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## DELHI HIGH COURT ON APPLICABILITY OF POSH ACT

### **A. Introduction**

The High Court of Delhi (“**HC**”), in *Dr. Sobail Malike* case,<sup>1</sup> on June 30, 2023, held that a woman working in a particular department can file a complaint against an employee working in any other department under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”).

### **B. Brief Facts**

1. An employee working in the Department of Food and Public Distribution, Ministry of Consumer Affairs and Public Distribution filed a complaint (“**Complainant**”) alleging sexual harassment against Dr. Sohail Malik (“**Malik**”), who was a batch officer Batch officer of the Indian Revenue Service.
2. The Complainant presented her case before the Internal Committee (“**IC**”).<sup>2</sup>
3. The IC hearing was scheduled for 22 June 2023, but instead of appearing, Malik moved the Central Administrative Tribunal, Principal Bench, New Delhi (“**Tribunal**”) to challenge the IC’s jurisdiction to investigate the complaint.
4. The Tribunal rejected and a dismissed the application. Aggrieved by this, Malik approached the HC.

### **C. Maliks’ Contentions**

1. He relied on certain sections of the POSH Act<sup>3</sup> to contend that the IC of one department cannot conduct an inquiry if it is a complaint, against an employee who is in another department.
2. He contended that that allowing the IC to investigate into the allegations against him would lead to a contradictory situation since, according to Section 13<sup>4</sup>, the IC’s report must be forwarded to the employer for further action. However, since the Head of the Department of the Complainant, has no disciplinary authority over him, the IC’s report would be unenforceable.

### **D. HC’s Judgment & Reasoning**

1. The HC dismissed the petition *in limine* by:
  - a. Observing that Section 11(1) does not impose such a restriction. It simply requires the Complainant to be an ‘employee’.<sup>5</sup>
  - b. Interpreting the definition of ‘employer’ under Section 2(g) to include the employer of the workplace where the alleged harasser is employed, not the employer of the complainant.<sup>6</sup>
  - c. Noting that Section 19(h) empowers the Complainant to initiate action in her own workplace even if the alleged harasser is not an employee of that workplace.<sup>7</sup>

<sup>1</sup>*Dr. Sobail Malike vs. Union of India and Anr.* (Delhi HC: 30.06.2023) W.P.(C) 8624/2023 and CM APPL. 32735/2023, CM APPL. 32736/2023.

<sup>2</sup> Earlier termed ‘Internal Complaints Committee’.

<sup>3</sup> Sections 2(f), 2(g), 2(m), 2(o), 4(1), 9(1) and 13 of the POSH Act.

<sup>4</sup> Enquiry report.

<sup>5</sup> Paragraph 36 of the Judgement.

<sup>6</sup> Paragraph 37 of the Judgement.

<sup>7</sup> Paragraph 41 of the Judgement.

2. It opined that: “*There is absolutely nothing, in the [POSH Act], which limits its scope only to cases where a woman employee is sexually harassed by another employee working in her own office, and excepts its application where the delinquent employee is employed elsewhere....*”<sup>8</sup>
3. The HC:
  - a. Adopted a purposive construction approach while interpreting the POSH Act recognising that it as a progressive legislation aimed at promoting social welfare.
  - b. Emphasized that it should not be interpreted in a manner that frustrates its objectives or leads to unjust or arbitrary outcomes.
  - c. Acknowledged that the primary goals of the POSH Act include protecting women’s rights to equality, life, and liberty, preventing gender-specific violence, and ensuring a safe working environment that is free from any form of sexual harassment.
  - d. Stated that these objectives are impartial and not biased against any specific person accused of harassment, and even the apprehension of a woman regarding her safety at the workplace contradicts the fundamental principles of the Constitution of India.
  - e. Ordered that the IC conducts the enquiry on the scheduled date in July 2023.
  - f. Allowed Malik to request the IC for a time extension and directed the IC to consider it sympathetically.

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<sup>8</sup> Paragraph 42 of the Judgement.  
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