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21.08.2024
AGM

**In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 3695 of 2020

**Jaya Sarkar
vs.
The Union of India & Ors.**

**Mr. Debasish Banerjee.
Mr. Rakesh Jana. ... For the Petitioner.**

**Mr. Partha Ghosh.
 ... For the Railways.**

The petitioner is an employee of the Indian Railways. She is aggrieved by the order passed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

She preferred an appeal before the Deputy Chief Labour Commissioner (Central), Asansol. The Deputy Chief Labour Commissioner (Central) intimated the petitioner that he is not the appellate authority under the abovementioned Act.

Being aggrieved by the said communication by the Deputy Chief Labour Commissioner (Central), Asansol refusing to register the appeal filed by the petitioner, the instant writ petition has been filed.

Learned advocate for the petitioner relies upon Rule 11 of the Sexual Harassment of Women

at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, which lays down the provision for appeal.

It mentions that subject to the provisions of Section 18 of the Act any person aggrieved from the recommendations made under sub section (2) of Section 13 or under clauses (i) or clause (ii) of sub Section (3) of Section 13 or sub Section (1) or sub Section (2) of Section 14 or Section 17 may prefer an appeal to the appellate authority notified under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946.

The petitioner produces the notification of the Ministry of Labour and Employment dated 4th May, 2016 being S.O. No 1632 (E) published in the gazette of India on 4th May, 2016 which mentions:

'In exercise of the powers conferred by clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), and in supersession of the notification of the Government of India in the Ministry of Labour and Employment number S.O. 1062 dated the 15th March, 1990, the Central Government hereby appoints the following officers to exercise the functions of appellate authority under the said Act in respect of the industrial establishments under the control of the Central Government or a Railways administration or a major port, mine or oil-field situated anywhere in India, namely :-

- (i) Chief Labour Commissioner (Central).
- (ii) Additional Chief Labour Commissioner (Central).
- (iii) All Deputy Chief Labour Commissioners (Central).'

From the aforesaid notification it is clear that all the deputy Chief Labour Commissioners (Central) has the power to act as the appellate authority to deal with appeals under the Act of 2013.

In view of the above, the impugned communication dated 03/05 February, 2020 is liable to be set aside and is, accordingly, set aside being contrary to the notification dated 4th May, 2016.

The Deputy Chief Labour Commissioner (Central), Asansol is directed to consider and decide the appeal filed by the petitioner in accordance with law.

In the event the petitioner prefers an application praying for condoning the delay in preferring the appeal, the same shall be considered leniently by the appellate authority in terms of the order passed by this Court on January 3, 2020 in WPA 23301 of 2019.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)