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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of Decision: 2<sup>nd</sup> February, 2023*

+ **W.P.(C) 11749/2019 and CM APPL. 48222/2019**

**MS. FAUZIA RUBBANI**

..... Petitioner

Through: Ms. Adeeba Mujahid, Ms. Swati P. Roy and Mr. Abhishek Kaushik, Advocates (M: 9953937934).

versus

**DELHI WOMAN COMMISSION & ORS.**

..... Respondents

Through: None.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has raised a grievance that the Petitioner has been wrongly terminated and her complaints of sexual harassment have also not been dealt with in accordance with law. It is submitted on behalf of the Petitioner that though an Internal Complaints Committee (hereinafter, "ICC") was constituted by Respondent No.4 - Company, no proper inquiry has been conducted and there is no progress in the matter.
3. The matter was first heard on 13<sup>th</sup> November, 2019 and Ms. Shruti Naraynan, Ld. counsel for Respondent Nos. 1 to 3, had submitted that a letter dated 5th March, 2018 was written by the Delhi Commission for Women (hereinafter, 'DCW') to the Respondent No.4- Saha Infratech Pvt Ltd. By the said letter the DCW had referred the complaint to the Director of the Respondent Company for inquiry by the ICC of the company and also directed the filing of a status report. The said letter read as:

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*The above named woman has filed a complaint against Mr. Abhishek Chaturvedi posted as Sr. Manager-HR in Company. The Commission refers the complaint to you for inquiry by the Internal Committee/Local Complaints committee constituted under section 4/ under section 5 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition, and Redressal) Act, 2013.*

*The status report is also to be submitted to the commission within one month and the final report after completion of the inquiry.*

4. In response to the said letter, the company had informed the DCW that they would be constituting an ICC and submitting a final report within 30 days. The said letter reads as:

*We have received your letter dated 05/03/2018, requesting us for an inquiry into the sexual harassment Complaint, alleged by Ms. Fauziya Rubbani against Mr. Abhishek Chaturvedi- Senior Manager- HR.*

*We had requested Ms Fauzia Rubbani, vide email dated to submit her official Complaint to our Internal Complaints Committee (ICC) at [icc@sahadevelopers.com](mailto:icc@sahadevelopers.com), to proceed with inquiry of the matter by our ICC, but have not received any email till date, from her.*

*Since, the matter has been referred to us, we shall accordingly conduct an inquiry through our ICC and shall submit a status report at the closing of 30 days and the final report after inquiry, in due course.*

*We have observed extremely unsatisfactory performance by Ms. Fauzia Rubbani, which has resulted in financial losses to our Company and therefore we had requested a satisfactory explanation from her end. It was also discovered, that despite*

*taking repeated leaves, she had with a malicious intent, modified her leave records in the system.*

*The details, as are available from the records of the Company are enclosed along with this letter, for your kind reference.*

However, it is submitted on behalf of the DCW that no final report has been received.

5. It appears that no ICC has been constituted by the Respondent No. 4 and therefore, no final report has been given.

6. Since the Respondent No. 4 has continued to avoid constituting the ICC and is also appearing before the DCW, the present writ petition was filed by the Petitioner seeking the following reliefs:-

*A. Issue a writ in the nature of direction awarding compensation for non-constitution of Complaints Committee by the Respondent No.4 in terms of Section 26 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013, which came into force w.e.f. 09-12-2013 holding that the Respondents Nos. 4, 5 & 6 have violated the Fundamental Rights of the Petitioner under Articles, 14, 15, 19 and 21 of the Constitution of India;*

*B. Issue a writ in the nature of Mandamus / direction holding that the Respondents Nos. 6 with the aid of Respondent no. 4 & 5 have sexually harassed the Petitioner and acted vindictively with premeditated malice against the Petitioner and direct the respondent no. 1 to initiate action against Respondent no. 6;*

*C. Issue a writ in the nature of Mandamus / direction holding that the Respondents have violated the law laid down by the Hon'ble the Supreme Court of India in the case of Vishaka and others versus State of Rajasthan and others reported in AIR 1997 (SC) 3011 and have deliberately flouted the rules prescribed by the Apex Court and failed to implement the guidelines laid down*

*as law towards protection of women from sexual harassment at workplace and failed to provide grievance procedure for redressal of complaint of the Petitioner against sexual harassment at workplace and by not taking disciplinary action against Respondents Nos. 6 and direction appropriate action in that regard:*

*D. Issue a writ in the nature of Mandamus / direction holding that the letter of termination of the Petitioner's service dated 6.03.2018 is entirely malicious, bad in law, void, non-est, being in violation of the Fundamental Rights of the Petitioner and against the law laid down by the Hon'ble the Supreme Court;*

*E. Initiate Contempt proceedings against respondent no. 4, 5 & 6 for willfully flouting and/or violation of the law laid by the Hon'ble the Supreme Court of India as above;*

*F. Order the Respondents to jointly and/or severally to pay substantial compensation of a sum of not less than Rs. 1,00,00,000/- (Rupees One Crore only) to the Petitioner for the grievous injury and irreparable damage done to her physically and her psyche by reason of actions complained against them;*

*G. Pending the hearing and final disposal of this Writ Petition this Hon'ble Court be pleased to stay the purported letter of termination of the 6.03.2018 of the Respondent No.4 and grant such consequential reliefs that this Hon'ble Court may deem fit, just and proper;*

*H. Pending the hearing and final disposal of this Writ Petition this Hon'ble Court be pleased to direct the Respondents jointly and/or severally to deposit such sum as may be just, fit and proper by way of security towards payment of compensation as may be awarded;*

*I. Pending the hearing and final disposal of this Writ Petition the Respondents jointly and/or severally be ordered to pay to the Petitioner for and towards expenses a sum of Rs.5,00,000/- (Rupees Five Lakhs only) for prosecuting this Petition;”*

*J. Pass any such other appropriate Writ, order or direction that seems fit under the circumstances explained above.”*

7. The Petition was listed on 13th November, 2019 on which date, it is submitted by Id. Counsel for the Petitioner that DCW had issued notices to the Company but since the Company was not being represented, the Petitioner stopped appearing before the DCW. On the said date, after hearing the Id. Counsel for DCW and the Id. Counsel for the Petitioner, the following order was passed:-

*“4. Ld. counsel further submits that the DCW has also issued notices to the Petitioner for appearance, however, the Petitioner did not appear before the DCW. Ld. counsel for the Petitioner, on the other hand, submits that the Petitioner had, on two occasions, appeared before the DCW, however, since none appeared the whole day for the company and no useful purpose was being served, she decided not to appear before the DCW. The Petitioner's services have already been terminated. It is also the grievance of the Petitioner that all the dues have not been paid to her.*

*5. Issue notice to Respondent Nos.4 to 6 through all modes, including by email. Respondent No.4 shall, on the next date, hiring a chart as to what are the dues of the Petitioner and if any payments have been made after her termination. A responsible officer of the Respondent No.4-Company shall remain present in Court on the next date. Copies of the documents shown to the Court by ld. counsel for Respondent Nos.1 to 3 be placed on record with an affidavit within two weeks.”*

8. Subsequently, on 10<sup>th</sup> February, 2020, since the Respondent No. 4 had still not filed its reply, the Respondent No. 4 was directed to pay a sum of Rs.1,20,000/- to the Petitioner. On the said date, the Respondent No. 4 was

also directed to give the details of the computation/payments made as also status of the constitution of the ICC. The said order reads as under:-

*“Ld. counsel for Respondent Nos. 4 and 5 have entered appearance. Mr. Vaikuntam, law officer of Respondent No. 4-company is also present in Court. Even on the last date, the companies were served, however, till date, the Respondents have not complied with the order dated 13th November, 2019, by which it was directed that a chart be filed by Respondent No.4 showing the dues of the Petitioner and details of payments, if any, which have been made to her.*

*If the affidavit in respect of the payments made and the constitution of the Internal Complaints Committee is not filed within four weeks, adverse orders would be liable to be passed. Ld. counsel for Respondent Nos. 4 and 5 submits that the company is willing to pay the outstanding dues of Rs. 92,000/- to the Petitioner. Without prejudice to the contention of Respondent Nos. 4 and 5 and considering that the Petitioner's case is that she has been terminated after she raised the allegations of sexual harassment, it is directed that a lump sum amount of Rs. 1,20,000/- shall be paid to the Petitioner, which shall be subject to further orders of this Court. The said payment is without prejudice to the rights and contentions of the parties.*

*The said payment shall be made within a period of two weeks. Reply be filed within four weeks, failing which, no further opportunity shall be granted to file the reply.”*

9. Thereafter, however, no affidavit has been filed by the Respondent Nos. 4 and 5. On 30th November, 2022, this Court again issued notice without process fee and till date, none appears for the Respondent Nos. 4 and 5. The relevant extract of the order dated 30<sup>th</sup> November, 2022 reads as:

*2. The learned counsel submits that she does not have any intimation with regard to the constitution of*

*Internal Complaints Committee nor an affidavit in this regard has been filed by the respondents no. 4 and 5, in terms of order dated 10.02.2020.*

*3. None appears on behalf of respondents no. 4 and 5 today.*

*4. Issue Court notice to R-4 and R-5 (without process fee) through all permissible modes.*

*5. In so far as the payment of an amount of Rs. 1,20,000, which was directed to be paid to the petitioner, is concerned, the same has been received by the petitioner without prejudice to her rights and contention.*

*6. The respondents no. 1 to 3 have filed the counter affidavit but the learned counsel for the petitioner submits that she has not received a copy of the same.*

*7. Let copy of the counter affidavit be supplied to the learned counsel for the petitioner during the course of the day.*

*8. The respondent no. 6 has already been served but there is no appearance on behalf of the respondent no.6*

10. A short affidavit has been filed by Delhi Commission of Women stating and placing on record the various notices issued to the Company-Respondent No. 4. A perusal of the said notices and replies by the Company would show that the Respondent No. 4 repeatedly informed the DCW that the Company would conduct an enquiry through its own ICC and submits a status report in respect thereof. Till date, the Company has not undertaken the requisite compliances.

11. As it is noticed in the present case, in the absence of ICC which was supposed to be duly constituted by the employer, in accordance with Section 4 of the POSH Act the Petitioner can approach the Local Complaints Committee. The ICC having not been set up; the Petitioner is left with no

other remedy except to pursue its complaint before the DCW. Moreover, the DCW is already seized of this matter.

12. Under these circumstances, it is directed that the DCW shall draw an adverse inference against the Respondent No. 4-SAHA Infratech Pvt Ltd, the Employer and proceed to pass the final orders in accordance with law with the provisions of the POSH Act 2013.

13. As per the scheme of the POSH Act, Section 26 of the POSH Act is a specific provision to impose penalty on employers who fail to constitute an ICC in accordance with the POSH Act. Section 26 of the POSH Act reads as:

*26. Penalty for non-compliance with provisions of Act.—(1) Where the employer fails to—*

*(a) constitute an Internal Committee under sub-section (1) of section 4;*

*(b) take action under sections 13, 14 and 22; and*

*(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder, he shall be punishable with fine which may extend to fifty thousand rupees.*

*(2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to—*

*(i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence: Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;*

*(ii) cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.*

14. Considering that the present matter has been pending since 2019 before this Court, and since no ICC has been constituted by the employer, as per Section 26 of the POSH Act, costs of Rs.50,000/- are awarded to the Petitioner to be paid by the Respondent No. 4. The Petitioner is free to write to the said Respondent No. 4 with a copy of the present order upon which the said costs shall be paid to the Petitioner within two weeks failing which the Petitioner shall seek enforcement this order in accordance with law.

15. In these circumstances, as the first notice was issued by the DCW in the matter in March, 2018, it is directed that the DCW shall pass a final order on the complaint of the Petitioner within three months. The Petitioner is at liberty to approach the Court if the present order is not complied with.

16. List for hearing before the DCW on 15<sup>th</sup> February, 2023 at 11:30 am.

17. With these observations, the present petition with all pending applications, if any, is disposed of.

**PRATHIBA M. SINGH  
JUDGE**

**FEBRUARY 2, 2023  
MR/Am**