

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 6476 of 2019

1. Smt. Chandrakiran Sinha W/o Shri Nileshwar Prasad Sinha Aged About 37 Years Occupation Feeding Demonstrator, Resident Poshan Punarwas Kendra, District- Hospital Dantewada, Chhattisgarh., District : Dantewada, Chhattisgarh
2. Smt. Satrupa Diwan W/o Shri L. R. Diwan Aged About 30 Years Occupation Accountant Cumdata Entry Operator, Resident Poshan Punarwas Kendra, District- Hospital Dantewada, Chhattisgarh., District : Dantewada, Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary, Health And Family Welfare Department Mahanadi Bhawan, Atal Nagar, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Under Secretary Health And Family Welfare Department Mahanadi Bhawan, Atal Nagar, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. Director Directorate Of Health Services, Indravati Bhawan, Naya Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
4. Dr. S.P.S. Sandilya Occupation In-Charge Chief Medical And Health Officer, District- Hospital Dantewada, Chhattisgarh., District : Dantewada, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. A. K. Pandey, Advocate.
For State	:	Mr. Chandresh Shrivastava, Dy. AG

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/08/2019

1. The challenge in the present writ petition is to the order of transfer dated 07.08.2019 so far as the respondent No. 4 is concerned who vide the impugned order has been shifted from the post of Civil

Surgeon, District Hospital, Dantewada to the post of Incharge, Chief Medical and Health Officer, District Dantewada.

2. Grievance of the petitioner is that the petitioner on an earlier occasion along with other female employees in the department had lodged a complaint against respondent No. 4 in respect of alleged harassment made by the respondent No. 4.
3. Based on the complaint an FIR was also lodged against respondent No. 4 for the offence under Section 509 based on the report of the Committee constituted by the department in the light of the case of **Vishaka and others V. State of Rajasthan and others, (1997) 6 SCC 241**, pronounced by the Hon'ble Supreme Court dealing with the sexual harassment complaints at the work place is concerned.
4. Further contention of the petitioner is that trial is going on against the petitioner and evidence has also been started. Evidence of petitioner No. 2 has already been recorded before the concerned Magistrate and now if the Respondent No.4 is shifted by the impugned order and made the in-charge Chief Medical and Health Officer, there is all possibility of petitioner's being harassed, if not, there are also possibility of petitioner being put to undue pressure so far as the criminal case is concerned and thus the impugned order needs modification.
5. State counsel on perusal of the order of transfer as also the contents of the documents enclosed along with the writ petition do not dispute the fact that petitioners had in fact along with the group of other ladies of the department lodged a complaint against respondent No. 4. State counsel also do not dispute the fact so far as initiation of criminal case against respondent No. 4 is concerned.

6. Given the said facts, it would be relevant to take note of the observations made by the Supreme Court in the case of **Vishaka and others V. State of Rajasthan and others, (1997) 6 SCC 241,,** wherein in paragraph 17(4) it has been held as under :-

“17. (4)Criminal Proceedings :

“Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimised or discriminated against while dealing with the complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.”

7. Prima facie, It appears that while passing of the impugned order the aforesaid developments or the facts of the case was not placed before the authorities concerned.
8. Given the aforesaid facts, this Court is of the opinion that ends of justice would meet if the respondent No. 1 is directed to reconsider the impugned order Annexure P-1 dated 07.08.2019 only so far as respondent No. 4's posting is concerned and if required a fresh order be passed taking into consideration the administrative exigency and also keeping in view the aforesaid factual matrix has has been narrated in the preceding paragraphs.
9. Let appropriate decision be taken at the earliest preferably within a period of 45 days from the date of receipt of copy of this order.
10. With the aforesaid observations, the writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge