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KERALA HC ON ESSENTIALS OF ICC HEARING IN POSH COMPLAINT

A. Introduction

Kerala HC (“**HC**”) in *HDFC Standard Life Insurance Company* case¹ opined that verbal cross-examination of witnesses in the presence of the respondents is not prescribed in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**Act**”).² Hence, not conducting such cross-examination does not amount to violation of the principles of natural justice.

B. Facts

1. Six employees of HDFC Standard Life Insurance Company Limited (“**HDFC-Life**”) filed POSH complaints in 2015 against the assistant sales manager of the company, Suresh Babu (“**Babu**”).
2. HDFC-Life’s Internal Complaints Committee (“**ICC**”) investigated into the complaints in 2016 and concluded that Babu had passed sexually-coloured remarks and displayed unwelcome verbal conduct of sexual nature amounting to sexually harassing the employees. Babu was terminated from his services based on the ICC’s recommendation.
3. Aggrieved by his termination, Babu appealed with the regional Joint Labour Commissioner (“**JLC**”), who set aside the ICC’s report and ordered re-investigation of the complaint on the following grounds:
 - a. Failure to submit details of ICC’s constitution with the JLC.
 - b. Not providing copy of complaint and findings by ICC.
 - c. Not making available documentary evidence.
 - d. Not examining witnesses in his presence.
4. JLC held that the ICC’s findings contained procedural irregularities and were in violation of the principles of natural justice.
5. Dissatisfied with JLC’s findings, the employees challenged the decision before the HC.

C. HDFC-Life’s Contentions before HC

1. Babu did not request for cross-examination of witnesses.
2. The Act³ does not prescribe cross-examination of witnesses or perusal of ICC records as the intent of the Act is to protect women employees against sexual harassment at workplace and ensure their right to work with dignity is intact.
3. Principles of natural justice were not violated, and the ICC had acted within the boundaries of natural justice as contemplated by the Act.

¹ *The Managing Director, HDFC Standard Life Insurance Company Ltd. & Ors. v. Suresh Babu and Anr.* (10.01.2022 – HC): MANU/KE/0060/2022.

² Commonly referred to as the “POSH Act.”

³ Section 13 of the Act.

D. Reasoning & Judgment

Ker HC:

1. Relied on *Sibu L.S.*⁴ case where the HC held that the Act details the enquiry procedure to be followed by ICC and any procedure done in accordance with the Act amounts to a full-fledged enquiry.
2. Relied on *Avinash Nagra*⁵ case where the Supreme Court opined that “*verbal cross-examination of aggrieved is not the sole criteria to controvert or contradict any statement given by the aggrieved before any authority*” and the primary intention is to ensure that the “*aggrieved depose before the committee without any intimidation.*”
3. Disagreed with JLC’s view that the principles of natural justice were violated due to failure of conducting cross-examination in Babu’s presence.
4. However, it directed that since the incident happened in 2015 and investigation was conducted in 2016, “*if the proceedings are to commence de nova, that would be a further ordeal and harassment to the complainants and the witnesses and agonizing to Babu. However, taking note of the objectives of the Act, there has to be a further inquiry after rectifying the mistakes*”. Accordingly, it directed HDFC-Life to conduct inquiry within 3 months of the HC’s order as follows:
 - a. Composition of ICC must be in accordance with the Act.
 - b. A copy of the complaints, statements/depositions made by HDFC-Life and witnesses must be furnished to Babu.
 - c. Unless the witnesses consent for verbal cross examination, no such procedure needs to be held.
 - d. Babu should be given a fair chance of being heard.
 - e. The inquiry report of the ICC must be made available to both parties.
 - f. If the allegations against Babu are proved, action taken against him must be in accordance with the provisions of the Act.
 - g. HDFC-Life to act upon ICC’s recommendation within 60 days.
 - h. Babu shall be deemed to have been placed under suspension till orders are passed HDFC-Life as above.

E. Comment

Training the members of Internal Committee (IC)⁶ in the conduct of investigation and inquiry into POSH complaints will be critical for employers. The above guidelines of the HC could be followed by IC to ensure that its decision can be defended in the event of its challenge before an appellate authority or court.

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⁴ *Sibu L.S. v. Air India Limited and Others* (08.04.2016 – HC): MANU/KE/0330/2016.

⁵ *Avinash Nagra v. Navodaya Vidyalaya Samiti and Ors.* (30.09.1996 - SC): MANU/SC/1058/1997.

⁶ ICC is now renamed as IC under the Act.