr. Mishra, Advs. for R2/NIPCCD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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05.10.2018

LPA 72/2018

1. This appeal has been filed by the appellant challenging the order dated December 12, 2017 passed by the learned Single Judge in W.P. (C) 5928/2016, whereby the learned Single Judge has dismissed the writ petition.
2. The grievance of the appellant is that, she had filed a petition challenging the "*status report*" dated September 08, 2015 prepared by the respondent No.5 whereby he has held that the complaint of sexual

harassment made by Ms. X (the real name is not mentioned to avoid any ignominy to the person concerned) is time barred. According to the appellant, she is the Presiding Officer of the Internal Complaints Committee (hereinafter 'ICC') of respondent No.2 being National Institute of Public Co-operative and Child Development at the Headquarters at Delhi. The said status report is contrary to the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act of 2013 in short), inasmuch as the said status report could only have been generated by ICC constituted under Section 4 of the Act and not by respondent No.5. In this regard, we may reproduce the relevant paras of the status report dated September 08, 2015 as under:

“7. In view of the above, it is to state that the complaint made by the complainant against Dr. P. Krishnamoorthy, RD(I) on 16th July, 2015 to the Hon'ble Minister, WCD-cum Chairperson NIPCCD is time barred.

8. Further, it may be mentioned that Mr. P. Krishnamoorthy joined NIPCCD in August, 2002 as Deputy Director and got promoted and posted at Regional Centre, Indore in February, 2010 as Regional Director, Indore. In the past 14 years of his career with NIPCCD we have not come across with any such complaint against him.

9. Based on the above factual position it can be summarized that complainant could have complained within three months period of occurrence of the incident as per the said Act and should not have taken more than two years after the

incident. As per the Act, it has termed as Time Barred.”

3. The appellant had relied upon Section 9 of the Act of 1993 in support of her contention that the complaint of sexual harassment at work place shall lie to the ICC or Local Committee. According to her, it is a conceded case of the parties that the complaint was initially made to the concerned Minister which was sent to the respondent No.5. In other words, the said complaint was not addressed by Ms. X to the appellant or the ICC but to the Minister concerned of the Ministry, who further sent the complaint to the Director of the respondent No.2, who forwarded it to Additional Director respondent No.5. The respondent No.5 sought comments of the officer against whom the alleged complaint was made. The learned Single Judge has by referring to the provisions of the Act and the CCS(CCA) Rules, 1965 and instructions issued by DoPT, Government of India has held that, the OM dated July 16, 2015 on which the official respondents relied, is only to serve as a guideline and does not replace the statutory provisions of the Act or the CCS(CCA) Rules 1965. The learned Single Judge in para 21 has held that it would have been apposite to refer the complaint of Ms. X to the concerned ICC for a preliminary investigation rather than to respondent No.5. He in para 22 held, the failure on the part of the official respondents to refer the complaint

of Ms. X to the ICC is not in accordance with the guidelines on “*steps for conduct of inquiry in complaints of sexual harassment*”. Finally, the learned Single Judge on examination of the complaint itself held:

- (1) There are no specifics;
- (2) Ms. X has not made any grievance of her complaint not being entertained;
- (3) Ms. X was last engaged in 2012. As per officer she last visited the Centre in 2013. The complaint made by Ms. X is highly belated.
- (4) There is no provision for the appellant to pursue the complaint on behalf of Ms. X.

4. Even before us the appellant has primarily relied upon Section 9 and Section 13 of the Act of 1993 which stipulates as under:

“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 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.

13. Inquiry report.- *(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.*

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(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 forwarded the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.”

5. According to her, on a reading of Section 9 and Section 13, it is clear that a complaint has to be made to the ICC and it is only after the ICC gives its report, the role of the disciplinary authority comes into play under Section 13 of the Act of 1993.

6. On the other hand, Mrs. Bharathi Raju, learned CGSC appearing for the Union of India has drawn our attention to the provisions of Section 11 of the Act to contend that the section itself stipulates if the rules are in place in an organisation the action shall be taken in accordance with the said rules. According to her, the CCS(CCA) Rules stipulates the procedure for conducting the enquiry. She has also drawn our attention to the Office Memorandum dated November 27, 2014 issued by the DoPT, of which para 5 stipulates the following:

“5. All Ministries/Departments are advised that the following procedure may be adopted while dealing with complaints of sexual harassment:-

(i) Sexual harassment will include any one or more of the Acts or behaviour defined in Rule 3-C of the CCS (Conduct) Rules 1964 read with Sec 3(2) of SHWW (PPR) Act.

(ii) The Committee constituted in each Ministry / Department / office under the CCS (Conduct) Rules, 1964 shall inquire into complaints of sexual harassment in accordance with the provisions of Section 4 of the SHWW (PPR) Act.

(iii) The Committee will as far as practicably follow the procedures prescribed in CCS (CCA) Rules 1965 for conduct of the inquiry.

(iv) If any complaint is received directly by the committee, the same shall be referred to the appropriate disciplinary authority and the Committee shall inquire into the complaint on the complaint being referred to it by the disciplinary authority.”

7. It is her submission that from the reading of the para (iv) above, it is clear, if the complaint is received directly by the ICC, the same shall be referred to the appropriate disciplinary authority and the ICC shall inquire into the complaint, on the complaint being referred to it by the disciplinary authority. In other words, the complaint made, has necessarily to be considered by the disciplinary authority before referring the matter to the ICC.

8. In this case, according to her, the authority concerned has considered

the complaint and formed the opinion as reflected in the status report dated September 08, 2015, the relevant paras of which have already been reproduced above which reveal the complaint was belated.

9. Having considered the submissions made by the appellant and the learned counsel for the respondents, it is clear that the appellant had primarily relied upon Section 9 of the Act of 2013, whereas the officials respondents relied upon Section 11 of the Act and the OM dated November 27, 2014 issued by the DoPT, Government of India, a reference to which has been made above. We have also considered the conclusion of the learned Single Judge, in Paras 21, 22 and on the complaint. We do agree with the conclusion arrived at by the learned Single Judge that the said OM dated November 27, 2014 cannot override the provisions of the statute and the CCS(CCA) Rules. But what is the important in the case is whether the appellant has any locus to pursue the complaint filed by Ms. X. The conclusion of the learned Single Judge is in the negative, as, rejection of complaint of Ms. X on the ground of delay, that too by respondent No.5, can be a grievance of the complainant Ms. X only and not of the appellant. We agree with the said conclusion arrived at by the learned Single Judge.

10. Additionally, the learned Single Judge has also concluded that the

complaint was belated. The said conclusion is by noting the provisions of Section 9 of the Act of 2013 which stipulates a complaint has to be made within a period of three months from the date of incident and in case of series of incidents within a period of three months from the date of last incident. The extension of time by ICC beyond a period of three months is for a further time not exceeding three months that too if it is satisfied that the incidents were such which prevented the woman from filing a complaint within the said period.

11. In the case in hand, the complaint was made by Ms. X on July 16, 2015 even though the complainant has stated “*emotionally I was assaulted for the same till February, 2015*”. Per contra the Officer has taken a stand that the complainant had last visited the Centre in 2013. In view of variance in stand, it is possible to contend that the delay is explainable but that has to be at the instance of the complainant Ms. X. The complaint has not been pursued by Ms. X. In fact, it is one of the grounds which prompted the learned Single Judge to dismiss the writ petition. That apart the finding is also that the complaint does not contain any specifics which finding cannot be faulted.

12. We do not see any reason to interfere in the impugned judgment dated

December 12, 2017 passed by the learned Single Judge. The appeal is dismissed.

CM Nos. 7076/2018, 7077/2018, 7078/2018 & 22310/2018

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

OCTOBER 05, 2018*/aky*