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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8624/2023 & CM APPL. 32735/2023, CM APPL. 32736/2023

DR SOHAIL MALIK ..... Petitioner

Through: Mr. Arun Bhardwaj, Sr. Adv. with Mr. R.K. Saini, Mr. Nishant Bahuguna and Ms. Usha Sharma, Adv.

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Vineet Dhanda, CGSC with Mr. Vinay Yadav and Ms. Gurleen Kaur, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (ORAL)

% 30.06.2023

per C. HARI SHANKAR, J.

1. If a woman employee in one department of the Government of India is sexually harassed by an employee of another department, would she, or would she not, be entitled to invoke the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("the SHW Act", hereinafter)? The petitioner would seek to submit that the answer has necessarily to be in the negative. In other words, according to the petitioner, one has to be sexually harassed by a colleague in one's own department, for the SHW Act to apply.

2. This writ petition, directed against judgment dated 23 June 2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi ("the learned Tribunal") in OA 1838/2023, requires the Court to address this issue, which, the petitioner submits, is thus far *res integra*.

Facts

3. The present proceedings emanate from a complaint addressed by an officer in the Department of Food and Public Distribution, Ministry of Consumer and Public Distribution, alleging that the petitioner, who is a 2010 Batch officer of the Indian Revenue Service (IRS), had sexually harassed her. The complaint was presented by the complainant before the Internal Complaints Committee (ICC) – constituted under Section 9 of the SHW Act in the wake of the judgment of the Supreme Court in ***Vishaka v. State of Rajasthan***[1] – of her department/workplace i.e. the Department of Food and Public Distribution.

4. On receiving a meeting notice dated 13 June 2023 from the said ICC, scheduling a hearing on the complaint of the complainant on 22 June 2023 and calling on the petitioner to appear therein, the petitioner, instead of appearing in the hearing, moved the learned Tribunal by way of OA 1838/2023, questioning the jurisdiction of the ICC to examine the complaint of the complainant.

[1] **(1997) 7 SCC 323**

5. The learned Tribunal has, by the impugned judgment dated 23 June 2023, rejected the said challenge and accordingly dismissed the OA.

6. Aggrieved thereby, the petitioner has moved this Court by means of the present writ petition.

7. We have heard Mr. Arun Bhardwaj, learned Senior Counsel for the petitioner, instructed by Mr. R.K. Saini, learned Counsel.

Petitioner's Submission

8. Mr. Bhardwaj has drawn our attention to clauses (f), (g), (m) and (o)[2] of Section 2, as well as Sections 4(1)[3], 9(1)[4], and 13[5] of the

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[2] **2. Definitions**. – In this Act, unless the context otherwise requires, -

(f) "employee" means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

(g) "employer" means –

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace;

Explanation. – For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of policies for such organisation;

(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

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(m) "respondent" means a person against whom the aggrieved woman has made a complaint under Section 9;

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(o) "workplace" includes –

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate

SHW Act, to contend that these clauses, read in juxtaposition and in conjunction with each other, would clearly indicate that the ICC of one department cannot conduct an inquiry under the SHW Act, even if

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Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainmental, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;

(vi) a dwelling place or a house;

[3] **4. Constitution of Internal Complaints Committee**. –

(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

[4] **9. Complaint of sexual harassment**. –

(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

[5] **13. Inquiry report**. –

(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of Section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

it is on a complaint by an officer in the said department, against an employee who belongs to another department and is not, therefore, within the disciplinary control of the department where the complainant is working.

9. Mr. Bhardwaj further points out that, while the Complainant, as an All India Service Officer, is governed by the All India Service (Discipline & Appeal) Rules, 1969, the petitioner is, instead, governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ["the CCS (CCA) Rules"].

10. Mr. Bhardwaj's submission is essentially that, if the ICC of the complainant's department is permitted to inquire into the allegations made by the complainant against the petitioner, a peculiar sequitur would result as, under Section 13 of the SHW Act, the report of the ICC is required to be forwarded to the "employer" in order to take consequent action, if necessary by way of disciplinary proceedings. He submits that the "employer" under Section 2(g) would be the Head of the Department of the complainant, who exercises no disciplinary control over the petitioner. As such, he submits that, the report of the ICC would be unenforceable, as no action could be taken on the basis thereof.

11. Mr. Bharadwaj also relies on the preamble[6] and on Section 1[7] of

[6] *An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto*

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

the SHW Act to contend that the workplace of the complaint and the alleged perpetrator of the act of sexual harassment have to be the same, for the SHW Act to apply.

Analysis

12. At the very outset of proceedings, the Court posed a query to Mr. Bhardwaj as to whether, if the ICC of the complainant department did not have jurisdiction to inquire into her complaint because the petitioner is not an officer of the same department, his contention was that the complaint could be inquired into by any other ICC.

13. Mr. Bhardwaj's characteristically candid answer is that the provisions of the SHW Act are silent in this regard but that, if they are to be strictly construed, the legal position that would emerge is that, in fact, the complainant may not have a remedy against the petitioner under the SHW Act. He, however, submits that it is not for a court to cure statutory lacunae and the remedy in that regard would vest with the legislature.

14. He submits that, in fact, the only remedy which would be available would be under Section 509 of the IPC, read with Section

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AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace;

[7] **1. Short title, extent and commencement**. –

(1) This Act may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

11(1) of the SHW Act.

15. We have considered the submissions of Mr. Bhardwaj carefully.

16. It is a settled position, now, after the judgments of the Supreme Court in ***Shailesh Dhairyawan v. Mohan Balkrishna Lulla***[8] and ***Richa Mishra v. State of Chhattisgarh***[9], that the rule of purposive construction has replaced the rule of plain meaning of the statute as the "golden rule" of interpretation of statutes. In ***Shailesh Dhairyawan***[8], the Supreme Court underscored the rationale of this change, thus:

> "31. The aforesaid two reasons given by me, in addition to the reasons already indicated in the judgment of my learned Brother, would clearly demonstrate that the provisions of Section 15(2) of the Act require purposive interpretation so that the aforesaid objective/purpose of such a provision is achieved thereby. The principle of "*purposive interpretation*" or "*purposive construction*" is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the "*purpose*" behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the court is supposed to realise the goal that the legal text is designed to realise. As Aharon Barak puts it:
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> > "Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language." [Aharon Barak, Purposive Interpretation in Law (Princeton University Press, 2005).]

[8] **(2016) 3 SCC 619**
[9] **(2016) 4 SCC 179**

> 32. Of the aforesaid three components, namely, language, purpose and discretion "*of the court*", insofar as purposive component is concerned, this is the *ratio juris*, the purpose at the core of the text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualise. It is the function that the text is designed to fulfil.
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> 33. We may also emphasise that the statutory interpretation of a provision is never static but is always dynamic. Though the literal rule of interpretation, till some time ago, was treated as the "*golden rule*", it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the courts not only in this country but in many other legal systems as well."
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> (Italics in original; underscoring supplied)

17. The above principles stand underscored when one deals with the SHW Act, as it is in the nature of ameliorative social welfare legislation. Any interpretation which would dilute, or defeat, the purpose of the legislation, which is to ensure a safe working environment for women has, therefore, to be sedulously eschewed.

18. The Statement of Objects and Reasons, and the Preamble, of the SHW Act read thus:

> Statement of Objects and Reasons
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> "1. *Sexual harassment at a workplace is considered violation of women's right to equality, life and liberty. It creates an insecure and hostile work environment*, which discourages women's participation in work, *thereby adversely affecting their social and economic empowerment and the goal of inclusive growth.*
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> 2. The Constitution of India embodies the concept of equality under articles 14 and 15 and prohibits discrimination on grounds of religion, race, caste, sex or place of birth or any of them. Article

19(1)(g) gives the fundamental right to all citizens to practise any profession, or to carry on any occupation, trade or business. *This right pre-supposes the availability of an enabling environment for women, which is equitous, safe and secure in every aspect*. Article 21, which relates to the right to life and personal liberty, includes the right to live with dignity, and in the case of women, it means that *they must be treated with due respect, decency and dignity at the workplace.*

3. Article 11 of the Convention on Elimination of All Forms of Discrimination (CEDAW), to which India is a party, requires State parties to take all appropriate measures to eliminate discrimination against women in the field of employment. In its General Recommendation No. 19 (1992), the United Nations Committee on CEDAW further clarified that *equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment at the workplace. India's commitment to protection and promotion of women's constitutional rights as well as respect for its obligations under various international treaties is unequivocal*.

4. With more and more women joining the workforce, both in organised and unorganised sectors, *ensuring an enabling working environment for women through legislation is felt imperative by the Government*. *The proposed legislation contains provisions to protect every woman from any act of sexual harassment* irrespective of whether such woman is employed or not.

5. The Supreme Court of India in the case of ***Vishaka v. State of Rajasthan***[1], also reaffirmed that sexual harassment at workplace is a form of discrimination against women and recognised that *it violates the constitutional right to equality* and provided guidelines to address this issue pending the enactment of a suitable legislation.

6. It is, thus, proposed to enact a comprehensive legislation *to provide for safe, secure and enabling environment to every woman, irrespective of her age or employment status (other than domestic worker working at home), free from all forms of sexual harassment* by fixing the responsibility on the employer as well as the District Magistrate or Additional District Magistrate or the Collector or Deputy Collector of every District in the State as a District Officer and laying down a statutory redressal mechanism.

7. The notes on clauses explain in detail the various provisions contained in the Bill.

8. The Bill seeks to achieve the above objectives."

(Emphasis supplied)

Preamble

"An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business *which includes a right to a safe environment free from sexual harassment*;

AND WHEREAS the protection against sexual harassment and *the right to work with dignity* are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace."

(Emphasis supplied)

19. Thus, the avowed objectives of the SHW Act are (i) ensuring that women's right to equality, life and liberty is not violated or compromised, (ii) providing of a secure and friendly work environment, (iii) social and economic empowerment of women, (iv) inclusive growth, (v) creating of an enabling environment for women which is equitous, safe and secure in every aspect, (vi) ensuring women are treated with due respect, decency and dignity at the workplace, (vii) equality in employment, (viii) ensuring women are not subjected to gender-specific violence, (ix) protection and

promotion of women's constitutional rights and, at the end of the working day, (x) ensuring that *every woman* is provided a safe working environment, insulated from *any act of sexual harassment, of any form*. Each and every one of these objectives is, conspicuously, "harasser-neutral". In an era in which – one has to say it, as one sees it every day even in the Court – women are equalling, if not outnumbering, men in professional achievements, there can be no compromise on any of these objectives. Applying ***Shailesh Dhairyawan***[8] and ***Richa Mishra***[9], therefore, any interpretation, of the provisions of the SHW Act, which downplays, or impedes complete achievement and implementation of, one or more of these objectives, has to be firmly eschewed.

20. Even while mandating, in sub-article (1)[10], absence of discrimination against any citizen on the grounds only of sex, Article 15 of the Constitution of India, in sub-article (3)[11], empowers the State to make special provisions for women and children. Article 51-A(e)[12] casts, on every citizen of India, the fundamental duty to renounce practices derogatory to women. Equalizing of the sexes in every aspect of life is, therefore, a constitutional imperative. The working environment is required to be as safe and secure for women, as it is for men. Even an apprehension, by a woman, that her safety might be

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[10] **15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**. –
(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

[11] (3) Nothing in this article shall prevent the State from making any special provision for women and children.

[12] **51-A. Fundamental duties**. – It shall be the duty of every citizen of India –
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(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

compromised or endangered in the workplace is, therefore, abhorrent to our constitutional ethos.

21. The provisions of the SHW Act have necessarily to be interpreted in the line of this constitutional imperative. The Court is loath to accord, to the SHW Act, any interpretation which would frustrate its objects and purposes or which would result in a manifestly arbitrary or unjust result, or which would result in underplaying any of its avowed objectives.

22. If the submissions of Mr. Bhardwaj, weighty though they undoubtedly are, were to be accepted, the position that would emerge is that, while a lady officer in a department, who is subjected to sexual harassment by an officer of the same department, would have the right to seek recourse to the SHW Act, no such remedy would be available if the harassment is perpetrated by an officer of another department, solely because he works under another "employer", and is not subject to the disciplinary control of the department where the complainant is working.

23. Such an interpretation would, in our considered opinion, would strike at the very root of the SHW Act, and its ethos and philosophy. That said, however, there is some force in Mr Bharadwaj's contention that the Court cannot rewrite the statute, or provide *casus omissus* and, if the SHW Act cannot be so read as to protect a woman working in one department of the Government from harassment by an officer or employee of another department, the Court may have to defer to the

statute.

24. Having perused the provisions on which Mr. Bhardwaj has placed reliance, however, we are of the opinion that the SHW Act does not insulate, from action thereunder, men who sexually harass women in offices other than those in which they are themselves working.

25. The inquiry is still at the stage of issuance of notice by the ICC to the petitioner to appear before it. We are, therefore, still at the Section 11 stage. What has to be seen, therefore, is essentially whether the ICC of the complainant's department had the jurisdiction to issue notice to the petitioner under Section 11(1) or whether it was foreclosed from doing so, solely because the petitioner was not an employee of the complainant's department.

26. Having read Section 11(1), we are in agreement with the learned Tribunal in its finding that there is nothing in the said provision which would restrict its application only to cases where the respondent i.e., the officer against whom sexual harassment is being alleged, is the employee of the department where the complainant is working.

27. Section 11(1) merely states that, "where the respondent is an employee", the ICC shall proceed to make inquiry into the complaint *in accordance with the service rules applicable to the respondent*. In our considered opinion, the use of the words "in accordance with the

service rules applicable to the respondent" itself indicates that the statute has kept in mind a possibility where the respondent may be governed by service rules which are not those which apply to the complainant or to the department where the complainant is working.

28. That apart, if one takes into account the definition of "employee" as contained in Section 2(f) of the SHW Act, there can be no gainsaying that the petitioner in the present case, i.e. the respondent in the complaint made by the complainant, is in fact an employee, as he satisfies all indicia of the definition. No doubt, he is not an employee of the department where the complainant is working; however, there is nothing in Section 11(1) which restricts its application to cases to such employees. It merely states that the respondent should be an employee and, in the present case, there is no doubt that the petitioner, i.e. the respondent before the ICC, is in fact an employee, albeit of another department of the Government.

29. Having viewed the issue from the perspective of Section 11, we may proceed to Section 13 of the SHW Act which, too, was pressed into service by Mr Bharadwaj.

30. Mr. Bhardwaj's contention is that, under Section 13, the ICC has to forward its decision to the employer, who has to take action on the basis thereof. The employer being the Head of the Office where the complainant is working, Mr. Bhardwaj submits that, even if the decision of the ICC is forwarded to the said employer, as he has no disciplinary control over the petitioner, Section 13 would become inoperative.

31. Though the argument is undoubtedly attractive, we, on a deeper study of the provisions, regret our inability to agree.

32. Section 13(1) merely states that, on completion of inquiry, the ICC "shall provide a report of its findings to *the employer*".

33. There are four sub-clauses in Clause (g) of Section 2, which defines "employer". Sub-clause (i) merely states that, in relation to any department, organisation, undertaking etc., the head of that department, organisation or undertaking, etc. would be the employer. Sub-clauses (ii), (iii) and (iv) deal with situations in which the "workplace" is not covered by sub-clause (i). Whereas sub-clause (ii) generally treats the person responsible for management or supervision of the workplace as the "employer", sub-clauses (iii) and (iv) specifically cater to contractors and to persons in charge of dwelling places or houses. All four sub-clauses are general in nature, and do not, in any manner, define "employer" vis-à-vis the employee who complains of sexual harassment.

34. Similarly, "workplace", as defined in clause (o) of Section 2, is not defined vis-à-vis the complainant-employee. It covers, generally, all Government departments [in sub-clause (i)], private sector organizations [in sub-clause (ii)], hospitals and nursing homes [in sub-clause (iii)], sports institutes, stadia, etc. [in sub-clause (iv)], any place visited by the employee during the course of employment [in sub-clause (v)] and dwelling places or houses [in sub-clause (vi)].

35. Section 2 of the SHW Act is a definition provision, and all clauses thereof, including clause (g) and (o), are mere definition clauses. A definition clause in a statute has no independent application on its own. It merely defines expressions which find place in the statute. A definition clause can be applied, therefore, only vis-à-vis the statutory provision in which that specific clause finds place.

36. Thus seen, and given the width of the definition of "employer" in Section 2(m), we are of the considered opinion that, in order to make the provisions of the SHW Act meaningful and applicable even in a case where the alleged perpetrator of sexual harassment is an employee of another department, the definition of "employer" under Section 2(g)(i) of the SHW Act has to be read as including the employer of the department where the alleged perpetrator of sexual harassment is working. Under Section 13(1), therefore, if the employer who has to take action on the basis of the findings of the ICC is the head of a department other than that in which the complainant-employee is working, we see no embargo under the SHW Act on the findings of the ICC being forwarded to that employer, who has disciplinary control over the alleged perpetrator of sexual harassment, to take action on the basis thereof.

37. Our interpretation is also in line with Section 13(3)(i), which requires the ICC, on its finding that the complaint of sexual harassment has been proved, to recommend, to the employer or the District Officer, "to take action for sexual harassment as a misconduct *in accordance with the service rules applicable to the respondent*".

The provision, therefore, caters to a situation in which the respondent is governed by independent service rules. If he is, the ICC, which finds against him, would recommend, to *his employer*, to take action against him *in accordance with the service rules to which he is subject.*

38. As such, we do not find that Section 13 of the SHW Act can be pressed into service by the petitioner as a ground to challenge the findings of the learned Tribunal.

39. The issuance of notice, to the petitioner by ICC, cannot, therefore, in our considered opinion, be regarded as an exercise devoid of jurisdiction.

40. At this stage, Mr. Bhardwaj also invited our attention to clause (h) of Section 19[13] of the SHW Act.

41. As in the case of Section 13, we see no reason why action under clause (h) of Section 19 cannot be taken by the employer who has the jurisdiction to do so. In fact, clause (h) of Section 19, if anything, militates *against* the stand that Mr Bharadwaj seeks to canvas, as it also applies to cases where the perpetrator of the act of sexual harassment is *not an employee*.

[13] **19. Duties of employer**. – Every employer shall –

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(h) cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;

42. *There is absolutely nothing, in the SHW 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.* The learned Tribunal has also held so, and we completely agree. We have, nonetheless, perused the provisions invoked by Mr Bharadwaj to discern whether any such exception can be read into the SHW Act, by implication, and we are convinced that the answer has to be in the negative.

Conclusion

43. In view of the aforesaid, we find reason to interfere with the findings of the learned Tribunal.

44. Mr. Bhardwaj has pointed out that the hearing of the ICC, which was fixed on 3 July 2023, has been preponed to today, i.e. 30 June 2023. He requests that the original date as fixed by the ICC may be maintained. Mr. Bhardwaj also prays that some further time may be granted in order for the petitioner to present himself before the ICC.

45. The hearing before the ICC shall, therefore, take place on the earlier date fixed, i.e. 4 July 2023. Apropos the request for further time, the petitioner shall be at liberty to make the request to the ICC. In that event, the ICC would consider it sympathetically and, if possible, adjust the petitioner in that regard.

46. Subject to the aforesaid, the writ petition is dismissed *in limine*.

C. HARI SHANKAR, J.
(VACATION JUDGE)

MANOJ JAIN, J.
(VACATION JUDGE)

JUNE 30, 2023
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