

20.11.2020

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W.P.A. 8657 of 2020
(Through Video Conference)

Dipankar Chakraborti & anr.

Vs.

State of West Bengal & ors.

Mr. Pratik Dhar

Mr. Samir Halder ... For the petitioners

Md. Yasin Ali

Ms. Tapati Samanta ... For the State

Mr. Sudipto Panda

Mrs. Mummun Tewary

... For the respondent

Mr. Debasish Banerjee

... For the respondent no.5

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioners are aggrieved by an order dated December 19, 2019 passed by the Local Complaints Committee (in short, 'LCC') on a complaint made by Ms. Santa Kanungo, being the respondent no.5.

2. Mr. Dhar, learned Senior Advocate appearing on behalf of the petitioners has placed Sections 2(g), 6, 9, 13(2) and 18 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (in short, 'the Act of 2013') in support of his contention that the L.C.C. cannot sit over a decision passed by the Internal Complaints Committee (in short, 'I.C.C.').

3. Mr. Dhar submits that an order passed by the I.C.C. under Section 13(2) of the Act of 2013 is appealable before the court or tribunal that has been set up under the Act as per Section 18 of the Act of 2013. His primary submission is that once an order is passed by the I.C.C., the L.C.C. has no jurisdiction to sit over the same in appeal. He submits that the I.C.C. was constituted by the institution and the respondent no.5 had participated in the same. Subsequent to the same, an order dated May 17, 2018 was passed by the I.C.C. that has been challenged by the respondent no.5 in W.P. No.11723(W) of 2018 (Santa Kanungo Vs. State of West Bengal & ors.).

4. Mr. Dhar further submits that subsequent to challenging the order of the I.C.C. before the High Court, the respondent no.5 approached the L.C.C. for further adjudication. He also submits that as the matter was already in seisin of the High Court, the L.C.C. could not have proceeded and the subsequent ex parte order passed by the L.C.C. is completely without jurisdiction.

5. Md. Yasin Ali, learned Counsel appearing on behalf of the State has submitted that since the case was against the employer, the L.C.C. is the correct forum. He, however, submits that the recommendation made by the L.C.C. for reconstitution of the I.C.C. by the institution is de hors the statute, and accordingly, the impugned order is liable to be set aside.

6. Mr. Debasish Banerjee, learned Counsel appearing on behalf of the respondent no.5 submits that the first proceeding before the I.C.C. was *dehors* the law and, therefore, void *ab initio*. He, accordingly, submits that the proceeding before the L.C.C. was the correct proceeding. In the same breath, he submits that the order passed by the L.C.C. recommending reconstitution of the I.C.C. is *dehors* the law and a specific order should have been passed under Section 13(3) of the Act of 2013.

7. Mr. Banerjee prayed that this writ petition be tagged along with the earlier petition so that the issue may be thrashed out completely.

8. Mr. Banerjee also relies upon a judgement in W.P.13448(W) of 2018 (Dipankar Chakraborti & ors. Vs. The State of West Bengal & ors.) wherein the present writ petitioners have challenged the authority of the D.L.C.C., Kolkata. He submits that the judgement acts as constructive *res judicata* and, therefore, the petitioners cannot be allowed to challenge the order of the present L.C.C.

9. I have heard learned Counsel for the appearing parties and perused the materials on record.

10. Before entering the controversy, I would like to delineate the relevant provisions that have been placed before this Court:-

“2.(g) “employer” means—

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace;

Explanation. —For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organisation;

(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

6. Constitution and jurisdiction of Local Complaints

Committee.—(1) Every District Officer shall constitute in the district concerned, a committee to be known as the “Local Complaints Committee” to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

(2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive

complaints and forward the same to the concerned Local Complaints Committee within a period of seven days.

(3) The jurisdiction of the Local Complaints Committee shall extend to the areas of the district where it is constituted.

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 a 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:

Provide 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 forward 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.

18. Appeal.—*(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section*

13 or sub-section (1) or subsection (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.”

11. On a detailed perusal of these provisions, it is clear that parallel proceedings cannot lie and both the I.C.C. and L.C.C. cannot adjudicate upon the same matter. Furthermore, I am unable to find any power that has been given to the L.C.C. to direct reconstitution of the I.C.C. The provision, according to me, is crystal clear and any recommendation made by the I.C.C. or the L.C.C. can be assailed in appeal as provided in Section 18 of the Act of 2013. In the event, there is no designated Court the challenge can be mounted before the extraordinary writ jurisdiction of this High Court. In the present case, the respondent no.5 after having participated in the entire proceedings before the I.C.C. has assailed the order of the I.C.C. before the High Court. Surprisingly, having challenged the said order a further complaint was lodged by her before the L.C.C. and that order is the impugned order before this Court. The order of the L.C.C. does not even take into account the letter of the petitioners that had challenged the jurisdiction of the L.C.C. (at page 191

of the writ petition). Furthermore, the direction of the L.C.C. for formation of the new I.C.C. is dehors the powers of the L.C.C. The tenor of the order is that of an appellate authority that has remanded the case back to the original authority with a direction to reconstitute the members of the I.C.C. In my view, this cannot be allowed to stand.

12. The argument of Mr. Banerjee with regard to the judgement of Justice Tapabrata Chakraborty dated 14.09.2018 in W.P. 13448(W) of 2018 that the said order acts as constructive res judicata is also rejected as the Hon'ble Judge has clearly indicated in the order that only the issue of territorial jurisdiction has been gone into and no other point has been addressed by the Court.

13. The respondent no. 5 in the present case is also hit by the Doctrine of Election. Having chosen to file a complaint before the institution and participated in the ICC proceedings, the respondent no. 5 cannot now turn around and argue that the ICC proceedings were void ab initio. It would have been a different matter if the respondent no. 5 had raised the point of jurisdiction before the ICC proceedings. That is not the case here. After having elected to participate in the ICC proceedings, the respondent no. 5 further challenged the ICC order before the High Court and when no interim order was obtained by the respondent no. 5 before the High Court, the respondent no. 5 proceeded to file a proceeding before

the LCC. This course of action, according to me, is against the principles established in law and hit by the Doctrine of Election. If the result of the ICC proceedings had been in favour of the respondent no. 5, she would not have challenged the same on the ground of the same being void and neither could the institution have challenged the same in appeal on the ground of the proceedings being void as the institution itself had set up the ICC proceedings. The above observations are limited to this writ petition and the writ court hearing the first writ petition shall naturally be a liberty to quash and set aside the ICC proceedings if the same is illegal and without jurisdiction. I make it clear that I have not gone into the issue with regard to the correct forum as per Section 6 of the 2013 Act.

14. In light of the above reasons, the impugned order dated December 19, 2019 is quashed and set aside.

15. Since the matter involves a point of law and parties had consented to argue the same without exchange of affidavits, the allegations made in the writ petition are deemed not to have been admitted.

16. With the above observations, this writ petition is disposed of.

17. All parties are to act on website copy of this order.

(Shekhar B. Saraf, J.)