



FIRESIDE CHAT SERIES

From the desks of Jayant Bakshi and Asawari Kapur



SEXUAL HARASSMENT AT THE WORKPLACE IS AN AFFRONT TO THE FUNDAMENTAL RIGHTS OF A WOMAN" - SUPREME COURT OF INDIA

We wish to share with you a recent case* pronounced by Justices D.Y. Chandrachud and Ajay Rastogi in the Supreme Court of India, while addressing the issue of Sexual Harassment of Women at Workplace. Some of the key observations made by the Hon'ble Supreme Court in this case are as below:

The Case Summary

The respondent (woman officer) had been appointed as a probationary officer in "Punjab and Sind Bank" in October 1998 and was later promoted to the post of chief manager in Scale IV. In December 2017, she was transferred from the Indore branch to Sarsawa in Jabalpur district. She submitted a representation to the authorities and made a request for being retained at Indore. The officer had said that as branch manager at Indore, she had reported about lapses, such as the existence of duplicate bank guarantee registers, to her superiors. The officer also alleged that one of her senior officers used to call her at late hours at home to discuss business that was not of urgent nature – **"First he called me at late hours at home to discuss not so important official matters then started insisting me to meet him personally either in Indore or Bhopal unofficially. Seems that my spurring of his advances towards me provoked him into adopting vengeful attitude towards me."**

**Civil Appeal No 1809 of 2020, February 25, 2020; (Arising out of SLP(C) No 11985 of 2019)*

Observation made the Court: **"An employee cannot have a choice of postings.** Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus. **Unless an order of transfer is established to be malafide or contrary to a statutory provision or has been issued by an authority not competent to order transfer,** the Court in exercise of judicial review would not be inclined to interfere."

Under Section 3 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Act"), the Court provided emphasis on the sub-section iv which reads as **"(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her"**. Also, the Court observed that "Clause (c) of Section 4(2) indicates that one member of the ICC has to be drawn from amongst a non-governmental organization or association committed to the cause of women or a person familiar with issues relating to sexual harassment. **The purpose of having such a member is to ensure the presence of an independent person who can aid, advise and assist the Committee. It obviates an institutional bias."**

"The Act was enacted to provide protection against sexual harassment of women at the workplace as well as for the prevention and redressal of complaints of sexual harassment. **Sexual harassment at the workplace is an affront to the fundamental rights of a woman** to equality under Articles 14 and 15 and her right to live with dignity under Article 21 of the Constitution as well as her right to practice any profession or to carry on any occupation, trade or business."

The Ruling: There can be no manner of doubt that the **respondent has been victimized.** Her reports of irregularities in the Branch met with a reprisal. She was transferred out and sent to a branch which was expected to be occupied by a Scale I officer. This is symptomatic of a carrot and stick policy **adopted to suborn the dignity of a woman** who is aggrieved by unfair treatment at her workplace. The law cannot countenance this. The order of transfer was an act of unfair treatment and is vitiated by malafides."

Accordingly, the Hon'ble Court directed that she be **reposted at the Indore branch** as a Scale IV officer for a period of one year.

Our View

The Hon'ble Supreme Court made two very significant observations, as below:

- In the context of sexual harassment of women at the workplace, the Court has specifically taken into account Section 3(iv) of the Act which states that **“interference with her work or creating an intimidating or offensive or hostile work environment for her”** - if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment - may amount to **sexual harassment**. In the future, we expect to see much litigation from aggrieved individuals and several cases being decided on this particular sub-section.
- Further, the Court made a detailed observation on the requirement of the **‘independent member’** in the Internal Committee, commenting that the “The purpose of having such a member is to ensure the presence of an independent person who can aid, advise and assist the Committee. It obviates an institutional bias.” Accordingly, we also expect that inquiry reports of the Internal Committee would be **challenged** on the ground that the external member was not completely independent and unbiased. We also expect the courts to reasonably accept this logic.



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