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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.NO.6535 OF 2022

AND

WMP.NO.6624 OF 2022

Mrs.DR.L.Suguna

... Petitioner

-vs-

1. The Secretary,
Ministry of Science and Technology
Technology Bhavan, New Mehrauli Road,
New Delhi-110 016.
2. The Director General, CSIR
Council of Scientific & Industrial Research
Anusandhan Bhawan, 2 Rafi Ahmed Kidwai Marg,
New Delhi-110 001.
3. The Chairperson,
National Commission for Women,
No.4, Deen Dayal Upadhyaya Marg,
New Delhi-110 002.
4. The Director
CSIR-Central Leather Research Institute
Adyar, Chennai- 600 020.
5. Dr.A.B.Mandal
CSIR-Central Leather Research Institute
Adyar, Chennai- 600 020.
6. The Central Administrative Tribunal
By its Registrar, City Civil Court Building,
High Court Campus, Chennai- 104.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, seeking for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 6th



respondent regarding order passed in O.A.No.96/2016 order dated 5/1/2022 and quash the same and direct the respondents 1 to 4 to refer the Petitioner's complaint dated 9/11/2013, 23/1/2015 & 1/8/2015 to the local complaints committee and if no such local complaints committee is formed direct the authority to form a local complaints committee as per Section 6 & 7 of the Sexual Harassment of Woman at Work Place (Prevention, Prohibition & Redressal) Act, 2013.

For Petitioner : Mr.T.Easwara Dhas
For Respondents : Mr.C.Samivel,
Senior Central
Govt. Standing Counsel
for R1 to R4

O R D E R

S.VAIDYANATHAN.,J
and
MOHAMMED SHAFFIQ.,J

Mr. C.Samivel, learned Central Government Standing Counsel takes notice for the Respondents 1 to 4.

2. By consent of both sides, this Writ Petition is taken up and disposed of at the stage of admission itself.

3. This Writ Petition has been filed challenging the order dated 05/01/2022 passed in O.A.No.96/2016 and to quash the same and direct the respondents 1 to 4 to refer the Petitioner's complaint dated 9/11/2013, 23/1/2015 & 1/8/2015 to a local complaint committee and if no such local complaints committee is formed, direct the authority to form a local complaints committee as per Sections 6 & 7 of the Sexual Harassment of Woman at Work Place (Prevention, Prohibition & Redressal) Act, 2013 (in short the 'Act, 2013').

4. The case of the Petitioner is that she made a complaint against the employer stating that she was harassed in the work place. As no action was taken, she had no other option except to approach the Central Administrative Tribunal, Chennai by way of filing O.A.No.96 of 2016, seeking for constitution of a Local Committee and conduct enquiry based on her complaints and take action against the 5th respondent in accordance with law and to transfer him to any other work place during the pendency of enquiry by the Internal Committee. The Tribunal, vide order 22.01.2016, directed the Authority to refer the Complaints to the "Local Complaints Committee", constituted under Section 7 of



the Act, 2013, as per Section 6 of the Act, 2013, against which, the Respondents 1, 2 and 4, filed Petition before this Court in W.P.No.28235 of 2016 on the ground that no opportunity was granted to them for filing their reply statement and this Court, by an order dated 21/04/2017 set aside the order of the Tribunal, only on the limited extent that opportunity shall be given to the respondents for filing their reply statement and thereafter dispose of the Original Application as expeditiously as possible, within a period of 12 weeks from the date of receipt of a copy of the order.

5. In pursuance of the said order, after filing of the reply statements by the Respondents 1, 2 and 4, the Tribunal, by order dated 05.01.2022 has observed that the Respondent Department has set up an internal inquiry comprising of eminent persons, holding higher / equal rank of Director, against whom she has filed the complaint and there is no illegality committed by the Respondents in constituting the internal inquiry, against which the present Writ Petition is filed.

6. The learned counsel appearing for the Petitioner submitted that the committee has to be constituted in terms of Section 6 of the Act, 2013, as the complaint is against the employer and the same has been framed pursuant to the orders of the Apex Court in the case of Vishaka and others Vs. State of Rajasthan reported in AIR 1997 SC 3011. Therefore, the complaint needs to be investigated only by the Local Complaints Committee and not by Internal Complaints Committee. He further submitted that though the Tribunal has rightly rendered a finding on 22.01.2016 that since the complaint is against the employer himself the competent committee is Local Complaint Committee and after restoration, the Tribunal, in its final order dated 05.01.2022 has stated that no illegality is found in forming internal enquiry committee, which is contrary to each other. He further submitted that there is no finding with regard to the fact that whether the 5th Respondent was acting as a Director as well as the Head of the 4th Respondent Institution as per Section 2 (g) of the said Act and whether he is an employer or not?

7. The learned Senior Central Government Standing Counsel, who took notice for the Respondents 1 to 4 submitted that Internal Complaints Committee has been constituted in terms of Section 4 of the Act, 2013, which is the competent committee for conducting enquiry on complaints of Sexual Harassment of Woman at work place.

8. Heard both sides. Perused the records.



9. In this context, it is useful to extract definition of the Employer, Local committee, Internal committee, Sections 4 and 6, which is extracted hereunder:

"Section 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:-

(h) "Internal Committee" means an Internal Complaints Committee constituted under Section 4;

(i) "Local Committee" means the Local Complaints Committee constituted under Section 6;
Section 4 - Constitution of Internal Complaints Committee

(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":
Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal



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Committee shall be constituted at all administrative units or offices.

(2) The Internal Committee shall consist of the following members to be nominated by the employer, namely:--

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section

(1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge:

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the internal Committee,--

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest,



Section 6 - Constitution and jurisdiction of [Local
Committee]

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

11. When this Court pointed out to the learned Central Government Standing Counsel that the Committee constituted only under Section 6 of the Act, 2013 alone is competent to hear the complaint and decide the issue, as the Local Complaints Committee, which is in existence in every District as per the Act, 2013 can look into the complaint of this nature for the reason that the complaint is alleged against the Superior Officer of the petitioner in this case, he has stated that the Respondents have no objection for the Local Complaints Committee to investigate the complaint of the petitioner and to proceed with the matter further.

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13. In the result, this Writ Petition is disposed of. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar

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To:

1. The Secretary,
Ministry of Science and Technology
Technology Bhavan, New Mehrauli Road,
New Delhi-110 016.
2. The Director General, CSIR
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Anusandhan Bhawan, 2 Rafi Ahmed Kidwai Marg,
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No.4, Deen Dayal Upadhyaya Marg,
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4. The Director
CSIR-Central Leather Research Institute
Adyar, Chennai- 600 020.

+1cc to Mr.T.Easwara Dhas, Advocate, S.R.No.18978

+1cc to Mr.C.Samivel, Advocate, S.R.No.19275

W.P.No.6535 of 2022

RK(CO)
RLP(25/04/2022)