



**Worship
Workplace**



A Case Study on – Workplace definition

Blog Series – 1 December 24, 2019 POSH – Vol.1

Hi All, Greetings from HR Vidyalaya. I am Anandan Subramanian, dedicating this Blog series, for all those who supported me, to my earlier series, on HR and Employment Law. After a gap of almost 3 months, I am commencing my writing activity and wish to publish blogs in www.hrvidyalaya.com. I wish to (try) post at least 2 blogs in a week – 1 on POSH and 1 on other HR/Employment legislation. My scribbles will be published on Tuesdays and Saturdays. Will ensure my post is restricted to a reading time of 5 to 7 minutes. Looking forward to your continued support.

Very recently, I was reached out by a HR personnel from Bangalore, through a landline number (and she also claimed that she is an IC member of her establishment). She was referred by a regular participant of my Webinar series. For the purpose of confidentiality she neither disclosed her name nor the establishment name. I too, did not bother myself to know such details. She spoke to me at length, asking for a clarification:

This employer had constituted an Internal Committee long back, but not “so operative” – meaning,

- △ There are no specific enrichment programs being imparted to employees, regularly
- △ New joiners are not provided with trainings but the “Employment Kit” provided to them, has a copy of Anti-Sexual Harassment Policy
- △ Internal Committee members does not meet / tele-meet, periodically to review/evaluate the happenings / action plans, etc.
- △ No skill upgrading programs were conducted for the Internal Committee members

As they do not receive any ‘big’ complaint from any of the Woman employee, (a) The Management (b) The Internal Committee and (c) The Human Resources Department, felt that their establishment is harassment-free campus.

One fine evening, they had received a “specific” complaint from one of their woman employee. The HR personnel narrated the case as per the following and I interrupted at times to clarify in-between:

1. This aggrieved woman employee has a complaint against another male member from her team
2. Both were thick friends. More importantly, that male employee was a reference by this aggrieved woman employee

I interrupted to state that, this woman employee can give complaint, irrespective of whether the male respondent is her close friend or not.

HR personnel continued,

3. Both were so close, to state that, they come together, nonetheless break for tea or lunch or leave the office.
4. We do hear that they, together, visit places after work or on week-ends, which officially we do not consider at all.
5. We have seen / heard of excesses by both, inside the office.
6. This, neither had a concern on their performance or the team's performance, hence the Team Leader did nothing.
7. Such actions by both, inside the office premises, had no influence on any other team members or any other team. Hence, we at Human Resources did not bother much.

I stated that, understandably the woman employee had consensus and welcomed or positively reciprocated to the actions of the male member (respondent employee).

8. On that specific day, before the woman employee came with a complaint, together, both went outside the office during the lunch hour (as per the CCTV footings and punching cards of both employees).
9. Our company provides food for all employees, inside the premises and the lunch hour break is for an hour.
10. Usually, employees have food inside and spend that extra minutes of lunch hour, at the corridor or go outside.

I interrupted to indicate that, this cannot be treated as course of employment, as the food is provided inside and employer do not **sponsor** employees to go outside for lunch.

The HR personnel, responded affirmatively and told that they do not discourage or question employees, during that break period, if they venture out. She continued stating,

11. Something happened, when both were outside the office and the woman employee was rushing back to the IC members' cabin and made a "Sexual Harassment" complaint

The HR Personnel wanted to know my insights on this Complaint, though she do not wanted to get influenced by any suggestion or decision from my side.

I took time to give my thoughts, as there were few technical points involved. After perusal of provisions of the Act / Rules, I made myself confident to prepare a checklist:

Definition of Aggrieved Women	Correct
Complaint on respondent	Correct
Whether the respondent is an employee	Yes
Whether this is a sexual harassment	To be inquired by the Internal Committee

Process of complaint	Correct, as she gave a written complaint to IC member
Timeline between "the alleged act" and "the submission of complaint"	Within 90 days, hence acceptable
Whether the Aggrieved women Comes under the definition of "employee"	Yes
Workplace - Where the act of alleged sexual harassment has happened, as per the complaint by the aggrieved woman employee	As per the Section 2(o) (v) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), Act, 2013, <i>"Any place visited by the employee <u>arising out</u> of or during the <u>course of employment</u> including transportation provided by the employer for undertaking such journey"</i>

In this specific incident, the place where the "act of sexual harassment" (alleged to have happened) Prima facie CANNOT be considered as ***"Arising out or during the course of employment"*** as the Employer neither requested both to go out nor the place where they went is for official task.

The place where they had gone might be considered as "workplace" if the Employer had

- ❶ Provided or sponsored the Lunch outside or
- ❷ It is Lunch meeting to be officially attended by both employees or
- ❸ Both went in an official vehicle for work-related task.

One has to determine whether the time, place and the task being done by the employee/s, were covered under the language "course of employment". A claim of "workplace" can be determined while the employee/s actions were in the Employer's interest or their own interest. If they are performing any act on the request or furtherance of the employer's interest is to be looked into. Where the "Course of employment" is clearly stated in the definition under the Act, even notional extension of employers' premises is not applicable in this particular case.

Even if one considers a reasonable extension in both time and place, there are no official task involved, hence it cannot be considered as "workplace" and the claim of "Sexual Harassment at workplace" cannot be entertained by the Employer. Besides, there is no sufficient causal connection between the employment and the alleged incident outside the workplace.

Therefore, in my opinion, this can be concluded that "act of alleged sexual harassment" is **not at the workplace** and the woman employee has to take care of herself, to make the complaint with law enforcement officers, as the place of alleged sexual harassment is not within the scope of employment. Whether the Employer need to assist the aggrieved women, in filing the case, too doesn't arise, in such situation.

Anandan S
Feature Writer, Skill Enhancer & Webinar Specialist