

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.07.2019

Delivered on : 08.08.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.34081 of 2018

- 1.P.Sudha
- 2.N.Devi
- 3.M.Rameesha
- 4.B.Manjula

...Petitioners

vs.

- 1.The District Collector,
The District Collectorate Office,
Kancheepuram, Tamil Nadu - 631 501.
- 2.The Commissioner of Labour,
Teynampet, Chennai - 600 006.
- 3.SLAM Clothing Private Ltd.,
Rep by the Managing Director,
Mahindra World City (SEZ),
Natham Subpost, Chengalpet,
Kancheepuram, Tamil Nadu - 603 002.
- 4.The Principal Secretary to Government,
Revenue Department, Fort St.George,
Chennai - 600 009.
- 5.The Principal Secretary to Government,
Home Department, Fort St.George,
Chennai - 600 009.
(Respondent Nos.4 & 5 are suo motu impleaded
vide Court order dated 21.12.2018, made in
W.P.No.34081 of 2018)

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the first respondent to pass orders on our representations dated 11.08.2018, seeking the constitution of the Local Complaints

Committee as per Section 6 of the Sexual Harassment of Women at Workplace Act, 2013 within a time frame to be fixed by this Court.

For Petitioners .. Ms.D.Geetha

For Respondents .. Mr.J.Pothiraj, Spl.G.P.
(for R.1,2,4 & 5)
Ms.Anita Suresh
for M/s.Srinath Sridevan
(for R3)

ORDER

The petitioners were employed under the third respondent. They were employed for a duration of 2 to 5 years. One Mr.Mani was appointed as floor in-charge of the third respondent factory in the month of April, 2018. According to these writ petitioners, the said Mani, who was floor-in-charge of the factory, used to harass women employees of the factory including the petitioners. According to them, earlier for the same kind of conduct, he was terminated from service by the third respondent Management and subsequently reinstated into service in April, 2018. The petitioners have averred several instances of sexual harassment meted out to them at the hands of said Mani and several complaints have been addressed to the Management through representations by the petitioners. According to these petitioners, none of their representations have evoked any response and the third respondent has also not constituted a Committee in terms of the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013).

2.According to the petitioners, in every establishment there must be an Internal Complaints Committee (ICC) in order to address the concerns of women employees. However, in the third respondent establishment, such Internal Complaints Committee was not constituted at all and therefore, the writ petitioners are before this Court seeking constitution of Local Complaints Committee (LCC), as per Section 6 of the Act, 2013.

3.In response to the notice ordered in the writ petition, Ms.Anita Suresh, learned counsel entered appearance on behalf of the third respondent management.

4.A counter affidavit has been filed on behalf of the third respondent establishment, in which it is averred that the third respondent establishment has constituted Internal

Complaints Committee comprising four constituted members, including an external member from NGO, in terms of the Scheme of the Act, 2013, particularly, Section 6 of the Act.

5.The learned counsel appearing for the third respondent would submit that the committee has been asked to look into the grievances of the women employees and therefore, there is no need to approach the Local Complaints Committee as provided under Section 6 of the Act. She would submit that only in the absence of ICC, the complaints could be received by the District Level Local Committee. In any case, since the Internal Complaints Committee has been formed and constituted as per the scheme of the Act, the writ petition can be disposed of by directing the Committee to look into the complaints of the petitioners.

6.At this, Ms.D.Geetha, the learned counsel appearing for the petitioners would submit that the petitioners have lost faith in the impartiality of the Internal Committee, even assuming the same is constituted. According to the learned counsel, the committee, was infact not constituted at all, but only to non-suit the petitioners, the management has come forward with this version, as if the committee has been constituted. In any case, the learned counsel would submit that despite several complaints raised over a period of time since the appointment of the said Mani in April 2018, no action was initiated nor their grievances were properly addressed by the Management. These petitioners were given to understand that the Management was infact not inclined or willing to look into the grievances of these petitioners with dispassionate approach in terms of the provisions of Act, 2013. Infact, the learned counsel for the petitioners would submit that from the averments as contained in the counter affidavit filed on behalf of the third respondent, it is seen that the third respondent management has given a clean chit to the person, who perpetrated sexual harassment in the work place. She would particularly point out the averment contained in paragraph 12 of the counter affidavit, which reads as follows;

"12.I also wish to submit that some of the statements in the writ affidavit are false, even to the petitioners' knowledge. The allegation that there are only 6 toilets at the workplace is untrue. The floor working area at the workplace where the petitioners were deployed has 14 toilets exclusively for female employees. The petitioners are well aware of this. I also have reason to believe that the statement that Mr.Manivannan comes to workplace in an inebriated condition, emanating a strong alcoholic odour is not correct. In the course of my work at the workplace, I

interact with Mr.Mani on a regular basis and on no occasion have I found him at the workplace in an inebriated condition or smelling of alcohol."

7.In the above circumstances, the learned counsel for the petitioners would apprehend that the so called Internal Complaints Committee, constituted by the third respondent Management, will not be impartial and objective and if the Internal Complaints Committee is allowed to enquire into the complaints, in the teeth of clean chit given by the third respondent Management itself, such enquiry will be partisan and will not be fair and proper. Infact, she would draw the attention of this Court to number of complaints/representations addressed to the management over the period of time, which were not acted upon. On the other hand, on the basis of the complaints, the service of the petitioners stood terminated by the Management. Therefore, these petitioners have no faith in the internal arrangement of the third respondent and therefore, the learned counsel requests this Court to direct the first respondent to look into the complaints by the Local Complaints Committee in terms of the provisions of the Act, 2013.

8.Though there was a strong objection for such course of action to be adopted by this Court by the learned counsel appearing for the third respondent, this Court has to pass orders by considering the pleadings and materials placed on record.

9.Although, it is stated in the counter affidavit that Internal Complaints Committee has been constituted with an external Member, but from the facts and the materials as disclosed in the proceedings, it appears that the management was either disinterested or deliberately avoiding the complaints given by the petitioners from being enquired into. Though number of representations have been addressed to the third respondent Management, the representations did not evoke any response. Only when the writ petitioners came before this Court and notice was ordered in the writ petition, now the third respondent has come with the statement that the Internal Complaints Committee has been constituted.

10.From the above, it could be seen that the management was not serious about the complaints given by these petitioners and was not inclined to take any action against the perpetrated sexual assault. Infact, as contended by the learned counsel for the petitioner that in paragraph No.12 of the counter affidavit, which is extracted above, the management had almost given a clean chit to its floor in-charge, against whom series of complaints were given by these petitioners. Therefore, the learned counsel for the petitioners is right in contending that

the petitioner may not get justice at the hands of the Internal Complaints Committee, which Committee, will probably be guided and influenced by the Management.

11. Therefore, this Court is of the view that in the fitness of things, it is better that Independent Local Committee shall examine the complaints of these petitioners instead of Internal Complaints Committee going into such complaints, as that would safeguard the rights of these writ petitioners and would also pave way for enforcement of the rights of the petitioners in terms of the provisions of the Act. After all, the Independent Local Committee has to give opportunity to all parties concerned before passing any final orders and therefore, the third respondent would not stand prejudiced at all.

12. In the above circumstances, the writ petition is allowed and there shall be a direction to the first respondent to examine the complaints of these writ petitioners and hold an enquiry in terms of the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and pass appropriate orders.

13. The first respondent is directed to constitute a Committee and issue notice to the parties concerned and shall enquire into the allegations/complaints by these writ petitioners and pass appropriate orders after conclusion of such enquiry within a period of three months from the date of receipt of copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
The District Collectorate Office,
Kancheepuram, Tamil Nadu - 631 501.
2. The Commissioner of Labour,
Teynampet, Chennai - 600 006.

3.The Principal Secretary to Government,
Revenue Department, Fort St.George,
Chennai - 600 009.

4.The Principal Secretary to Government,
Home Department, Fort St.George,
Chennai - 600 009.

+1cc to M/s.D.Geetha, Advocate Sr.67796

+1cc to M/s.Srinath Sridevan, Advocate Sr.69080

W.P.No.34081 of 2018

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srg 19/09/2019