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

Date of decision: 17.07.2019

+ W.P.(C) 10544/2018 & CM APPL. 41135-41136/2018

RASHI

..... Petitioner

Through: Mr. Prateek Tushar Mohanty,
Ms. Payal Mohanty and Mr. Tushar
Ranjan Mohanty, Advocates

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms. Anuja Saxena, Advocates for R-2
to R-4

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction to set aside the impugned verbal order/direction to the petitioner not to attend office with effect from 03.10.2018. Consequently, direct the respondents to take action in terms of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

2. The brief facts of this case are that the present petitioner was appointed as a Data Entry Operator on contract basis for the respondent no.2 Council to work in the Statistics Division. The petitioner and three other ladies were interviewed in the respondent No.1 Department by Ms. Rabiya,

Consultant (Statistics) and all the four joined as Data Entry Operator on contract basis on various dates in December, 2016. Along with the petitioner, one Ms.Poonam was also appointed and Ms.Poonam and the petitioner were informed that they would have to learn the work in the respondent No.1 Department and later they would have to work in the respondent No.2 Council. The petitioner and the other three Data Entry Operators were given temporary entry passes of Paryavaran Bhawan (now called the Pt Deendayal Antoday Bhawan) on various dates of December, 2016. The petitioner and the other three Data Entry Operators were aware that they would be paid salary through some Service Provider Agency, but had no personal interaction with the said Agency. Even though Provident Fund Contributions and Employees State Insurance Fund Contributions are being deducted from the salary of the petitioner, however, neither the petitioner has been given her Provident Fund Number, nor any Employees State Insurance Number or Card.

3. Learned counsel for the petitioner submits that the petitioner and Ms.Poonam were not paid the salary for the month of December, 2016, ostensibly due to some miscommunication between respondent No.1 and respondent No.2, but they did not raise the issue, as both of them belong to

poor families and were in dire need of some employment and were afraid that if they raise the issue, their services may be terminated.

4. Learned counsel further submitted that from March, 2017, the petitioner and Ms. Poonam were asked to report to respondent No. 2 Council and the petitioner started to work there. However, when the Employees and some officers of respondent No.2 Council came to understand that Ms.Poonam had a son and was staying alone as her husband had deserted her, said Poonam was subjected to suggestions to start a physical relationship with some of the male employees. As Ms. Poonam got no respite from the continuous sexual harassment, she quietly left her job one day and thereafter, one Ms. Vandana Jolly was appointed as Data Entry Operator on contract basis. Soon thereafter, the petitioner and Ms. Vandana Jolly were subjected to Sexual Harassment, both by words and by action, inappropriate sexual advances, which included showing porn videos on the mobile phone, touching the body and even on some instances forcibly trying to kiss the Petitioner when she was late in Office and was alone near the rest room. At that point of time, the petitioner had made an oral complain to the Deputy Director General in the respondent No. 1 Department and while the petitioner is not aware as to what happened, but a few days later, the male

employee who had indulged in the unsavory incident was removed from the Office. Unfortunately, the respondent No. 3, who had the additional charge of the post of Chairman of the respondent No. 2 Council, develops a liking towards the petitioner and thereafter a lot of pressure was brought on the petitioner to establish physical relationship with respondent No. 3. When the petitioner did not agree to the same, the petitioner was subjected to a lot of torture. The petitioner was told that the Deputy Director General in the Respondent No. 1 Department, who had earlier helped the petitioner, had faced serious hardship due to his fight with Respondent No.3. Therefore, it was in the best interest of the petitioner to succumb to the wishes of respondent No.3.

5. It is further submitted that the petitioner was wary of complaining against a powerful person like respondent No.3, but when the situation became unbearable, the petitioner had no other option but to complain against respondent No.3. The petitioner prepared a complaint on 28.09.2018, but when the petitioner reached the office of respondent No.1, the reception had closed, and the complaint could not be deposited. However, the petitioner met some office colleagues that evening and when asked, disclosed the reasons for her visit. The complaint of Sexual Harassment

dated 28.09.2018 of the petitioner was submitted at the office of Respondent No.1 at 09.30 hours. Thereafter, when the petitioner reached office, she was prevented from going inside the office by the Security Guard, who informed that he has been asked by respondent No.3 to do so. When she demanded a written order of termination, failing which she said that she will call the Police.

6. It is further submitted that in the evening of 01.10.2018 again, the petitioner was told that she need not come to office on 03.10.2018, but no written order was given. Therefore, the petitioner contacted her Advocate, who visited the office of respondent No.2 Council and demanded a written order of termination. However, no written order was given and on the advice of her Advocate, the petitioner sent an e-mail to Respondent No. 1.

7. Counsel for the petitioner submits that Sexual Harassment of Women in the Respondent No.2 Council is rampant and goes on with the blessings of respondent No.3. The said respondent with the aid and advice of the Legal Consultant, who is given a remuneration of ₹60,000/- per month without even bothering to come to office, thus saved the officers who are accused of Sexual Harassment. As a matter of fact, when respondent No. 3

is himself indulging in such nefarious activities, it is but natural that he will support the others like him.

8. It is further submitted that there was one incident which the petitioner shied away from detailing in paragraph 11 of her complaint dated 28.09.2018 was that respondent No.3 visited the office room of the petitioner, while asking what work the petitioner was doing. Respondent No.3 came close to the petitioner and his elbows brushed against the breasts of the petitioner. Respondent No.3 made it look like as if it was an accident, but the petitioner is sure that Respondent No.3 touched her inappropriately by design.

9. Counsel for the petitioner further submitted that it is settled law that every action of the State or an instrumentality of the State must be informed by reason. Action uninformed by reason may amount to being arbitrary and liable to be quashed under Article 226 or Article 32 of the Constitution. The action must be just, fair and reasonable. Fair play and natural justice are part of fair public administration; non-arbitrariness and absence of discrimination are hall marks for good governance under rule of law. Thus, he submits that the oral impugned order by not allowing the petitioner to enter in the

respondent office is arbitrary, malafide and in violation of the fundamental Rights of the petitioner.

10. The respondent nos.2 to 4 filed a counter affidavit whereby stated that the petitioner was an employee of the out sourcing agency named as FDS Management Services Pvt. Ltd., New Delhi, therefore, the employment letter, Provident Fund Number and Employees State Insurance Card etc. all would be issued to the petitioner by the abovementioned company. The petitioner was deployed by the said manpower provider company in the answering respondent office in the month of January, 2017. The petitioner had never been the employee of the answering respondent therefore the answering respondent was having all the correspondences with the deploying agency and a letter dated 27.09.2018 in regard to the discontinuation of engagement of petitioner as Clerk was issued by the answering respondent to the out sourcing agency i.e. FDS Management Services Pvt. Ltd., New Delhi.

11. Learned counsel for the respondents submits that when the petitioner came to know about facts discussed, she filed the false complaint against respondent no.3, which this Court may observe as an easiest way of her outburst against the decision of the answering respondent as since January,

2017 to 27.09.2018, the petitioner did not file any complaint against the answering respondent.

12. The respondent is a National Body by an Act of Parliament i.e. Rehabilitation Council of India, Act 1992 having its office at B-22, Qutub Institutional Area, New Delhi. The answering respondent has the strength of 38 sanctioned posts which includes all class of employees. Therefore, the answering respondent procures manpower through out-sourcing agencies. The petitioner was also working with the answering respondent through her parent Company named as above since 1st January, 2017 vide Out Sourcing Agency Letter No. FDS/ND/8515/2017. The petitioner from day one having an attitude that she is having a backing of one senior officer of the ministry of Social Justice of Empowerment and therefore, she had all the liberty to attend the office by her choice i.e. coming late in morning and leaving early in the evening. It is further submitted that number of time she was verbally instructed to come on time and do her work properly but she was hardly bothered about the instructions given by the Senior Officials of the answering respondent.

13. Learned counsel further submits that the petitioner is an outsourced staff from the said agency and she remained absent from 25.09.2018 to

27.09.2018 without prior permission and visited answering respondent's office on 28.09.2018 at 10:40 am and left immediately at 10:43 am without intimating any higher authority. Thereafter, the security guards were instructed not to allow the petitioner into the office of answering respondent. On 01.10.2018 at 10:30 am, the petitioner visited the answering respondent's office and forced the security guard to let her enter the office, whereas she was verbally told by the security guards that they are having instructions not to allow her into the office. The petitioner misbehaved with the security guards and threatened them that she will call the police if they will obstruct her way to enter into the answering respondent's office. Thereafter the petitioner made a telephonic call to someone and asked the security guard Mr. Santosh Kr. Yadav to talk to the person over the mobile. It is pertinent to mention here that the person over the phone asked the security guard as to who is he? As soon as the security guard told the person that he is security guard then the person over the phone threatened the security guard by saying that "*tere ko jail bhijwa duga*" and when after end of call, the security guard asked the petitioner as to who was the person on the phone? Then the petitioner told the security guard that he was Mr. Mohanty, thereafter, the petitioner forcefully entered into the office.

14. While concluding her arguments, counsel for the respondent submits that the present writ petition is the misuse of the gross process of law only with mala fide intentions to secure her job. Since the answering respondents had already issued the letter to the petitioner's deploying agency about discontinuance of services of petitioner in answering respondent's office, therefore, thus, the Company named above is responsible to deploy or engage the petitioner anywhere else. Further, the present case is the inglorious example of misuse of the women laws by making totally false and frivolous allegations against the persons in particular the respondent No. 2 and its chairperson being respondent No.3 who is highly reputed person and has been diligently performing his duties as Chairperson of the respondent No.2.

15. I have heard learned counsel for the parties at length and perused the material available on record.

16. On perusal of the communication dated 26.09.2018, it is revealed that on several occasions in the past, the petitioner was orally instructed to come to the Office on time and do her duty with devotion and sincerity. However, no change was noticed in her casual approach towards duty in office. The Employee Attendance Register/Dashboard (page 98) of the petition dated

10.04.2016 clearly shows the casual approach of the petitioner. Vide circular dated 17.09.2018, the petitioner was warned to come on time and be punctual. Despite, on 18.09.2018, she reported to office at 12:50:14 and thereafter, on 20.09.2018 reported to the office at 11:12:12, thereafter, on 24.09.2018 at 10:45:24 and on 28.09.2018 at 10:40:15. It is admitted fact that the duty reporting time is 09.30 A.M. Despite the circular issued for all the employees, the petitioner did not stop coming late in the office, therefore, in the impugned letter, the respondents asked the service provider agency that they do not want the service of the petitioner for the reason that she is irregular and non-punctual in the office.

17. The fact remains that the petitioner worked as data entry operator and was an employee of an outsourcing agency. She made complaint of sexual harassment after removal from the service. Thus, this Court has no power under Section 226 of the Constitution of Indian to direct the respondents to keep the petitioner in service who was not even on the roll of the respondents.

18. In view of above, I find no merit in the present petition.

19. The same is, accordingly, dismissed.

CM APPL. 41135-36/2018

20. In view of the order passed in the present writ petition, the applications have been rendered infructuous and are, accordingly, disposed of.

**(SURESH KUMAR KAIT)
JUDGE**

JULY 17, 2019/rhc

