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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.7874 OF 2020

AND

W.M.P.NOS.9293 AND 9294 OF 2020

Thabitha David, W/o Bharat Hiremath

...Petitioner

Vs.

1.The Commissioner of Labour, Puducherry.

2.M/s.Hindustan Unilever Limited,

"Unilever House"

Registered Office at

B.D.Sawant Marg, Chakala, Andheri Est,

Mumbai, Maharashtra - 400 099.

Factory at NH-45 A, Vadamangalam,

Puducherry-605 102

Rep. by its Board of Directors &

Managing Director.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the first respondent to take appropriate action against the second respondent to ensure the implementation of the POSH Act, 2013 in the second respondent's establishment at Pondicherry, consequently direct the second respondent to act on the petitioner's compliant dated 21.02.2020 in accordance with POSH Act, 2013 and not to dispense with the service of the petitioner pending the enquiry under POSH Act, 2013, without due process of law.

For petitioner : Mr.P.R.Thiruneelakandan

For respondents : Mrs.G.D.Jearany,  
Govt. Advocate (Pondicherry) for R-1

Mr.Sanjay Mohan for  
M/s.S.Ramasubramaniam & Associates  
for R-2



## ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the first respondent to take appropriate action against the second respondent to ensure the implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (for short, POSH Act) in the second respondent's establishment at Pondicherry, and consequently direct the second respondent to act on the petitioner's compliant dated 21.02.2020 in accordance with POSH Act, 2013 and not to dispense with the service of the petitioner pending the enquiry under POSH Act, 2013, without due process of law.

2. The case of the petitioner is that she was appointed as Unit HR Manager in the second respondent's Detergent manufacturing factory at Vadamangalam and personal products manufacturing factory at Vadamangalam, Puducherry. According to her, the second respondent had given three strong appraisal rating for the year 2018 and she was also awarded numerous certificates and trophies for outstanding performance as the leader of the Human Resources Department (HRD).

3. According to the petitioner, trouble started when one Mr.Velu C.S., Factory Manager, who was transferred from Haridwar HUL Factory to Pondicherry HPC, HUL-HPC in January 2019. According to her, the said Mr.Velu started misusing his power by targeting the petitioner and harassing her and preventing her from discharging her normal duties. It is the further averment of the petitioner in the affidavit that he was constantly involved in bullying and shaming her, calling her and defaming her as useless and unfit to work in the organisation.

4. Unable to bear the harassment meted out to her by the said Factory Manager, the petitioner has reported about the harassment and ignominy suffered by her, to the higher authorities. A complaint was also registered through a mail on 13.12.2019. However, there was no action forthcoming in response to her complaint and no action has been also taken against the person concerned. According to her, the harassment continued day-in and day-out, and the petitioner was being bullied constantly at the instance of the said Manager. As there was no action forthcoming from the Management despite her repeated complaints under the POSH Act, she has come up with the present Writ Petition for the relief stated supra.

5. In response to the Writ Petition, a preliminary counter affidavit has been filed on behalf of the second respondent-Company.



6. The learned counsel for the petitioner submitted that there was no action taken against the complaint given under the POSH Act, 2013, and therefore, the petitioner was constrained to file the present Writ Petition. According to the learned counsel, the counter affidavit filed on behalf of the second respondent did not meet the averments contained in the affidavit filed in support of the Writ Petition and it was an evasive counter affidavit, which ought not to be accepted by this Court. In fact, the learned counsel kept repeating the same statement contending that the Management must be directed to file counter affidavit on merits and ought not be allowed to file the present counter affidavit, which is unacceptable to his client.

7. When this Court repeatedly encountered him and confronted the learned counsel for the petitioner stating that there are certain facts which are narrated in the counter affidavit, dated 31.07.2020 filed on behalf of the second respondent, and whether the petitioner was inclined to meet those averments at all, the learned counsel kept saying that he would not accept that counter affidavit at all and he would not like to respond to the counter affidavit.

8. In any case, this Court has gone through the counter affidavit and found that the action was taken by the second respondent in response to the complaint filed by the petitioner under the POSH Act, 2013. As per paragraph 12 of the counter affidavit, a detailed enquiry appeared to have been conducted by the Committee constituted and it was pointed out that there was no adequate cause to register a complaint under the POSH Act. The contents of paragraph 12 of the counter affidavit are extracted hereunder:

"12. Although the papers in the writ petition have not been served upon the company the 2nd Respondent has come to know during the course of the hearings before this Hon'ble Court that the relief sought for in the Writ Petition is to enforce the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") in relation to a Complaint dt.21.02.2020 filed by the Petitioner. In this regard, it is pertinent to submit that a detailed inquiry was conducted by the Committee constituted under the said enactment into the Petitioner's Complaint dt.21.02.2020. The Committee has also provided its final decision in the matter, concluding that there was no adequate cause to register a complaint under the POSH Act as no act of



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sexual nature nor any act of retaliation was found. The 2nd respondent had sent the Petitioner an E-mail dt.17.03.2020, wherein it had informed the Petitioner of the outcome of the Inquiry carried out by the Committee constituted under the provisions of the said Act and setting out the aforementioned detailed findings of the said Committee."

9. As a matter of fact, it has been stated in paragraph 10 of the counter affidavit in respect of how the termination letter was e-mailed to the petitioner. Paragraph 10 reads as follows:

"10. The letter of termination dated 19.03.2019 that was emailed in the above manner was also expected to be sent by Registered Post from the 2nd Respondent's Head Office in Mumbai. I submit that it had been stated in the email dated 19.03.2020 that a copy thereof is also being sent to the petitioner to registered post, since that is the practice which is typically followed by the 2nd Respondent, by way of abundant caution. However due to the imposition of "work from home" protocol by the 2nd Respondent with effect from 17.03.2020 itself and the imposition of lockdown due to the Covid-19 global pandemic shortly thereafter, the said letter could not be sent by registered post. I submit that in the 2nd Respondent Company, managerial staff of the grade of the Petitioner report to the head office at Mumbai. Since the petitioner had been employed as a manager and accordingly her letter of appointment had been issued by the 2nd Respondent's head office at Mumbai, it was necessary that the hardcopy of her letter of termination dated 19.03.2020 also be issued by the appropriate authority, from Mumbai. Due to the imposition of the lockdown in Mumbai wherein severe restrictions on movement had been imposed and also several post offices were neither accessible nor functioning, it was impossible to send the hardcopy of the letter by registered post to the Petitioner as indicated in the e-mail dt.19.03.2020 issued to her."



10. There are several other averments contained in the other paragraphs of the counter affidavit, which required response from the petitioner. But it is unfortunate that the learned counsel who represented the petitioner, was unmindful of the questions posed to him by this Court as to how he proposed to meet the detailed averments contained in the counter affidavit filed on behalf of the second respondent.

11. It appears that the learned counsel for the petitioner is not interested in arguing the case on merits, but is interested in fighting with the Management, with mindless tenacity which is not required at all in the facts and circumstances of the case.

12. Till the end, the learned counsel refused to accept the counter affidavit as something which he needed to respond to and kept raising his voice that he would not accept it as a counter affidavit.

13. This Court is unable to appreciate the refractory and cantankerous conduct displayed by the learned counsel without any provocation either from the respondents or from this Court.

14. In any event, the averments contained in the counter affidavit would point to the fact that the petitioner has no case at all and there appears to be no cause of action worthy enough for this Court to adjudicate upon the so-called grievances expressed in the affidavit filed in support of the Writ Petition by the petitioner.

15. As a matter of fact, the Management, as could be seen from the counter affidavit, has conducted a detailed enquiry and the proceedings have also been shared with the petitioner through e-mail, which has not been refuted or denied by the petitioner.

16. In the said circumstances, nothing survives for adjudication in the Writ Petition any further. Accordingly, the Writ Petition is dismissed. No costs. Consequently, W.M.Ps. are closed.

Sd/-  
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

CS



To

The Commissioner of Labour,  
Puducherry.

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+1cc to Mr.P.R.Thiruneelakandan, Advocate SR.No.61576

+1cc to M/s.S.Ramasubramaniam & Associates SR.No.60959

W.P.No.7874 of 2020

AJS (CO)

RVM(27/12/2021)