

High Court of Delhi upholds that an internal committee has jurisdiction under the POSH Act to initiate inquiry against a respondent employed with another employer

Recently, in *Dr. Sohail Malik v. Union of India*¹, the Hon'ble High Court of Delhi ("**Delhi HC**") relying on the rules of purposive interpretation, upheld applicability of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**POSH Act**") where complaints of sexual harassment are instituted against respondents employed with different employer(s). The Delhi HC clarified 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*". It further held that in such cases, an internal committee ("**IC**") duly constituted under the POSH Act is not foreclosed from inquiring into complaints of sexual harassment instituted against persons outside of the "*disciplinary control*" of the complainant's employer, and that it may forward its inquiry report to the respondent's employer for further action.

Brief facts

The complainant, an officer of the Department of Food and Public Distribution, Ministry of Consumer and Public Distribution, filed a complaint of sexual harassment with her IC ("**Complainant IC**") against the respondent, an officer of the Indian Revenue Services. Both were employed with different employers² in different workplaces³ having its respective ICs⁴ constituted under the POSH Act. Based on her complaint, the Complainant IC issued a notice to the respondent requesting his appearance for a hearing. The respondent challenged the Complainant IC's jurisdiction before the Central Administrative Tribunal ("**CAT**") on grounds that it cannot examine complaints instituted against employees outside of the disciplinary control of complainant's employer. Aggrieved by the order of the CAT upholding the Complainant IC's jurisdiction, the respondent filed a writ petition before the Delhi HC.

Adopting a strict interpretation of the POSH Act, the respondent contended that applicability of the POSH Act is limited to complaints of sexual harassment where the complainant is "*sexually harassed by a colleague in one's own department*" or workplace and challenged the jurisdiction of the Complainant IC to conduct the inquiry. The respondent further contended that since the Complainant IC's report would have to be forwarded to the complainant's employer, who cannot exercise disciplinary control over the respondent, such report would be "*unenforceable, as no action could be taken on the basis thereof*".

¹ WP (C) 8624/2023 (Delhi HC)

² Section 2(g), POSH Act.

³ Section 2(o), POSH Act.

⁴ Section 4, POSH Act.

Issue

The Delhi HC examined the question of whether the Complainant IC had jurisdiction to inquire into the sexual harassment complaint instituted against the respondent, being an employee from another department.

Analysis and findings

Rule of purposive interpretation to be adopted while interpreting provisions of the POSH Act

Observing that the POSH Act is in the nature of an ameliorative social welfare legislation, the Delhi HC noted that the rule of purposive interpretation of statutes, based on the understanding that *“the court is supposed to attach that meaning to the provisions which serve the “purpose” behind such a provision; and by interpretative process the court is supposed to realize the goal that the legal text is designed to realize”*, is to be adopted in interpreting provisions of the POSH Act.

Examining the statement of objects, reasons and the preamble to the POSH Act, the Delhi HC noted that the objects of the POSH Act, are to, *inter alia*, “protect every woman from any act of sexual harassment” and to “provide for a safe, securing 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”. The Delhi HC also observed that these objectives are “harasser-neutral”, and that any interpretation which would dilute or defeat the objectives and implementation of the POSH Act, has to be disregarded and avoided. The Delhi HC noted that a strict interpretation of the POSH Act as proposed by the respondent hits at the root, ethos and philosophy of the POSH Act and would have the effect of depriving the complainant of any remedy against the respondent solely by reason of the employer being under the disciplinary control of another employer.

Definitions and usage of the terms ‘employer’, ‘employee’, ‘workplace’ under the POSH Act general in nature and not vis-à-vis an employee who complains of sexual harassment

The Delhi HC noted that the definitions and usage of the terms ‘employer’, ‘employee’, ‘workplace’ under the POSH Act are general in nature, and that these terms are not defined vis-à-vis an employee who complains of sexual harassment. Considering the question of whether the Complainant IC has jurisdiction to issue notice to the respondent under Section 11(1) of the POSH Act, the Delhi HC noted 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”*. As such, based on Section 13(1) of the POSH Act which states that an IC *“shall provide a report of its findings to the employer”*, the decision of the Complainant IC in the present instance can be forwarded to the respondent’s employer. The Delhi HC also drew attention to Section 19(h) of the POSH Act, which allows a complainant to initiate action in cases where the respondent *“is not an employee”*.

In view of the above, the Delhi HC upheld the order of the CAT and held that there is 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.”*

JSA Comment

The erstwhile position on an IC’s jurisdiction in cases involving individuals from different workplaces was grey. Particularly, the common perception was that an IC may be able to take cognizance of a written complaint of sexual harassment only where the respondent and the complainant share a common employer. The Delhi HC’s decision in the above case provides much needed clarity on the interpretation of several provisions of the POSH Act, while also providing comfort to complainants desirous of filing complaints with their own IC, even in cases where the respondent may belong to a different organization. Having said that, aspects such as the binding and persuasive value of the complainant IC’s inquiry report/findings over the respondent’s employer, consequent extent of co-operation by the respondent’s employer in implementing actions against the respondent and harmonization of overlapping jurisdictions of the ICs, have not been addressed by the Delhi HC in its decision and may have to be tested with time. However, this decision may be a welcome step in the right direction in achieving the objectives and purpose of the POSH Act in providing women with a safe and secure working environment free from sexual harassment.

Employment Practice

JSA has a team of experienced employment law specialists who work with clients from a wide range of sectors, to tackle local and cross-border, contentious and non-contentious employment law issues. Our key areas of advice include (a) advising on boardroom disputes including issues with directors, both executive and non-executive; (b) providing support for business restructuring and turnaround transactions, addressing employment and labour aspects of a deal, to minimize associated risks and ensure legal compliance; (c) providing transaction support with reference to employment law aspects of all corporate finance transactions, including the transfer of undertakings, transfer of accumulated employee benefits of outgoing employees to a new employer, redundancies, and dismissals; (d) advising on compliance and investigations, including creating compliance programs and policy, compliance evaluation assessment, procedure development and providing support for conducting internal investigations into alleged wrongful conduct; (e) designing, documenting, reviewing, and operating all types of employee benefit plans and arrangements, including incentive, bonus and severance programs; and (f) advising on international employment issues, including immigration, residency, social security benefits, taxation issues, Indian laws applicable to spouses and children of expatriates, and other legal requirements that arise when sending employees to India and recruiting from India, including body shopping situations.

JSA also has significant experience in assisting employers to ensure that they provide focused and proactive counselling to comply with the obligations placed on employees under the prevention of sexual harassment regime in India. We advise and assist clients in cases involving sexual harassment at the workplace, intra-office consensual relationships, including drafting of prevention of sexual harassment (POSH) policies, participating in POSH proceedings, conducting training for employees as well as Internal Complaints Committee members, and acting as external members of POSH Committees.

This Prism has been prepared by:



Gerald Manoharan
Partner



Sonakshi Das
Principal Associate



Sandhya Swaminathan
Associate



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