

Allahabad High Court

Smt. Shobha Goswami vs State Of U.P. And 2 Ors. on 27 May, 2015

Bench: B. Amit Sthalekar

HIGH COURT OF JUDICATURE AT ALLAHABAD

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Court No. - 58

Case :- WRIT - A No. - 31659 of 2015

Petitioner :- Smt. Shobha Goswami

Respondent :- State Of U.P. And 2 Ors.

Counsel for Petitioner :- Ashish Kumar Ojha, Radha Kant Ojha

Counsel for Respondent :- C.S.C., Nisheeth Yadav

Hon'ble B. Amit Sthalekar, J.

Heard Shri R.K. Ojha, learned senior counsel assisted by Shri Ashish Kumar Ojha for the petitioner, Shri Azad Khan, learned standing counsel for the respondent no. 1 and Shri C.B. Yadav, learned senior counsel assisted by Shri Nisheeth Yadav for the respondent no. 2.

The petitioner in this writ petition is seeking quashing of the order dated 26.2.2015 whereby she has been placed under suspension with a further prayer that a direction be issued to the respondent no. 2 to constitute a proper committee as required under section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 read with judgment of the Supreme Court in the case of Vishakha Dev Vs. State of Rajasthan.

The contention of the petitioner is that she has made allegations of sexual harassment against the respondent no. 3 in which an enquiry has already been instituted. The submission is that the order of suspension has been passed by way of counter blast to implicate the petitioner on false allegations. A further submission has been made by learned senior counsel that the order of suspension is ante dated and in fact the petitioner had continued to discharge her duty even upto 2nd March. From a perusal of the impugned order of suspension it is noticed that there are several

allegations which are of a very serious nature relating to causing loss to the Government exchequer of an amount about Rs. 2,00,000/-. There are further allegations of causing loss about Rs.19,000/- by over writing. There are also allegation of misappropriation of several sums. There are also allegations of misappropriation of funds of about Rs.11,00,000/- and about Rs. 14,00,000/- also. All these allegations are of a very serious nature relating to financial irregularities.

Considering these allegations I do not find any ground for interference in the impugned suspension order.

Shri Ojha, learned senior counsel then submitted that the Committee looking into the allegations of sexual harassment leveled by the petitioner be reconstituted. The submission of Shri Ojha is that if the allegation is made against a senior officer then the lady officer constituting the Committee should atleast be senior to that officer. He submits that Harish Kumar Verma is the second officer in the Greater NOIDA Establishment and that Smt. Leenu Sehgal has been changed and in her place one Smt. Navisa Sharma, DGM Planning has been incorporated in the Committee but she is subordinate to Harish Kumar Verma. It is also mentioned that there are two other lady officers, Assistant Law Officer and one Shri S.R. Zeena, member of NGO and she is an independent member.

Shri Ojha submits that there should be a Lady member senior to the officer against whom the allegations have been made and if such a lady is not available such a lady should be incorporated in the Committee from some other department. He further submits that Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides that the woman officer should be of a senior level rank meaning thereby that she must be senior to the officer against whom the allegations have been made. Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 reads as under:

"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 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 be 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, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section."

In my opinion, there is nothing in the Scheme of the section which requires the lady member to be senior in rank to the officer against whom the allegation of sexual harassment are brought. The language of Section 4 of the Act only requires the lady member to be of Senior Level. What is to be noted is that the Committee consists of four members out of which three are women and one is from an NGO and is an independent member altogether. It is not shown or even submitted that Smt. Navisa Sharma, DGM, Planning does not belong to Senior Level. Therefore, the submissions of Shri Ojha per se have to be rejected.

Learned counsel for the parties, however, do not dispute that a charge sheet has already been issued to the petitioner on 8.5.2015 to which the petitioner has sought time for submitting her reply. Be that as it may, since the charge sheet has been submitted it is provided that the respondents shall

complete the departmental proceeding within four months from the date of receipt of the certified copy of this order.

The writ petition stands disposed of.

Order Date :- 27.5.2015 o.k.