



## news flash

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### MERE PHYSICAL CONTACT - NOT SEXUAL HARASSMENT

#### **Introduction**

The Delhi High Court has, on 31 October 2017, passed a landmark judgment in the case of *Shanta Kumar V. Council of Scientific and Industrial Research (CSIR) & Ors.*<sup>1</sup> ruling that mere physical contact without sexual overtones would not amount to sexual harassment at workplace.

#### **Brief Facts**

- On 29 April 2005, when the petitioner was working in the laboratory, the respondent no. 3 entered, stopped all the machines and pushed her out of the laboratory and locked it. The petitioner alleged that the respondent no. 3 also used derogatory language.
- On 3 March 2006, the complaint made by the petitioner was forwarded by Dr. PK Jain (HOD) under the note “for further investigation of sexual harassment”.
- On 14 August 2006, an officer of the Central Road Research Institute sent a memo to the petitioner seeking a clarification whether she desired to pursue the aforesaid complaint since the words “sexual harassment” had not been used by her anywhere before.
- On 18 August 2006, petitioner sent a letter in response stating that she had faced all kinds of harassment including sexual harassment.
- Director, CRRI constituted a complaint committee consisting of 5 members.
- The committee examined the complaint and concluded that the nature of the complaint was not sexual in nature but administrative and managerial. The impugned report was accepted by the Disciplinary Authority and is also under challenge.
- A writ petition was filed before the Delhi High Court by Shanta Kumar challenging the proceedings of the Complaint Committee and the order of the Disciplinary Authority dated 12 October 2009 exonerating Respondent No. 3 of the sexual harassment charges made against him.

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<sup>1</sup> Delhi High Court – W.P.(C)8149/2010

### **Contentions of the petitioner**

- The report of the Complaint Committee lacked application of mind. It was contended that the respondent no. 3 had touched the petitioners arm and any unwelcome physical contact would amount to sexual harassment.
- The Complaint Committee was not constituted in accordance with the instructions of the Government of India issued by the DoPT vide OM No.11013/10/97 Estt.(A) dated 13.07.1999 as most of the members were subordinate to the respondent no. 3.
- An *ad hoc* Disciplinary Authority was constituted even though a regular Disciplinary Authority was present.

### **Ruling of the Delhi High Court**

The Delhi High Court held as follows:

1. Deciding on the issue of sexual harassment, the Court referred to the landmark decision of the Apex Court in *Vishakha v. State of Rajasthan*<sup>2</sup>, which proposed guidelines for sexual harassment at workplace. The relevant definition of sexual harassment is, “2. Definition: For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as: a) physical contact and advances; b) a demand or request for sexual favours; c) sexually coloured remarks; d) showing pornography; e) any other unwelcome physical verbal or non-verbal conduct of sexual nature.” This was further adopted by Central Civil Service Conduct Rules, 1964 under Rule 3C.
2. The Court inferred that any physical contact or advance would be sexual harassment provided it is made in the context of a sexually oriented behaviour. A mere accidental touch, even if unwelcome would not amount to sexual harassment. In the instant matter, the incident on 29 April 2006 would not qualify as sexual harassment even if it was derogatory in nature. The Court rejected the first contention made on behalf of the petitioner.
3. The second contention was also rejected as the Complaint Committee was constituted as per the instructions in OM No. 11013/10/97-Estt.(A) dated 13.07.1999 and was headed by an officer sufficiently higher in rank.
4. The third contention with regard to the establishment of an ad-hoc Disciplinary Authority was also rejected and the argument of the respondent no. 1 and 2 was accepted. Further, the petitioner did not oppose or express any apprehension of the *ad hoc* Disciplinary Authority and thus this question cannot be heard at this stage.
5. The petition was dismissed.

### **ALMT Analysis**

The Delhi High Court has rightly held that where there is mere physical contact, even if it is unwelcome does not necessarily imply sexual harassment. This is a very important judgment and provides clarity on the interpretation of the definition of “sexual harassment”. It may also act as a deterrent from filing frivolous complaints merely to harass/ threaten the accused, where there has not been any actual sexually oriented behaviour.

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<sup>2</sup> (1997) 6 SCC 241.

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