

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

Mr. Sayeed Ahmed Baba, Officiating Chairperson and Hon'ble Member (A).

Case No. – OA 599 of 2018.

MD. RIZWAN - VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and
Date of order

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07.03.2024

For the Applicant : Mr. M. N. Roy,
Mr. G. Halder,
Ld. Advocates.

For the State respondents : Mr. G.P. Banerjee,
Ld. Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt. – II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsel, the case is taken up for consideration sitting singly.

In this application, the prayer is for setting aside the inquiry report of the Internal Complaints Committee dated 25th April, 2017. The Committee after considering all the facts and evidences, came to the conclusion that the applicant is guilty of sexual harassment at work place U/s. 2(n)(v) and 3(2)(iv) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Accordingly, the Committee also recommended to the employer to take action as a misconduct in accordance with the provisions of the Service rules.

In terms of section 18 of the Act, this application has been filed before this Tribunal, being the appellate authority to hear such matters. Submitting on behalf of the applicant, Mr. M.N. Roy submits that section 11(4) mandates the inquiry shall be completed within ninety days from the date of Internal Complaints Committee (ICC) initiated the inquiry. In this case, the Inquiry Committee took around 400 days to complete the inquiry against the applicant. Mr. Roy, learned counsel for the applicant refers to section 13 of the Act by which the inquiry committee was required to provide a copy of the inquiry report to the applicant within ten days from the date

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of completion of the inquiry. In this case, though the inquiry was completed on 25.4.2017, but only on 17.5.2017 copy of such report was served upon the applicant after more than ten days. Mr. Roy further referring to the charges against the applicant refutes that such action on part of the applicant constitute any sexual harassment at work place as described in the Act.

Mr. Roy also points out that the inquiry committee refers to such acts prevailing any other countries – Australia, Canada and U.S.A in relevant to the Indian context.

Mr. G.P. Banerjee, learned counsel for the State respondents responding to Mr. Roy's submission of the inquiry committee failing to submit its report within ninety days, Mr. Banerjee refers to para 4 of page 4 of the State's reply. In the reply, it is stated that ninety days period is not applicable in this case since the applicant being a Government employee will be charged under the service rules – West Bengal Services (CCA) rules, 1971 by which no such ninety days obligation is upon the respondents/disciplinary authority.

With regard to determining whether the action of the applicant tantamount to sexual harassment or not, Mr. Banerjee refers to several paras of the reply. One such reference is at para 1 of the page 2 explaining the phrase "Sexual harassment". The references are also seen in the reply in which particular sentences have been communicated by the applicant to the complainant which according to Mr. Banerjee are clear display of sexual harassment. In short, Mr. Banerjee relying on the facts given in the reply submits that a senior Officer in the rank of Joint Labour Commissioner calling the complainant, a married lady junior to her in hierarchy in age had a very odd hours in the night itself is enough to come to the conclusion that his intentions were not gentlemanly and in violation of civil courtesy and manners.

Finally, Mr. Banerjee refers to the conclusion of the inquiry and argues that making such calls at odd hours and demanding friendship is an act of sexual harassment at work place as per the Act. Such repeated acts not only violated her privacy, but has challenged her right to live with dignity. Mr. Banerjee refers to

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section 2(n)(v) which is as follows :-

Skg. *“...Any other unwelcome physical, verbal or non-verbal conduct of sexual nature...”.*

Reiterating the point that the ICC failed to deliver its report within 90 days as a mandate under clause 4 of the Act, Mr. Roy relies on the following judgements of the Apex Court -

- “1. (1997) 1 SCR 120 : AIR 1967 SC 1074
2. (1975) 2 Supreme Court Cases 482 &
3. (2009) 10 Supreme Court Cases 552”.

Disagreeing with Mr. Ray for his emphasis on the mandate of submissions of such report within 90 days, Mr. Banerjee refers to the reply of the State respondent and argues that such 90 days mandate is not required in this case because the applicant, being a senior State Government Officer will be covered under section 11(1) for departmental proceedings under West Bengal Service (CCA) Rules, 1971.

Having heard the submissions of learned counsels and after perusal of the relevant documents in this application, the Tribunal finds that specific sexual harassment charges have been levelled against the applicant. The inquiry report has covered these unwarranted actions and gestures of the applicant in detail. Neither in the application nor during submissions these charges have been denied. The one and only prayer prayed by the applicant side is for setting aside this report which the ICC failed to submit within the mandatory 90 days.

Mr. Roy has been repeatedly referring to the word “shall” under clause 4 of the Act. It is not in dispute that such report of the ICC was required to be submitted within 90 days was actually submitted after 422 days. Prima facie, it is clear that submissions of such report after 90 days were not in conformity with the relevant clause of the Act. Thus, it can be safely said that such report submitted by the

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ICC is questionable. It is also the impression of this Tribunal that such mandate of submissions of report within 90 days was an important feature of this Act and known to the members of the Committee. The Committee either remained ignorant of this important requirement or they were busy and ignored the importance of such requirement. Some leniency and consideration could have been acceptable by this Tribunal had this report been submitted with a delay of few days or couple of weeks. But this report was submitted not within 90 or 100 days, but after 422 days! Therefore, this Tribunal being aware of the importance of the word "shall" comes to the finding that such report submitted after such a long time was in violation of the clause 4 of the Act and therefore, the validity of this very report is questionable and quashable. Therefore, this report is quashed and set aside giving liberty to the respondent no. 1, Additional Chief Secretary, Labour Department, Govt. of West Bengal to initiate disciplinary proceedings against the applicant in accordance with rules.

Accordingly, the O.A. is disposed of.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A).

A.K.P.