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ITEM NO.1

COURT NO.14

SECTION X

S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS

Miscellaneous Application No. 2308/2023 in W.P.(C) No. 162/2013

(Arising out of impugned final judgment and order dated 17-07-2013 in W.P.(C) No. No. 162/2013 passed by the Supreme Court of India)

BINU TAMTA & ANR.

Petitioner(s)

VERSUS

HIGH COURT OF DELHI & ORS.

Respondent(s)

(FOR ADMISSION and IA No.184930/2023-CLARIFICATION/DIRECTION)

Date : 07-11-2023 This petition was called on for hearing today.

CORAM :

**HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE UJJAL BHUYAN**

**For Petitioner(s) Ms. Vibha Datta Makhija, Party-In-Person
Ms. Baani Khanna, AOR
Mr. Praveen Gaur, Adv.
Mr. Karan Mangain, Adv.**

For Respondent(s)

**UPON hearing the counsel the Court made the following
O R D E R**

We have heard learned senior counsel Ms. Vibha Datta Makhija who is petitioner No.2, appearing-in-person on the application being Miscellaneous Application No.2308/2023 filed by her. The prayers sought in the application read as follows:

"26. In the circumstances, it is prayed that Hon'ble Court be pleased to:

a. Pass directions as prayed for in Paragraph 25 in the present Application being:

I) Direct that references to "aggrieved woman" [as defined in Regulation 2(a)] be supplanted with "aggrieved persons" to reflect the gender-neutral protection of the Regulations;

II) Direct that "sexual harassment" be defined in gender-neutral terms to bring within its purview acts of sexual harassment committed by Respondents of the same sex as the "aggrieved person";

III) Direct that Regulations be amended as necessary to ensure that the Regulations permit persons of all gender to avail the redressal mechanism provided therein;

IV) Direct that reports be furnished regarding the carrying out of sensitization activities, outlining the applicable policy (if any), frequency of such activities and publication thereof; and

V) Direct the formulation of a committee to assess the adequacy of the present functioning of the Regulations apropos sensitization activities and recommend changes required in the Regulations to increase the frequency, scope and entities thereof.

B. Pass such other orders as this Hon'ble Court may deem fit and proper in the interest of justice."

During the course of submission, petitioner No.2, appearing in-person pointed out that the Gender Sensitization and Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013 (for short, "Regulations") were notified by this Court on 06.08.2013 and the said Regulations have been made applicable to an "aggrieved women" as defined in Regulation 2(a) of the Regulations. However, in view of the subsequent development of law and recognition of the constitutional rights of other persons such as LGBTQIA+ persons, these Regulations are wholly inadequate to cover such persons and their grievances, including harassment in the workplace, that is, the Supreme Court of India which cannot be remedied under the existing body of Regulations. Therefore, she submitted that the Regulations of 2013 would call for amendments in terms of what are

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sought in the prayers extracted above in order to make the said Regulations inclusive. This is particularly having regard to the judgment of the Supreme Court of India in National Legal Services Authority (NALSA) vs. Union of India reported in (2014) 5 SCC 348.

Having heard second petitioner-in-person and on perusal of the Regulations of 2013, we find that the existing Regulations are in order to protect an 'aggrieved woman' in the workplace i.e. the Supreme Court of India. These Regulations were formulated having regard to the clause 3 of Article 15 of the Constitution of India and in order to extend the constitutional right of equality and equal protection of the laws as enshrined in Article 14 of the Constitution.

However, we find that the definition of "aggrieved woman" as it exists would not cover a person who is belonging to the LGBTQIA+ umbrella. If such a person suffers sexual harassment, according to the petitioner, who has appeared in-person, there are no Regulations as such where a remedy could be sought. It is in the above context that amendments to the 2013 Regulations have been sought. But we find that the object and purpose of the Regulations of 2013 Act are in order to protect an 'aggrieved women' in the workplace i.e. the Supreme Court of India. If a person other than an 'aggrieved woman' is subjected to sexual harassment and there is no body of Regulations to extend protection to such a person and a question arises regarding the manner in which such a protection could be extended, in our view, the answer does not lie by amending the existing Regulations.

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We are of the view that it would be inappropriate to direct the aforesaid amendments to be made to the 2013 Regulations as otherwise the whole purpose and object of the said Regulations would be diluted and denuded of its effect. Moreover, we feel that the focus will be lost from the principal objective i.e., prevention of sexual harassment of women at the Supreme Court of India, if such amendments to the Regulations which were framed following enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 are made.

That apart, we refer to the judgment of this Court in State of Jammu & Kashmir vs. A.R. Zakki, 1992 Supp (1) SCC 548 wherein it was observed that a writ of mandamus cannot be issued to the legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation.

To the same effect are the observations of this Court in Union of India vs. K. Pushpavanam, 2023 SCC OnLine SC 987 wherein it was observed that a writ court would not direct the Government to consider introducing a particular bill before the House of Legislature within a time frame. Therefore, a Constitutional Court would not issue a writ of mandamus to a legislature or to a rule making body to enact a law on a particular subject and in a particular manner.

By way of response, petitioner No.2, appearing-in-person submitted that she would withdraw this application and she would make a representation to the Gender Sensitization Committee of the Supreme Court for formulation of another body of Regulations to

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cover persons belonging to the LGBTQIA+ Communities for their protection from sexual harassment in the workplace i.e. Supreme Court of India.

In the above circumstances, we dismiss this application as well as the application for Clarification/Direction as withdrawn.

Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA)
COURT MASTER (SH)

(BEENA JOLLY)
COURT MASTER (NSH)