



Kajol Pokkebhriyal
Associate

DELHI HIGH COURT ON EMPLOYER'S DUTY TO CONSTITUTE INTERNAL COMMITTEE UNDER THE POSH ACT

A. Introduction

The Delhi High Court (**HC**), in the case of *Fauzia Rubbani vs. Delhi Woman Commission & Ors.*,¹ took a strict view on the failure of the employer, Saha Infratech Private Limited (**SIPL**), to constitute the Internal Complaints Committee (**ICC**)² under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (**POSH Act**).

B. Brief Facts

1. The petitioner, Fauzia Rubbani (**Rubbani**), employed with SIPL, filed a sexual harassment complaint (**Complaint**) in 2018 against an employee. She had also raised her grievances before the Delhi Commission for Women (**DCW**).
2. DCW referred the matter to Director, SIPL for inquiry by its ICC on 5 March 2018. Further, it directed SIPL to file a status report within 30 days and the final report after completion of the inquiry.
3. SIPL terminated Rubbani's employment on 6 March 2018 alleging non-performance. It failed to constitute the ICC following which, Rubbani filed a writ petition (**Petition**) before the HC.
4. By an interim order of 10 February 2020, the HC directed SIPL to pay INR 1.2 lacs compensation to Rubbani since her employment was allegedly terminated because of the Complaint.

C. HC's Judgment & Reasoning

The HC:

1. Took a stern view against SIPL's failure to conduct the inquiry despite its assurances to investigate the Complaint through its ICC, and several notices issued by DCW for a status report on the constitution of the ICC and the final report post completion.
2. Opined that since SIPL failed to comply with the requisite compliances under the POSH Act,³

¹ *Fauzia Rubbani vs. Delhi Woman Commission and Ors.* (02.02.2023 – Del HC): MANU/DE/0623/2023 and available [here](#).

² Renamed by the POSH Act as "Internal Committee" or "IC."

³ As per section 4 of the POSH Act, an employer is obliged to constitute the ICC for inquiry into sexual harassment complaints. The provision requires the ICC to consist of a senior-level woman employee as a Presiding Officer, at least 2 internal employees,

Rubbani's only remedy under the POSH Act is to pursue the Complaint before the Local Complaints Committee,⁴ which was DCW in the matter.

3. Accordingly, HC directed DCW to draw an adverse inference against SIPL for its failure and pass final orders in accordance with the POSH Act.
4. Taking cognizance of the provision for an employer's non-compliance of the POSH Act,⁵ HC penalized SIPL and directed it to pay Rubbani INR 50,000.

D. Comment

This judgment reaffirms the judicial view of an employer's duty to address POSH complaints through its IC in a timebound manner and in accordance with the provisions of the POSH Act. Failure in complying with the provisions of the POSH Act could result in punishment.

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and an external 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.

⁴ Established under section 6 of the POSH Act.

⁵ Section 26 of the POSH Act which penalizes the employer for non-compliance of its provisions.