

INDIA LEGAL UPDATE

23 May 2023

Supreme Court of India Flags Lapses in Implementation of POSH Act

Court:
Supreme Court
Cause Title:
Aureliano Fernandes v. State of Goa and Others
Judgement Date:
12 May 2023
Online Link:
Aureliano Fernandes v. State of Goa and Others

The Supreme Court of India on May 12, 2023, in the case of *Aureliano Fernandes v. State of Goa and Others*,^[1] held that the Internal Complaints Committee (ICC) fell into an error when it attempted to fast forward the entire proceedings and declined to grant a reasonable time to the appellant to effectively participate in an enquiry under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act).

The POSH Act lays down a comprehensive mechanism for the constitution of the Internal Complaints Committee (ICC) and Local Committee (LC), the manner of conducting an inquiry into a complaint received, duties of an employer, duties and powers of the District Officer and others, penalties for non-compliance of the provisions of the Act, etc.

The Supreme Court while examining the case went ahead and pointed out that there are “serious lapses” in the enforcement of the POSH Act. The Supreme Court has issued directions to ensure that affirmative steps are taken to make sure that the ultimate object of the POSH Act is achieved.

The new requirement as laid down by the Supreme Court is about important information to be uploaded and updated on the website from time to time as mentioned below:

- a. details of the Constitution and Composition of the ICC / LC,*
- b. details of the e-mail IDs and contact numbers of the designated person(s),*
- c. the procedure prescribed for submitting an online complaint, and*
- d. the relevant rules, regulations, and internal policies.*

[1] *Aureliano Fernandes v. State of Goa and Others*, CA No. 2482 of 2014, decided on May 12, 2023. Available at https://main.sci.gov.in/supremecourt/2012/21189/21189_2012_17_1501_44461_Judgement_12-May-2023.pdf; last accessed on May 23, 2023.

Additionally, the Supreme Court reiterated compliance with the following provisions of the POSH Act in true letter and spirit:

- **Immediate and effective steps to familiarise members:** The employers shall familiarise members of the ICCs / LCs with their duties and the way an inquiry ought to be conducted upon receiving a complaint of sexual harassment at the workplace; starting from when the complaint is received, till the inquiry is finally concluded and the report submitted.
- **On-going awareness sessions:** The employers shall regularly conduct orientation programmes, workshops, seminars, and awareness programmes to upskill members of the ICCs / LCs and to educate women employees and women's groups about the provisions of the Act, the Rules, and relevant regulations.
- **Modules to conduct workshops and awareness programmes:** The National Legal Services Authority (NALSA) and the State Legal Services Authorities (SLSAs) shall develop modules to conduct workshops and organise awareness programmes to sensitize authorities/management/employers, employees, and adolescent groups with the provisions of the Act, which shall be included in their annual calendar.
- **Seminars and workshops for ICC members:** The National Judicial Academy and the State Judicial Academies shall include in their annual calendars, orientation programmes, seminars, and workshops for capacity building of members of the ICCs / LCs established in the High Courts and District Courts and for drafting Standard Operating Procedures (SOPs) to conduct an inquiry under the Act and Rules.

The judgement from the Supreme Court reinforces creating a safe working environment for women and protect them from sexual harassment.

Queries?

If you have any queries about this article, please reach out to our experts:



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