

Item No.2
23.06.2026
Court. No. 12
GB

FMA 265 of 2023
With
CAN 3 of 2025
With
CAN 5 of 2026

XXX
Vs.
Union of India & Ors.

Mr. Supratim Dhar,
Mr. Dhananjay Nayak

...for the Appellant.

Mr. M. Datta

...for the UOI.

Mr. Victor Chatterjee,
Mr. Amit Ghosh

...for the Respondent No.5.

1. Despite service, none appears on behalf of the respondent no.9. The respondent no.9 also did not appear before the writ court.
2. The appeal arises out of a judgment and order dated November 11, 2022, passed by a learned Single Judge in WPA 4176 of 2019.
3. The appellant shall be described as 'XXX' in all the appeal papers as also the paper book henceforth. The appellant filed a complaint of sexual harassment at workplace, when she was serving on a temporary basis as an Advisor, in Hindustan Cables Limited (HCL). The office was situated at 1/315, Gariahat Road, Jodhpur Park, Kolkata – 700068.
4. Being aggrieved by the report of the Internal Complaints Committee (ICC), the procedure followed by the ICC and the lack of jurisdiction of the ICC to deal with the complaint, , a writ petition was filed.

5. The first contention before the learned writ court was that the committee did not have the jurisdiction to take up the matter, as the complaint was against the CMD, who was the head of the office in Kolkata and under whom the complainant/aggrieved woman was working. He was the “employer”.
6. It is also contended that the issue of lack of jurisdiction of the ICC was raised in paragraph 6 of a representation filed before the Presiding Officer of the ICC. The appellant had specifically stated that the composition of the ICC was in violation of the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013 (in short ‘POSH Act’). It is thus contended that despite such legal issue having been raised, the ICC did not return a specific finding thereon, but continued to hear the matter. It is next contended that the ICC did not even bother to enquire in the manner prescribed by the statute and the rules.
7. Mr. Victor Chatterjee, learned advocate for HCL submits that the appellant wrote to the Ministry of Heavy Industries and Public Enterprise alleging sexual harassment at workplace at the instance of the then CMD, under whom she was working. The ministry instructed the Board of Directors to constitute the ICC for all female employees of HCL. Accordingly, the committee was constituted and the proceedings were taken up. Thus, the CMD did not have any involvement or hand in the constitution of the committee. The Board

of Directors had constituted the committee. The Board was the employer of the appellant and not the CMD. It was further contended that the complaint was filed after nine days from discontinuation of the temporary service and, such belated complaint was rightly treated to be frivolous.

8. The report and the manner in which the entire proceeding was conducted and concluded by the said ICC, was the subject matter of challenge in the writ petition. A prayer was made before the learned Single Judge to quash the report of the Internal Complaints Committee and to refer the matter afresh, to a committee comprising of neutral persons.
9. Upon discussing the provisions of Section 2(g) which defines employer, the learned Single Judge was of the view that, as the CMD was answerable to the Board of Directors and the Board of Directors was the ultimate authority, the Board of Directors would be the employer under Section 2(g).
10. The appellant had taken voluntary retirement on February 1, 2018. Nine persons were appointed on temporary basis as per the decision of the management of HCL, for a period of 11 months with existing terms and conditions of engagement. The appellant's name appeared under serial no.2 of the said list. The said decision was taken with the approval of the CMD, HCL, that is, the respondent in the proceeding before the ICC, against whom the complaint had been lodged. There is no denial of the fact that the said respondent

was not only the head of the office in which the appellant was engaged on temporary basis, but the decision to engage her on temporary basis as an Advisor along with eight other persons, was also taken with the approval of the CMD.

11. The point of jurisdiction of the ICC was held in favour of the employer. We are unable to accept such finding of His Lordship, inasmuch as, under Section 2(g)(i) 'employer' in relation to any department/organization/undertaking/establishment/enterprise/institution/office/branch or unit of the appropriate government or local authority would be the head of the department/organization/undertaking/office/unit/enterprise, etc. Undoubtedly, the CMD was the head of the office of HCL in Kolkata, in which the appellant was engaged on temporary basis after she had accepted VRS. Sub-Section (ii) of Section 2(g), provides that in a workplace not covered under sub-section (i), an employer would be any person responsible for the management, supervision and control of the workplace. The definition of workplace is under Section 2(o), which includes any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which was established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the government or the local authority or a government company or a corporation or a cooperative society. HCL is a public sector undertaking under the Ministry of Heavy

Industries and Public Enterprise. Thus, the definition of workplace also covers the office in which the appellant was serving on temporary basis.

12. Section 6 of the POSH Act provides for the constitution and jurisdiction of local committees. The local committees are to be constituted to receive complaints of sexual harassment from establishments in which internal committees had not been constituted due to having less than ten workers or in cases where the complaint was against the employer itself. Under Section 2(f) a person on temporary engagement was also covered by the definition of employee.

13. The relevant provisions are quoted below:-

“2.(f) “employee” means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

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.

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6. Constitution and jurisdiction of [Local Committee].—(1) Every District Officer shall constitute in the district concerned, a committee to be known as the “ [Local Committee]” to receive complaints of sexual harassment from establishments where the 1 [Internal Committee] has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

(2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned [Local Committee] within a period of seven days.

(3) The jurisdiction of the 2 [Local Committee] shall extend to the areas of the district where it is constituted.”

14. Thus, in our view, the complaint against the employer ought to have been referred to the local committee, even if, the appellant approached the ministry directly.
15. The constitution of the ICC in HCL Kolkata, on earlier occasions, had been done by the CMD of the office at Kolkata. Thus, the fact that the CMD of HCL, Kolkata was not only the head of the office in which the appellant was working but also, a person in charge of the management, control and supervision of the said office, is available from the records.
16. The issue of delay in filing the complaint is a mixed question of law and fact, which we do not wish to go into as the complaint should be reopened and enquired into, by the appropriate authority under the law. This point is left open to be adjudicated by the appropriate authority.
17. Section 9 of the POSH Act provides that an aggrieved woman may make in writing a complaint of sexual

harassment at workplace, to the Internal Committee or to the local committee within a period of three months from the date of the incident and in case of a series of incidents, within a period of three months from the last date of incident.

18. Prima facie, we find in the complaint dated May 9, 2018, which was filed before the Ministry of Heavy Industries and Public Enterprises that, incidents which happened on April 13, 2018 had also been narrated.
19. Under such circumstances, the ICC could not have aborted the proceeding upon holding that the witness, that is, the husband of the appellant was not present during the alleged incident and did not have any knowledge of the issue and that the complainant declined to adduce evidence and failed to prove the allegation.
20. The learned Single Judge considered Section 4, but failed to consider Section 6 of the POSH Act and as such erred in holding that the CMD was not the employer.
21. We hold that the CMD was the head of the office/unit of HCL where the appellant was working on temporary basis, as an Advisor (accounts). He was the employer for the purpose of the POSH Act. The proceeding should have been initiated before the local committee having jurisdiction.
22. The fact that the CMD is no longer in employment, does not change the legal position, inasmuch as, the provision of compensating the aggrieved woman in the

event the complaint is found to be proved, has been made in the statute. The second proviso to Section 3(iii) provides that, if the respondent fails to pay the sum referred to in Clause (ii), the ICC, or the local committee, may forward the order of recovery of the sum as arrear of land revenue.

23. Under such circumstances, the order of the Internal Complaints Committee is set aside on the ground that the committee lacked jurisdiction. The CMD was the employer for the purpose of implementation of the POSH Act. The appellant is at liberty to take appropriate steps in accordance with law. The order of the ICC as also the learned Single Judge of this Court, are set aside.
24. It is expected that, if a complaint is filed before the local committee, the local committee shall take expeditious steps, in accordance with law.
25. Accordingly, the appeal and the connected applications are disposed of.
26. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)