

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW-137-2020

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...Petitioner.

Versus

1 The Director of Technical Education,
Government of Goa,
Alto Porvorim,
Opp Education Department,
Bardez, Goa-403521.

2 X X X X

3 The Presiding Officer/Chairperson,
Sexual Harassment Committee,
Government Polytechnic, Panaji.

4 The Chairperson,
Local Complaints Committee (Sexual
Harassment),
Office of the Collector, North Goa
Panaji, Goa.

5 The State of Goa,
Through the Chief Secretary,
Secretariat, Porvorim, Goa.

.... Respondents.

Mr. Nigel Da Costa Frias with Mr. Gaurish Malik, Advocates for the Petitioner.

Mr. Devidas J. Pangam, Advocate General with Mr. Geetesh Shetye, Additional Government Advocate for Respondents No.1, 4 and 5.

Mr. Menino Teles, Advocate for Respondent No.2.

Mr. Allvin Facho, Respondent No.3 in person.

**Coram : M. S. SONAK &
DAMA SESHADRI NAIDU, JJ.**

Date : 24th August, 2020

ORAL JUDGMENT (Per: M. S. Sonak, J).

Heard Mr. Nigel Da Costa Frias with Mr. Gaurish Malik, learned Advocates for the Petitioner, Mr. Devidas J. Pangam, learned Advocate General with Mr. Geetesh Shetye, learned Additional Government Advocate for the Respondents No.1, 4 and 5, Mr. Menino Teles, learned Advocate for the Respondent No.2 and the Respondent No.3 in person.

2. We issue Rule. At the request of and with the consent of the learned Counsel for the Respondents, we make Rule returnable forthwith.

3. The challenge in this Petition is mainly to the order dated 30.01.2020 made by the Additional Collector-1, North Goa District, presumably in his capacity as the Chairperson of the Local Committee constituted in terms of Section 6 of the Sexual Harassment of Women At Workplace (Prevention, Prohibition and Redressal) Act, 2013, (said Act).

4. By this impugned order, the complaint of the Petitioner dated 21.01.2020 against the Respondent No.2, was referred to the Internal Complaints Committee (ICC) for conduct of inquiry into the matter and disposal of the same. In pursuance of the order dated 30.01.2020, the ICC, by order dated 09.03.2020, has informed the Petitioner that her complaint has been investigated by the ICC and the same has been disposed of in terms of the findings of the ICC. Hence, the Petitioner, has also challenged the order dated 09.03.2020 made by the ICC disposing of her complaint under the provisions of the said Act.

5. Mr. Nigel Da Costa Frias, the learned Counsel for the Petitioner, at the very outset made it clear that the Petitioner, by way of abundant caution has already instituted an appeal against the order dated 09.03.2020 before the Appellate Authority. He further submits that the Petitioner's basic challenge is to the order dated 30.01.2020 and if the same is set aside, then, obviously, the order

dated 09.03.2020 made by the ICC will no longer survive and the Petitioner, will withdraw the appeal before the Appellate Authority.

6. The Petitioner, in this case, is an employee of the Government Polytechnic. The Respondent No.2 is the Principal and, consequently, the head of the Government Polytechnic, Panaji. On 04.11.2019, the Petitioner, made a complaint against the Respondent No.2. This complaint was ultimately taken up for consideration by the Local Committee, which has, made the impugned order dated 30.01.2020 only remanding the matter to the ICC for its consideration. In pursuance of such remand, the ICC, vide order dated 09.03.2020 has disposed of the Petitioner's complaint.

7. Therefore, the main issue which arises for determination in this Petition is whether the complaint made by the Petitioner was required to be investigated into by the Local Committee or whether, the ICC was competent to investigate and dispose of the same. Mr. Costa Frias, the learned Counsel for the Petitioner contends that since the Petitioner's complaint was against her employer, i.e. the Respondent No.2 herein, it is only the Local Committee which had jurisdiction to entertain and dispose of the Petitioner's complaint.

8. In order to appreciate the aforesaid contentions, reference

is necessary to the provisions of Section 6 of the said Act, which read as follows:

*“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 [Internal Committee] has not been constituted due to having less than ten workers or **if the complaint is against the employer himself.**”*

[Emphasis supplied].

9. From the aforesaid, it is quite clear that the jurisdiction of the Local Committee extends to receiving complaints of sexual harassment from the establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself. The expression “or” suggest that the jurisdiction of the Local Committee to receive complaints extends to a situation where there is no Internal Committee constituted or on account of the fact that the establishment employees less than ten workers or where the complaint is made against the employer himself.

10. The issue, therefore, is whether in the present case the Petitioner, who had made the complaint against the Respondent

No.2, can be said to have made a complaint against her “employer”.

11. The expression “employer” has been defined under Section 2(g) of the said Act in the following terms:

“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".

[Emphasis supplied].

12. The definition of the expression "employer" is quite exhaustive and the same means the head of the department or organisation. In the present case, we are concerned with the Government Polytechnic and there is no dispute that the Respondent No.2 is the Principal of Government Polytechnic. The Respondent No.2, can, under these circumstances be styled as the head of the department of the Government Polytechnic. Since the complaint made by the Petitioner is against the Respondent No.2, who is the head of the Government Polytechnic institution, it is obvious that the complaint in the present case is against the employer himself. In such situation, the appropriate authority to receive and dispose of such complaints, will be the Local Committee in terms of Section 4 of the said Act.

13. The Local Committee, by making the impugned order

dated 30.01.2020 has virtually declined to exercise the jurisdiction which is vested in it in terms of Section 4 of the said Act. Learned Counsel for the Respondents tried to contend that the complaint as made neither amounts to any complaint for “sexual harassment” as defined under Section 2(n) of the said Act nor can the Petitioner be regarded as “aggrieved woman” as defined under Section 2(a) of the said Act. They submit that it is for this reason the Local Committee has made the impugned order dated 30.01.2020. They submit that in pursuance of remand, the ICC has arrived at the same conclusion. They submit that since the Petitioner has already appealed against the decision of the ICC, this Petition, may not be entertained.

14. From the perusal of the impugned order dated 30.01.2020, we do not find that the Local Committee has actually gone into the issue of whether the complaint made by the Petitioner, amounts to any complaint for sexual harassment as defined under Section 2(n) of the said Act or whether the Petitioner, in the present case can be regarded as “aggrieved woman” as defined under Section 2(a) of the said Act. The impugned order, without any reasons, simply forwards the complaint to the ICC for its determination. Since, we have already held that the Local Committee is the proper authority to look into the complaint of the Petitioner which was made against her employer, the impugned order dated 30.01.2020, will have to be set aside and the matter restored to the Local

Committee for its determination in accordance with law.

15. The ICC in the present case, made its order dated 09.03.2020, on the basis of remand in terms of the impugned order dated 30.01.2020. Now that we are of the opinion that the impugned order dated 30.01.2020 deserves to be set aside, obviously, the ICC's order dated 09.03.2020 cannot independently survive and the same will also have to be set aside. In fact, we are quite satisfied the ICC did not have the jurisdiction to look into the complaint of the Petitioner and it is only the Local Committee which was vested with the jurisdiction to receive and dispose of the complaint of the Petitioner. Accordingly, the fact that the Petitioner, may, out of abundant caution, appealed against the ICC's order dated 09.03.2020, can really be no bar to the entertainment of the present Petition. Besides, Mr. Costa Frias, has made statement that such appeal will be withdrawn and not pursued, which statement, is now duly accepted by us.

16. Accordingly, solely on the grounds of jurisdiction and not on merits, we set aside the impugned orders dated 30.01.2020 and 09.03.2020 made by the Local Committee and the ICC, respectively. We now direct the Local Committee to receive and dispose of, in accordance with law, the Petitioner's complaints dated 04.11.2019 and 21.01.2020 on their own merits.

17. We make it clear that we have not even remotely adverted to the merits of the complaint or, for that matter, to the issues as to whether the complaint alleges any sexual harassment as contemplated under Section 2(n) of the said Act or whether the Petitioner is indeed “aggrieved woman” as defined under Section 2(a) of the said Act. According to us, all these are matters which will have to be examined and determined by the Local Committee itself on its own merits and in accordance with law. We are sure that the Local Committee, in determining such issues will no doubt comply with the principles of natural justice and fair play.

18. Since, the Chairperson of the Local Committee has been impleaded as Respondent No.4 to the Petition, cognizance will have to be taken of this order and necessary steps will have to be taken to dispose of the Petitioner's complaints on their own merits and in accordance with law.

19. The Rule is disposed of in the aforesaid terms.

20. There shall be no order as to costs.

21. We direct the Registry to maintain a record of the identity of the parties but to mask the names of the parties in order to protect the privacy of the parties. The Registry to also take care of

this aspect whilst uploading this order on the website.

22. All concerned to act on the basis of the authenticated copy of this order.

DAMA SESHADRI NAIDU, J.

M. S. SONAK, J.

msr.