

List of Cases cited:

1. U.O.I. Vs Ashok Kumar Aggarwal, (2013) 16 SCC 147
2. C.B. Bobby Vs St. of Kerala, 2025 SCC OnLine Ker 211

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Shri Ashok Khare, learned Senior Advocate assisted by Shri Siddharth Khare, learned counsel for petitioner, Shri Shambhavi Nanda, learned Advocate holding brief of Shri Ghan Shyam Yadav, learned counsel for respondents and learned Standing Counsel.

2. Petitioner who is posted and working as District Programme Officer, Kushinagar has invoked extraordinary and equitable jurisdiction of this Court under Article 226 of the Constitution to assail the order of suspension passed against him by the Chief Secretary Child Development and Nutrition, Uttar Pradesh basically on following three grounds:

(i) The words spoken to the aggrieved woman does not amount so sexual harassment in relation to her workplace more especially in the light of the statement of the aggrieved woman herself recorded before the internal complaint committee.

(ii) The internal complaint committee was not duly constituted as mandatorily required under Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short 'Act, 2013').

(iii) The detailed procedure required to be followed in consonance with the rules of punishment and appeal rules applicable to the employee was not

followed, inasmuch as petitioner was denied opportunity to cross-examine the complainant and still further had no opportunity even to make representation against the findings before the committee itself as contemplated under Section 11 of the Act, 2013.

3. In support of his above arguments learned Senior Advocate has taken the Court through the findings part of the report of the internal committee in which it has come to be returned that calling a woman to his own house and stadium for evening walk and making comments upon her physical body structure and request for scooty riding with her, prove that the delinquent employee was trying to harass her and it was further proved from the written statement of Virendra Nath Verma retired clerk and further recordings of CCTV and further it cannot be ruled out that CCTV footage / recording were not disturbed.

4. According to Shri Khare it was all a sheer doubt expressed in the finding part itself as there was no direct evidence that petitioner ever tried to sexually harass the aggrieved women at any point of time so as to call an for action under the Act, 2013. Shri Khare has also taken the Court through the statement of aggrieved women recorded by the internal complaint committee in which she had stated that the delinquent employee commented upon her being fatty and used suggest her to go for evening walk with him at multiple times and also invited to have meals with him. Shri Khare submitted that a mere statement that the petitioner suggested the aggrieved women to go with him for evening or morning walk or invited over a meal or to suggest her to drive the scooty with him as a pillion rider, is not at all suggestive of

any element to constitute sexual harassment within the meaning of the Act. Shri Khare has also taken the Court through the provisions as contained under Section 4 of the Act according to which the internal complaint committee was to be consisted of at least one member from a non-governmental organization or association committed to the cause of women or person familiar with issues relating to sexual harassment as according to him, the committee that was constituted and submitted a report, consisted of only government officials including the chairman, who were five in number. The relevant provision of Section 4 are reproduced hereunder:

“4. (1).....

(2) The internal Committees shall consist of the following members to be nominated by the employer, namely:

(a) a Presiding Officer who shall be a women employed at a senior level at a 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 he 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 organization.

(b) not less that two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organizations 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.

(emphasis added)

5. Shri Khare has also taken the Court through Section 11 of the said Act that makes it, according to him, compulsory for the internal complaint committee to proceed to hold enquiry into complaint in accordance with the provisions of service rules as applicable to the said respondent employee. Shri Khare submits that petitioner being government employee, is governed under the U.P. Government Servant (Discipline and Appeal) Rules 1999 which lays down a detailed procedure under Rule 7 for holding enquiry in the matter of major penalty and whereas in the present case no such either charge sheet was issued to the petitioner by the internal complaint committee, nor the procedure prescribed was followed to get the statements recorded and to supply the copy of the complaint if any, made by the aggrieved woman. Section 11 of the Act, 2013 is reproduced hereunder:

“11. Inquiry into complaint.- (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such matter as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under Section 509 of the Indian Penal

Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.”

(emphasis added)

6. In view of the above provisions Shri Khare has also argued that since petitioner was not supplied with the enquiry report, he had no opportunity to submit representation against the findings before committee itself.

7. Replying to the above arguments advanced by learned counsel for petitioner, Shri Shambhavi Nandan, learned Advocate has submitted that insofar as the first argument is concerned, the comments made by the petitioner to the aggrieved women amounted to ‘body shaming’ and in the event petitioner suggested such a women to have morning and evening walk with him and further offered a meal and then also to be a pillion rider over her scooty, if all taken together, would constitute sexual harassment of woman at workplace within the meaning of Section 2(n) of the Act,

2013. According to him if remarks amounts to body shaming then it would amount sexually coloured remarks and unwelcomed physical remarks at times may be even sexually coloured remarks. The definition Section 2(n) is reproduced hereunder:

“sexual harassment’ includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:-

(i) physical contact and advances;

or

(ii) a demand or request for sexual favours; or

(iii) making pornography; or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;”

(emphasis added)

8. Meeting the second argument Shri Shambhavi Nandan submitted that the petitioner had not only been heard by the internal complaint committee but even his statement was recorded and, therefore, the petitioner cannot raise an argument that he had no opportunity to contest the matter of complaint before the internal complaint committee or that he could not put up his defence. It is submitted that if petitioner wanted to cross-examine the aggrieved women, he should have made an application before the internal complaint committee itself and hence, after the report has been submitted for the respondents to proceed to pass orders upon his indictment for sexual harassment meted out to aggrieved women, if has now approached this Court raising all these pleas, such pleas should not be allowed. He has also taken the Court through the statement of

Petitioner Shailenda Kumar Rai recorded before the internal complaint committee.

9. Meeting the argument as to the constitution of the internal complaint committee, Shri Shambhavi Nandan has argued that the petitioner ought to have raised this ground before the internal committee itself raising the objection that the committee could not have heard the matter as it lacked proper constitution. Shri Shambhavi Nandan, submits that according to the proviso to Sub-Section 2 of Section 4 one half of the total members are required to be women and looking to the overall object of the Act which is aimed at securing a protective environment for women at workplace clause 6 of Sub-section 2 should be taken as directory and not mandatory. According to him it is quite possible that at some places such organizations may not exist and women or person who can not be found familiar with issue of sexual harassment. He submits that what is necessary is sufficient representation of women in the committee as prescribed and that part should be taken as mandatory.

10. On the point of report being not supplied by the internal complaint committee to the petitioner, Shri Shambhavi Nandan submitted that copy of the complaint itself has been filed which shows that petitioner had been served with the copy of the enquiry report and therefore, the petitioner ought to have availed the opportunity of moving representation before the internal complaint committee itself against findings as per the second proviso to Section 11. He has further argued that had the petitioner approached the committee and committee had rejected the representation being barred by time or otherwise, the petitioner could

have raised this plea that the internal complaint committee did not address the issues that he had raised in his representation.

11. Besides the above argument, Shri Shambhavi Nandan argued that petitioner has further opportunity to file appeal as aggrieved person from the recommendations of the internal complaint committee made under subsection 2 of Section 1 of the Act, 2013. He has placed Section 18 of the Act 2013 which is reproduced hereunder:

“18. Appeal (1) Any person aggrieved from the recommendation made under sub-section (2) of section 13 or under clause (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 or non-implementation of such recommendation may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendation.”

12. Shri Shambhavi Nandan has further placed before the Court copy of the first information report lodged against the petitioner in connection with the Case Crime No. 0368 of 2024 under Section 506, 504, 354(a) of the erstwhile IPC by one Meera Kushwaha in which she had alleged that the District Programme Officer got her seated beside him and started indecent talks and then started touching her body parts

and even suggest her to accompany her to his room to have sex and when she objected he started abusing her using filthy language and even threatened her to remove her from employment. Shri Shambhavi Nandan argued that the conduct of the petitioner in the department has been such that many women workers have been feeling uncomfortable at work place while working with him.

13. Replying the above arguments, Shri Khare submitted that the allegations made in the first information report are yet to be proved in trial, in as much as these allegations were in respect of another woman and has nothing to do with the case in hand. It is argued by Shri Khare that even if the petitioner approaches to the appellate authority, since the respondents were required to follow the procedure prescribed under Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999, there was no reason or occasion for them to place the petitioner under suspension.

14. Having heard learned counsel for respective parties and having perused the records, this Court is required to examine as to whether there was any *prima facie* case made out against the petitioner to place him under suspension and whether the suspension would be in any manner prejudicing the rights of the petitioner in approaching the concerned authority. It is well settled principle in service jurisprudence that suspension is no punishment. An employee is placed under suspension by the employer only to ensure that he is not able to influence the enquiry in any manner, in as much as he is not able to interfere with the evidence or also in such cases where the employer finds it necessary to place an employee under

suspension so as to have smooth disposal of disciplinary proceedings.

15. In the case of *Union of India v. Ashok Kumar Aggarwal (2013) 16 Supreme Court Cases 147*, vide paragraph 19 the Court has held thus:

“19. During suspension, the relationship of master and servant continues between the employer and the employee. However, the employee is forbidden to perform his official duties. Thus, a suspension order does not put an end to the service. Suspension means the action of debarring for the time being from a function or privilege or temporary deprivation of working in the office. In certain cases, suspension may cause stigma even after exoneration in the departmental proceedings or acquittal by the criminal court, but it cannot be treated as punishment even by any stretch of imagination in the strict legal sense.

16. Naturally if the employee is regularly discharging duties on a position that he holds as ahead of the department, in matters of complaint of sexual harassment where a decision is yet to be taken finally by the authority, the authority may place the said employee under suspension firstly as a confidence building measure amongst the working women in the department and secondly to ensure that such an officer may not abuse his position to pressurize other working women or otherwise also to the aggrieved women even while the final action is still pending consideration. The circumstances and the manner in which the ‘body shaming’ as verbal remarks has been attributed to the petitioner by the aggrieved women at the workplace, it may constitute sexual harassment. However, observation if made as a final view in this regard may run

