

## HR Law Hotline

April 16, 2009

### SEXUAL HARASSMENT: SUPREME COURT PENALIZES EMPLOYER FOR NOT FOLLOWING PROCEDURE

In a recent case of sexual harassment<sup>1</sup>, the Supreme Court (“SC”) re-affirmed its 1997 judgment (in the case of Vishaka and others v. State of Rajasthan (AIR 1997 SC 3011)) by directing the employer to follow the guidelines laid down in the Vishaka judgment (supra) in addition to awarding costs of litigation to the harassment victim.

#### FACTS OF THE CASE

In the present case, the appellant was a deputy commander of an army brigade in the state of Uttaranchal and was also the deputy chairman of a school in which the aggrieved was the Principal. The appellant wrote letters to the Principal, admitting his affection for her and allegedly made advances towards her in the course of her employment. The Principal filed an oral complaint with the school’s chairman. The complaint, however, was not taken into cognizance by the chairman, who asked the principal to file a written complaint. After a certain lapse of time, and after the alleged receipt of anonymous complaints against the principal, the Principal’s employment was terminated for unspecified reasons.

Aggrieved by the termination of employment, the Principal filed a writ petition in the High Court of Uttaranchal. An order was passed by the High Court directing the Army headquarters to take disciplinary action against the appellant and the chairman as an instance of sexual harassment had been established.

The SC, without going into the merits of the case, established that the school had not followed the procedure laid out under law to address cases of sexual harassment – i.e. neither a complaint redressal mechanism existed nor was a Complaint Committee established. The SC further ruled that the chairman had failed to take cognizance of the complaint filed by the principal. The SC held that such inaction on the part of the school was a violation of the ruling of SC in the Vishaka case (supra) and the Army authorities would be required to bear the costs of setting up and running such a committee when appointed by the High Court. The SC further directed the school’s management to reimburse all the costs incurred by the Principal including the counsel’s fees.

#### LEGAL POSITION IN INDIA

The Constitution of India (“Constitution”) provides for fundamental rights of working women under Articles 14, 19 and 21. The SC in its landmark judgment in the case of Vishaka (supra) laid down guidelines (“Guidelines”) for all organizations to follow in order to deal with sexual harassment issues. The Guidelines include setting up a Complaints Committee which shall deal with any issues concerning sexual harassment of female employees. Since no subsequent legislation has been enacted by the legislature to give effect or nullify the provisions of the Guidelines, under Article 142 of the Constitution, the Guidelines are to be followed as if it were the law enacted by the Parliament. Recently, the Delhi High Court has held that the Guidelines would not apply only to incidents of sexual harassment within the workplace but even outside such as the officer’s mess (please refer to our previous hotline titled “Sexual Harassment: Workplace ‘outside the box’!” in this respect).

Protection of Women Against Sexual Harassment at Workplace Bill, 2007 (“Bill”), which is yet to be enacted, is possibly the first attempt of the Indian government to introduce a codified law on this important and sensitive subject. The Bill seeks to provide for the prevention and redressal of sexual harassment of women at workplace. The Bill provides for establishing a mandatory committee to hear complaints of sexual harassment and the procedure of appointment of such committee. The Bill stipulates a time period for completing the enquiry and for employers to take action against the accused and also provides for monetary penalties if the complaint is found to be true.

#### ANALYSIS AND IMPLICATIONS

In absence of a codified legislation to deal with protection of women against sexual harassment at the workplace, the Guidelines continue to be treated as the law. There have been past instances in which the courts have directed employers to take disciplinary action against delinquent employees, alleged to have caused sexual harassment. However, in the instant case, the SC has gone a step further and awarded cost of litigation to the victim.

Courts in India have generally been cautious in awarding damages in the form of legal costs. The recent trend in few other judgments including this judgment may expound as a forward looking step that any violation of law may not only lead to penalty and redressal but also a liability of having to reimburse legal costs.

- Kabeer Shrivastava & Vikram Shroff

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