

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 5176 of 2015

Smita Mohapatra

.....

Petitioner

Mr. A.K. Mohanty Advocate

Vs.

Union of India and others

.....

Opposite Parties

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

07.04.2022

Order No.

03.

This matter is taken up through hybrid mode.

2. The petitioner has filed this writ petition challenging the order dated 23.02.2015 passed by Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 260/0069 of 2015, in dismissing the application of the petitioner due to lack of jurisdiction.

3. Mr. Mohanty, learned counsel for the petitioner contended that since the petitioner was harassed in the work place, an inquiry was conducted wherein it was reported that the complaint made by her was not proved. The petitioner filed an application to set aside the report by approaching the Central Administrative Tribunal, Cuttack Bench. But the Tribunal dismissed the application on the ground of lack of jurisdiction. The said order of the tribunal is under challenge in the present writ petition.

4. The fact of the case is that, the petitioner was holding the additional charge of ASP-II, Bhubaneswar RMS with effect from 07.05.2014. From the very first day of assuming the charge, the opposite party no.4 started misbehaving with the petitioner. She

was not allowed to do her duty smoothly besides being humiliated, misbehaved and sexually harassed repeatedly by the opposite party no.4. As a consequence thereof, the petitioner submitted a complaint on 15.05.2014. An Internal Complaint Committee headed by opposite party no.3 was constituted by the Chief Post Master General, Odisha Circle, Bhubaneswar under Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013. The Committee in its report found the complaint made by the petitioner not proved and accordingly submitted its report on 20.11.2014. The petitioner challenged the same before the Central Administrative Tribunal in the aforementioned O.A.

5. The Tribunal taking into consideration the note containing frequently asked questions and answers on sexual harassment of women at work place. In the note, against the question “What is the status of the report of the complaints committee” it is noted that “in its order dated 26.04.2004 in the Writ Petition No. 173-177/1999 in the case of Medha Kotwal Lele and Ors Vs. UOI & Ors., the Hon’ble Supreme Court has directed that the Reports of the Complaints Committee shall be deemed as an Inquiry Report under the CCS Rules. Thereafter, the Disciplinary Authority will act on the report with the Rules. Sub-Rule (2) of Rule 14 of CCS (CCA) Rules, 1965 has accordingly been amended to provide that Complaint Committee shall be deemed to be the Inquiry Authority for the purpose of these Rules by the Notification dated 01.07.2004. In view of the said amendment made to the CCS (CCA) Rules, the instruction contained in DoPT’s OM dated 12th Dec, 2002 stands modified and the report of the Complaints

Committee should be treated as an inquiry report and not a preliminary report. In view of such position if the Complaint Committee has furnished the report, that should be treated as an inquiry report under CCS Rules and the proceeding is to be made under the CCS Rules. Instead of approaching the appropriate authority, the petitioner had approached the tribunal.

6. Learned counsel for the petitioner relied on Section 18 which provides Appeal of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which prescribes that any person aggrieved from the recommendations made under sub-section (2) of Section 13 or under clause (i) or sub-section (2) or 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.

7. Mr. Mohanty, learned counsel further contended that since the inquiry was conducted under Rule 13 (2) of the Act, they he has approached the Tribunal. But such plea has not been advanced before the Tribunal nor nothing has been placed before this Court for consideration that the petitioner has pleaded such fact in the tribunal and the tribunal has not considered the same.

8. In view of the above, this Court is of the considered view that due to non availability of materials before this Court establishing the fact that the petitioner has pleaded or argued before the Tribunal that in view of Section 18 of the 2013 Act, the

tribunal has jurisdiction to entertain the application, this Court is not inclined to entertain such plea at this stage.

9. But fact remains the complaint committee has furnished the report and that report to be considered as inquiry report under CCS (CCA) Rules and in that case the proceeding as envisaged under CCS (CCA) Rules has to be followed. The tribunal is well justified in not entertaining the matter and directing the petitioner to pursue under CCS (CCA) Rules applicable to the petitioner in accordance with law.

10. With the above observation/direction the writ petition stands disposed of.

Arun/ Bichi



(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE