

Can the Employer be considered as an Employee

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When a Head of the Organisation or a Branch or Department is considered as an Employer, if she is an aggrieved woman, can she make a complaint to Internal Committee as an Employee of an organization or she is considered as an Employer and though the Internal Committee is constituted, she has to make complaint before Local Committee as per the provisions (Section 7) of the POSH Act?

In the case of *Jaya Kodate V/S Rashtrasant Tukdoji Maharaj Nagpur University*, Hon'ble Mumbai High Court has ruled as per the following:

Para 33. Mere look at the definition of words "employee" and "employer" reveals that both occupy the fields which are not mutually exclusive. Some posts or designation shall fall under both. A high ranking lady officer occupying managerial or supervisory post in employment of State or Public Body, Company or an Institution may become victim of Sexual Harassment. She may exercise administrative powers over several subordinates. So long as she is answerable to somebody else, may be an artificial person, she may in that eventuality, qualify to be an employee. A lady head of the department or principal or chief executive officer may therefore fall under both these definitions Similarly, the "respondent" may also hold these posts and therefore, is covered under both these heads. Normally these concepts are mutually exclusive and will not overlap.

But we find that in the 2013 Act these concepts are loosely defined to enable the 2013 Act to reach as many respondents as necessary to advance effectively the object and to curb the mischief. Section 2 itself opens with the qualifying phrase "In this Act, unless the context otherwise requires,".

Thus question whether respondent is an employee or employer will call for determination in the context of the facts and situation. We find that various concepts have been defined deliberately widely and also wisely. The entire 2013

Act needs to be viewed as a net cast by the Parliament to cover as many establishments as possible; a net woven by using various concepts as its units giving it spring like qualities. Definition of workplace and unorganized sector leave no manner of doubt about the expanse of net foreseen by the Parliament.

Concepts like "Employee" and "Employer" in definition clause before us is like a spring which possess property of both expanding and contracting to meet the situation. One spring or concept may be required to be stretched while the other compressed to further the object of such legislation. Parliament appears to have left it to executive to use this legislation giving it adequate elbow-space or maneuverability looking to the mischief sought to be prevented and to advance the object firmly. Restricting or curtailing the meaning of any one or more of the concepts and/or then expanding the other/s does not cause any damage to the fabric of net but augments its strength or capacity.

To us, the "employee" and "employer" appear to be interdependent concepts warranting either narrow or liberal approach in the perspective of the context to preserve the legislative sanctity of definition of "Aggrieved Woman", "Respondent" and to further the object of the 2013 Act. When "Aggrieved Woman" happens to be an employee, concept of "employer" as defined will have to be understood in extremely narrow manner thereby pushing into the fold of "employee" even a high ranking officer or an elected office bearer, whether paid or not but owing some obligation to the superiors or superior body like managing/executive committee or general body

Hence in the above case the aggrieved woman can be considered as an Employee and she can make a complaint before the Internal Committee itself.

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