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

+ **W.P.(CRL) 1639/2019 & CRL.M.A. 11919/2019**

ABHILASHA DWIVEDI

..... Petitioner

Through: Ms. Naomi Chandra and Ms.
Aprajita Budhwar, Advocates.

versus

DEPARTMENT OF WOMEN & CHILD

DEVELOPMENT NCT OF DELHI & ANR Respondents

Through: Mr. Rajesh Mahajan, ASC for
State.
S.I. R.N. Ashangsomatai, P.S.
Mukherjee Nagar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.11.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

- a. Issue a writ of Mandamus directing Respondent No.2 to constitute an independent committee to enquire into and investigate all the allegations of the Petitioner pertaining to sexual harassment at workplace as well allegations pertaining to malpractices at OHB-II, Sewa Kutir, Kingsway Camp, New Delhi.
- b. Issue a writ of Mandamus quashing the notice dated 30.03.2019 transferring the Petitioner to CHB I & II Boys (Alipur).

- c. Issue a writ of Mandamus directing the Respondent No. 1 to compensate the Petitioner for causing delay in acting on her complaints and for all the harassment suffered by her while pursuing her grievances which went unacted upon for over 3 months.

2. At the material time, the petitioner was working as a Clinical Psychologist at the Observation Home for Boys-II situated at Kingsway Camp, Delhi (hereafter referred to as 'OHB-II'). She is not an employee of respondent no. 1 but an employee of an NGO named "Expressions Children Home". The said NGO was engaged by respondent no. 1 for providing mental health services at such facilities. The petitioner has been providing counselling services at OHB-II since 01.06.2018.

3. The petitioner alleges that she had been facing harassment from the Superintendent at OHB-II (hereafter referred to as 'PK'). She alleges that PK had compelled her to make a false report in respect of other officers and also in respect of violence and other acts amongst Children in Conflict with Law (CCL). She alleges that she was pressurized to conceal malpractices at OHB-II. In addition, she also alleges that PK's conduct and behaviour towards the petitioner was inappropriate.

4. The petitioner alleges that there were several incidents, where CCL's residents were assaulted physically and mentally by other inmates and she had taken such incidents seriously and included them in her reports. However, this was not acceptable by PK and she was compelled by him to omit such incidents from her report. The petitioner

claims that she was ill-treated as a consequence of her refusal to participate in such malpractices. She also alleges that the conduct of PK was inappropriate not only towards her but to other female staff/officers as well.

5. In her petition, she has stated that PK would change his clothes in the presence of female staff much to their discomfort and embarrassment; he would also ask her to accompany him wherever he was going; he would make the petitioner and other female staff sit in his chamber throughout the evening even though there was no work; he would stare at the petitioner and make the petitioner feel uncomfortable; and he would also indulge in vulgar conversations. Resultantly, the petitioner felt extremely uncomfortable and insecure in such an environment.

6. The petitioner complained that on 07.01.2019, she had spent half a day to trace a CCL who had escaped. She claims that she had gathered information from other inmates by using psychological techniques and was successful in tracing the missing CCL. He was traced and brought back to OHB-II. The petitioner stated that she had approached PK to submit a psychological report of the errant CCL, but he had refused to do so point blank and abused and threatened her to the extent that she was left scarred and traumatized. The petitioner claims that in view of the above, she found that she had no option but to report PK's conduct and therefore on 08.01.2019, she filed a complaint against him with the Delhi Commission for Women (respondent no.2 – DCW). She states that subsequently on 10.01.2019, she also uploaded her complaint on

She Box, an online portal maintained by the Ministry of Women and Child Development.

7. The petitioner states that she did not receive any response to her complaints. However, on 30.03.2019, she received an email informing her that she had been transferred to CHB-I & II (Alipur) and was directed to report at the said facility latest by 11:00 a.m. on 02.04.2019.

8. The petitioner claims that atmosphere at CHB-I & II is not congenial for women staff. She also states that she became aware that PK had visited the said home during the past few days and therefore, she did not report for work on 02.04.2019, as she was directed. However, she sent an email on 01.04.2019, seeking permission to work at OHB-II till her complaint was investigated.

9. On 24.04.2019, the petitioner received an email informing her that an Internal Complaint Committee (ICC) had been constituted with the Deputy Director (ICDS) as the Presiding Officer. Thereafter, on 24.05.2019, she received a notice calling her to be present for a hearing before the ICC. The petitioner states that on 28.04.2019, she received a one-line email from the ICC stating “*we will not help you*”.

10. The petitioner states that thereafter on 03.05.2019, the petitioner sent an email to the respondents seeking information regarding constitution of the ICC.

11. The petitioner states that she received an email on 06.05.2019 from the ICC, giving her a final opportunity to appear before the said

Committee on 21.05.2019, failing which the matter would be considered *ex parte*.

12. Thereafter, the petitioner was constrained to file the present petition.

13. A counter affidavit has been filed enclosing therewith the report of the ICC in a sealed cover. The sealed cover has been opened and the report is taken on record.

Submissions

14. Ms Chandra, the learned counsel appearing for the petitioner earnestly contended that since the petitioner did not have any confidence in the ICC as constituted, it is required to be reconstituted with a further direction to act under the supervision of a higher committee/authority.

15. In view of the above submissions, this Court had pointedly asked Ms Chandra to indicate the reasons that leads the petitioner to doubt the integrity and independence of the ICC.

16. In response, Ms Chandra contended that the petitioner had no confidence in the ICC as the presiding officer was a colleagues of PK; the petitioner's complaint was being considered by the ICC constituted at the head office and not at OHB-II; and the petitioner had received an email from the ICC stating "*we cannot help you*". She submitted that in view of the above, directions ought to be given for reconstitution of the ICC.

17. Next, she submitted that the petitioner being transferred to CHB (Alipur) which was not congenial for women staff, also indicated that the department was biased against her.

Reasons and Conclusion

18. At the outset, it is relevant to note that by an order dated 19.09.2018, respondent no.1 had constituted the ICC for purposes of implementation of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The term of the ICC was fixed for a period of three years, that is, from 19.09.2018 to 18.09.2021. The ICC comprised of four members; Dr Nisha Aggarwal, Deputy Director; Ms Anita, Assistant Director; Ms Sakshi Daksh, Supervisor; and Ms Hazel Siromoni (President YWCA of Delhi). Since the presiding officer had proceeded on a lengthy leave, respondent no.1 had issued an order dated 18.03.2019 appointing Ms Sharmistha Sharma, Deputy Director (ICDS) as the presiding officer of ICC, instead of Dr. Nisha Aggarwal, Deputy Director.

19. It is apparent from the above that the ICC was not constituted to deal with any specific complaint of the petitioner but to consider all complaints of sexual harassment within the organisation. This Court finds no reason to doubt the integrity or the independence of the ICC. Merely because the presiding officer is the colleague of PK, is no ground to doubt her independence. The ICC is an internal committee and is bound to include some members from the Department. In addition to the above, it is also relevant to note that the ICC is

constituted by four members and there is no ground whatsoever to doubt the independence of the other three members. There is no material on record, which would even remotely suggest that the petitioner has any reasonable ground to apprehend that the ICC is biased against her.

20. Insofar as the email message stating that “*we will not help you*” is concerned, it was explained to the petitioner that the same had been sent inadvertently. The ICC had also clarified that a similar message had been sent randomly/automatically to all e-mail addresses in the system and copies of such messages had also been forwarded to the petitioner. The petitioner was assured by the ICC that her complaint would be inquired into. Thus, any apprehension on account of receiving the said email is unwarranted.

21. In view of the above, this Court finds that the petitioner’s apprehension regarding the constitution of the ICC is wholly unmerited.

22. The inquiry report of the ICC was placed before this Court. It indicates that ICC had held hearings to examine the petitioner’s complaint on five occasions (that is, 22.04.2019, 25.04.2019, 01.05.2019, 03.05.2019 and 21.05.2019). However, the petitioner had failed to appear before the ICC at any of them. The inquiry report indicates that the inquiry proceedings were terminated, as the petitioner did not provide any evidence/document/witness to support her allegations against P.K.

23. It is also relevant to note that certain allegations of inappropriate behaviour on part of PK, which are stated in the petition, do not find

mention in her complaint filed on 08.01.2019. The said complaint alleges that PK had rebuked the petitioner in front of fifteen other persons. The said complaint does not contain any allegation that PK used to change his clothes in front of the petitioner/female staff or that he would insist that they sit in his room, despite there being no work. There is no allegation of inappropriate behaviour having any sexual overtones.

24. In her complaint dated 08.01.2019, the petitioner had reported that PK had shouted at her in front of the whole staff and she found the said behaviour to be intolerable.

25. Clause (n) of Section 2 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 defines the expression “sexual harassment” as under:

(n) “sexual harassment” includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

26. This Court finds it difficult to accept that shouting at the petitioner in anger, as alleged by the petitioner in her complaint dated 08.01.2019, by itself can be considered as ‘sexual harassment’ within

the meaning of Section 2(n) of the said Act.

27. The ICC had also found that the allegations made by the petitioner were general in nature and she had failed to substantiate them.

28. Insofar as the petitioner's prayer for quashing the notice dated 30.03.2019 transferring the petitioner to CHB-I & II Boys (Alipur) is concerned, this Court is unable to accept that any interference with the same is called for in these proceedings.

29. The question as to how an organisation deploys human resources available to it, is a matter of internal management and warrants no interference by this Court. However, it will be open for the petitioner to make a representation to the concerned authorities setting out her apprehension regarding the work environment at CHB-I & II Boys (Alipur). Needless to state that if any such representation is made, the same would be considered by the concerned authorities.

30. The petition is dismissed with the aforesaid observations. The pending application is also disposed of.

VIBHU BAKHRU, J

NOVEMBER 19, 2019
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