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DELHI HIGH COURT ON JURISDICTION OF LOCAL COMMITTEE UNDER POSH ACT

A. Introduction

The Delhi High Court (**HC**), in the case of *X v. Y*,¹ held that the Secretary would fall within the definition of ‘employer’ for the purposes of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”) and thus the jurisdiction of complaint would lie with the Local Committee.

B. Brief Facts:

1. The Petitioner i.e., the **aggrieved woman**² alleged that she was facing severe sexual harassment at her workplace by the Secretary of the Academy (“**Secretary**”) since March 2014. Further, she claimed to have been subjected to several racial and sexist comments and intimidation by the Secretary.
2. In November 2019, the Petitioner lodged an FIR against the Secretary of an unnamed academy and also emailed its Executive Board (“**Board**”) seeking investigation into the actions of the Secretary by an independent Committee. Petitioner contended that the Internal Committee (**IC**) lacked jurisdiction since the Secretary was her ‘employer’ as per Section 2(g) of the POSH Act.³
3. The Board overlooked the Petitioner’s email and proceeded with constituting an IC. On witnessing that no action was being taken against the Secretary, she complained with the Local Committee (**LC**) praying for urgent interim reliefs.

¹ *WP(C) 1103 of 2020*, decided on 25-10-2021. The identity of the parties to suit has been kept confidential in view of Section 16 of the POSH Act. Copy judgement is available at: http://164.100.69.66/jupload/dhc/SAS/judgement/26-10-2021/SAS25102021CW11032020_111245.pdf.

² Section 2(a) of POSH Act.

³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

4. The IC, however, proceeded to send multiple notices to the Petitioner asking her to participate in the proceedings. In parallel, the LC held that the Secretary fell within the definition of ‘employer’ and granted interim relief of three months paid leave to the Petitioner.
5. The Petitioner informed the Board of the order passed by the LC, but it was not complied with by the Board. She was issued another notice by the IC and attempts were made by the president and others to the Petitioner persuading her to withdraw her complaint.
6. Further, she was served with termination notice on ground that she had not fulfilled her role diligently. The Petitioner thus filed a petition before the HC praying for the execution of the LC Order and reinstatement to job with continued benefits.

C. Order and Reasoning:

1. The HC analysed the meaning of the term ‘employer’⁴ and the term “workplace”⁵ and held that:
“When the definition of “employer” is read in conjunction with the definition of “workplace”, it is clear that any person who heads any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority or any person responsible for the management, supervision and control of the workplace is to be regarded as an “employer” for the purposes of the Act.”
2. Although the president is in charge of all the offices, the day-to-day affairs of the office where the Petitioner is employed was managed and controlled by the Secretary and hence, he would be included within the meaning of ‘employer’.
3. The HC examined Sections 4 and 6(1) of the POSH Act to understand the jurisdiction of LC and IC and held that the complaint against the Secretary would lie only against the LC and not IC. The judgement held:
“The Internal Complaints Committee does not have any jurisdiction to entertain a complaint against the Secretary. Any order passed by the Internal Committee or finding returned would be non est being without jurisdiction.”
4. The HC also took into account the merit of the complaint made to the LC since the Petitioner had only approached the LC and not the IC and also refused to participate in the IC proceedings despite receiving multiple notices.
5. The responsibility of the employer to provide safe working environment as stipulated in Section 19 was reiterated by the HC to point out that, instead of receiving support and assistance, the Petitioner was subjected to opposition and termination of her employment.
6. In conclusion, it held that the Secretary was an “employer” and therefore the jurisdiction solely lay with the LC. The order reinstated the Petitioner to her former position with continuity of service, full back wages, and other consequential service benefits.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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⁴ Section 2(g) of POSH Act.

⁵ Section 2(o) of POSH Act.