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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.6995 of 2014, 27067 & 27068 of 2013
and

M.P.Nos.2 of 2014, 1 and 2 of 2013

W.P.No.6995 of 2014

Sushma Alaguvadival,
W/o Alaguvadival,
101, Poornima Amaipaakam,
Thirukazhukundram Taluk,
Kancheepuram District.

... Petitioner

Vs

1. The Union of India,
Rep. by its Secretary,
Department of Atomic Energy,
New Delhi.
2. The Chairman,
Atomic Energy Commission,
Mumbai- 400 001.
3. The Director,
Bhabha Atomic Research Centre,
Mumbai.
4. The Director,
Bhabha Atomic Research Centre Facility,
Department of Atomic Energy,
Kalpakkam, Kancheepuram District.
5. S.Kumar
6. The Chairperson,
Standing Complaints Committee,
Bhabha Atomic Research Centre Facility,
Kalpakkam, Kancheepuram District.
7. The Chairperson,
Women Cell,
Bhabha Atomic Research Centre Facility,
Kalpakkam, Kancheepuram District.

...Respondents



PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records comprised in Ref:BARCF/FD/2013/172 dated 28.10.2013, on the file of the 4th respondent, quash the same and consequentially direct the respondents 1 to 4 to take disciplinary action as against the 5th respondent based upon the report of the 7th respondent dated 22.01.2013.

W.P.No.27067 of 2013

Sushma Alaguvadival,
W/o Alaguvadival,
101, Poornima Aamaipaakam,
Thirukazhukundram Taluk,
Kancheepuram District.

... Petitioner

Vs

1. The Union of India,
Rep.by its Secretary,
Department of Atomic Energy,
New Delhi.
2. The Chairman,
Atomic Energy Commission,
Mumbai- 400 001.
3. The Director,
Bhabha Atomic Research Centre,
Mumbai.
4. The Director,
Bhabha Atomic Research Centre Facility,
Kalpakkam, Kancheepuram District.
5. S.Kumar
6. K.V.Ravi
7. Mrs.H.K.Parvathy
8. Mr.P.Soundraraaj
9. The Chairperson,
Women Cell,
Bhabha Atomic Research Centre Facility,
Kalpakkam, Kancheepuram District.

... Respondents



PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondents 1 to 4 to furnish the enquiry report of the 9th respondent and also consequentially direct the respondents 1 to 4 to take disciplinary action as against the 5th respondent based upon the report of the 9th respondent dated 22.03.2013 as per the request of the petitioner in her representation dated 10.04.2013.

W.P.No.27068 of 2013

Sushma Alaguvadival,
W/o Alaguvadival,
101, Poornima Amaipaakam,
Thirukazhukundram Taluk,
Kancheepuram District.

... Petitioner

Vs

1. The Union of India,
Rep.by its Secretary,
Department of Atomic Energy,
New Delhi.
2. The Chairman,
Atomic Energy Commission,
Mumbai- 400 001.
3. The Director,
Bhabha Atomic Research Centre,
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4. The Director,
Bhabha Atomic Research Centre Facility,
Kalpakkam, Kancheepuram District.
5. S.Kumar
6. K.V.Ravi
7. Mrs.H.K.Parvathy
8. Mr.P.Soundraraj
9. The Chairperson,
Women Cell,
Bhabha Atomic Research Centre Facility,
Kalpakkam, Kancheepuram District.

... Respondents

PRAYER in W.P.No.27068 of 2013 : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of



Mandamus, directing the respondents 1 to 4 to take action against the 5th respondent under the provisions under the Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013.

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W.P.No.6995 of 2014:

For Petitioner : Mr.R.Bharanidharan

For Respondents : Mr.K.Venkataswamy Babu
Senior Panel Counsel
[For R1 to R4, R6 and R7]

Mr.K.Thilagaraj [For R5]

W.P.Nos.27067 & 27068 of 2013:

For Petitioner : Mr.R.Bharanidharan
[In both Wps]

For Respondents : Mr.K.Venkataswamy Babu
Senior Panel Counsel
[For R1 to R4 and R9]

Mr.K.Thilagaraj [For R5]

No Appearance [For R6 to R8]

COMMON ORDER

The relief sought for in W.P.No.6994 of 2014 is to call for the records comprised in Ref:BARCF/FD/2013/172 dated 28.10.2013, on the file of the 4th respondent and quash the same and to direct the respondents 1 to 4 to take disciplinary action as against the 5th respondent based upon the report of the 7th respondent dated 22.01.2013.

1.1 In respect of W.P.No.27067 of 2013, the relief sought for is to direct the respondents 1 to 4 to furnish the enquiry report of the 9th respondent and consequentially, to direct the respondents 1 to 4 to take disciplinary action as against the 5th respondent based upon the report of the 9th respondent dated 22.03.2013 as per the request of the petitioner in her representation dated 10.04.2013.

1.2. In respect of W.P.No.27068 of 2013, the relief sought for is to direct the respondents 1 to 4 to take action against the 5th respondent under the provisions under the Sexual Harassment of women at workplace (Prevention, Prohibition and



Redressal) Act, 2013.

2. Since the issues involved in all the writ petitions are identical and hence, they are disposed of by this common order.

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3. The facts in nutshell, which all are relevant for deciding the writs on hand are that the petitioner, who is an employee of Bhabha Atomic Research Centre, Kalpakkam, submitted a complaint on 09.01.2013 regarding a Sexual Harassment caused to her by the 5th respondent.

4. The complaint was published in the news media and the 5th respondent filed Crl.O.P No.1000 of 2013, seeking Anticipatory Bail and the interim bail was granted. Initially, a Committee to deal with the allegations of Sexual Harassment was constituted by the respondent / employer and the said committee had not conducted any enquiry. Thereafter, second committee was constituted on 16.01.2013 and the said committee conducted an enquiry by providing opportunity to the complainant as well as to the accused officer. The second committee considered the allegations and submitted its reports on 22.01.2013. The copy of the report was not communicated to the petitioner and she could not get the copy only from the Appellate authority, more so, by submitting an application under the Right to Information Act.

5. The learned counsel for the petitioner strenuously contented that the way, in which, the complaint was dealt with by the respondents are not in consonance with the provisions of the Act and more so, by prolonging and protracting the issues, the authorities contributed for the dilution of the allegations raised against the 5th respondent. It is an administrative bias on the part of the respondents in dealing with such complaints and therefore, constitution of third committee is to be set aside and actions must be proceeded with on the report submitted by the 2nd respondent committee constituted on 16.01.2013.

6. The learned counsel for the petitioner reiterated that the petitioner produced all relevant evidences to establish the allegations and the allegations were proved beyond any doubt before the committee constituted. The committee also considered the evidences and made a finding, holding that the allegations against the 5th respondent are held proved. Thus, the authorities ought to have initiated action by following the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Instead, they have constituted a third Committee, which caused greater injustice to the petitioner by not dealing with the complaint in an appropriate manner.

7. The learned counsel appearing on behalf of the Union of



India, representing the Respondents 1 to 4, 6 and 7, contended that no doubt, the first committee had not initiated action to conduct enquiry and the second committee conducted enquiry and submitted a report. However, on receipt of the notification from the Government of India, Department of Atomic Energy, the 4th respondent had to constitute a fresh committee as the committee constituted must be in accordance with Section 4 of the Sexual Harassment Act. In view of the fact that the second committee constituted was not in consonance with the provisions of the Act, it necessitated the 4th respondent to constitute the fresh committee and therefore, there is no infirmity as such.

8. The learned Central Government Standing Counsel appearing on behalf of the official respondents reiterated that there was no official bias and the proceedings were conducted by providing opportunity to all the parties and thus, the allegations raised against the Department are vague and not supported with any evidences. Thus, the writ petition is to be rejected.

9. This Court is of the considered opinion that the Sexual Harassment Act emanated from the judgment of the Hon'ble Apex Court of India in Vishakas' case. The Hon'ble Supreme Court of India in unequivocal terms held that the protection of women in work place is of paramount importance and swift actions by following the procedures are imminent. Thus, any lapses in this regard on the part of the administration must also be viewed seriously. It is not as if on receipt of complaint, an employer can act in a casual manner as this kind of sexual allegations in work place causes greater concern in the working atmosphere and further, creates lot of trouble amongst the women employees, who all are working in various institutions. In the event of prolongation or inaction against such allegations, the faith on the system will be questioned and furthermore, it will provide a wrong message to the accused persons.

10. This Court is of the considered opinion that such allegations are very frequently noticed in Government Departments, Public Institutions etc., However, an amount of sensitivity shown by the administration is of paramount importance and in the event of not showing any sensitivity, undoubtedly, we are not dealing with the issues in accordance with the provisions of the Act and further, committing an act of dereliction, which is certainly a misconduct or an offence. Thus, while dealing with such allegations, the authorities are expected to be more vigilant and cautious and any lapses in this regard must be viewed seriously. Always such lapses will be misconstrued as if the authorities have acted in support of the accused persons. When such sexual harassment allegations are person related, any inaction or delayed action will be a ground to raise allegation against the administration itself as there



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is a likelihood of bias in many occasions. In order to avoid all such conflicts, administrative bias, etc., the authorities must act swiftly on receipt of any such complaint from any of the employee. Any belated action must be accountable and lapses in constitution of a committee or otherwise must also be treated as dereliction of duty.

11. In the present case, no doubt, the allegations against the 5th respondent are serious. The instances narrated would reveal that the petitioner could able to establish the allegations against the 5th respondent as the instances were brought to the notice of the husband of the petitioner by her. All such evidences were also produced by the complainant before the second committee constituted, who in turn, gone into the nature of evidences and accordingly, made a finding, holding that the allegations against the 5th respondent are held proved.

12. This being the factum, there is no reason whatsoever to constitute a third committee.

13. However, it is brought to the notice of this Court that the second committee constituted was not in consonance with the provisions of Section 4 of the Sexual Harassment Act and in the event of proceeding based on the report, there is a likelihood of setting aside the report of the committee and under those circumstances, the authorities thought fit to constitute the committee in accordance with the provisions of the Act. This reason necessarily to be considered, in view of the fact that if at all the report of the second committee is acted upon, it will pave way for the accused person to challenge the said report merely on the ground that the enquiry was conducted by an incompetent committee constituted in violation of Section 4 of the Sexual Harassment Act. In order to avoid such lapses, new committee is necessarily to be constituted. However, the writ petition is kept pending for about 6 years, which is also unfortunate as such writ petitions relating to complaints of Sexual Harassment must be moved at the earliest possible even for final hearing.

14. Under these circumstances, this Court is of an opinion that efflux of time caused mental agony to the complainant. Loss of time naturally would result in loss of trust on the system. Therefore, it is the responsibility of all concerned to ensure that the complaints of Sexual harassment are dealt in accordance with the provisions of the Act and within a reasonable period of time. Time becomes essence, in view of the fact that the other employees working in the institutions also must be issued with a stern message that such kind of allegations will be viewed seriously by the administration. In the absence of no result for long time, the said lapses would encourage such offenders, who



all are tempted to commit offences relating to Sexual Harassment. All these aspects are very much important and must be part of administrative efficiency. In an efficient administration, if such allegations are addressed properly, then every employee will get better working atmosphere to perform their duties and responsibilities in an efficient manner.

15. One has to imagine, an employee, who suffered such harassments from the hands of the superiors, no one can expect that such employee will be in a position to perform her duties efficiently and effectively. If so, is it not the duty of the employer to ensure an atmosphere, which is conducive for the employees to work effectively. Certainly, it is the duty of the employers to ensure an atmosphere for the purpose of improving the efficiency level in public administration. Efficiency in public administration is the constitutional mandate. Thus, providing mechanism including constitution of a committee in accordance with law, conducting enquiry and proceeding further by following the procedures are part of the administrative efficiency and therefore, in the event of any violation, lapses, it is to be construed that the authorities failed to comply with the constitutional perspectives and principles.

16. Right to work is a basic right. Right to work must include peaceful atmosphere. When a person is employed and attending the work place, it is the duty of the employer to develop a sense of security in the minds of employees, more specifically, women employees. Sense of security alone would lead to efficiency in work place and in the absence of any such security, no doubt, the employees will not be in a position to work in a better manner and the administration is also failing in its duty to provide a conducive atmosphere, more specifically to the women employees. Thus, the administrative officials are duty bound to ensure a better atmosphere for developing efficient administration.

17. As far as the writ petitions on hand are concerned, the petitioner underwent sufferings, more specifically, the matters are kept pending for about 7 ½ years and even now, it has not reached finality. Under these circumstances, this Court has no option, but to direct the official respondents to constitute a committee in a time bound manner and complete the same as expeditiously as possible in order to avoid further lapses or defects in the enquiry and accordingly, this Court is inclined to pass the following orders:

1) The order impugned passed by the 4th respondent in proceedings in Ref:BARCF/FD/2013/172 dated 28.10.2013 is quashed.



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2) The 4th respondent is directed to constitute a Committee in accordance with Section 4 of the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013, within a period of one week from the date of receipt of a copy of this order.

3) It is made clear that the NGO to be appointed as the member of the Committee, must be an outsider, preferably outside from Kalpakam in the present case.

4) The Committee to be constituted by the 4th respondent shall conduct the enquiry, taking note of the evidences already considered by the second committee, so also the report submitted and proceed further by providing opportunity to all the parties concerned. If necessary, take further evidences or otherwise, conclude the enquiry and submit a final report within a period of six (6) weeks from the date of the receipt of a copy of this order.

5) On receipt of the enquiry reports, the respondents 1 to 4, 6 and 7 are directed to initiate all further actions both under the Criminal Law and under the Service Law as the case may be as applicable and as expeditiously as possible.

18. With these directions, all the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Secretary,
Union of India,
Department of Atomic Energy,
New Delhi.
2. The Chairman,
Atomic Energy Commission,
Mumbai- 400 001.



3. The Director,
Bhabha Atomic Research Centre,
Mumbai.
4. The Director,
Department of Atomic Energy,
Bhabha Atomic Research Centre Facility,
Kalpakkam, Kancheepuram District.
- 5 The Chairperson,
Standing Complaints Committee,
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6. The Chairperson,
Women Cell,
Bhabha Atomic Research Centre Facility,
Kalpakkam, Kancheepuram District.

+1cc to Mr.K.Venkataswamy Babu, Senior Panel Counsel
Advocate, S.R.No.63950

W.P.Nos.6995 of 2014,
27067 & 27068 of 2013

AJS (CO)
CT/17/12/2021