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VASANTHA AND A CASE OF GENDER DIVERSITY AT WORKPLACE: KARNATAKA ALLOWS WOMEN TO WORK IN NIGHT SHIFTS IN FACTORIES

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Background

"Excepting the solitary reason namely difference in sex among the workers, there is no reason or rhyme to treat the women differently, nor it could be held that it is a protective legislation to save the women from exploitation. On the other hand, the very provision results in denial of livelihood, improvement in status to women as well as economic freedom and the impugned provision in any view of the matter offends Article 15(1) of the Constitution."

It is with these words that the High Court of Madras, in the case of *Vasantha R v Union of India [(2001) 11LLJ 843 Mad]* (*Vasantha*), declared the provisions of Section 66(1)(b) of the Factories Act, 1948 (Factories Act) to be unconstitutional on the ground of the same being violative of Articles 14, 15 and 16 of the Constitution of India (Constitution).

Section 66(1)(b) of the Factories Act allows women to work in factories only between 6 am and 7 pm. However, the said provision allows such hours to be extended with a notification by the relevant state government, but only to 5 am and 10 pm for any factory or class of factories.

In the backdrop of *Vasantha*, the Government of Karnataka released a notification dated 20 November 2019 (Notification) allowing women in factories to work during night shifts (i.e. between 7 pm and 6 am) notwithstanding the restriction on relaxation imposed by the above-mentioned provision.

Permission comes with conditions

While granting permission for engaging women during night shifts, the Notification requires the employer to obtain a written consent from such women employees and comply with certain other conditions as set out below.

- The Notification provides that there should be an express prohibition on sexual harassment in any form. The code of conduct and discipline applicable to the factory should incorporate specific rules in this regard which *inter alia* provide appropriate penalties for offenders. Suitable amendments should also be made in the standing orders of the establishment as framed under the Industrial Employment (Standing Orders) Act, 1946. Further, where there is any criminal case of sexual harassment, the employer should initiate "appropriate action" under the penal law and, at the same time, ensure that the victim is not discriminated against at the workplace. In order that complaints of sexual harassment raised by women employees are adequately redressed, there should be a complaint redressal mechanism comprising of a complaint committee, a special counsellor and other support services, whenever required. All female

employees working in the factory should be made aware of their rights in this regard.

- Aside from providing proper lighting, the Notification requires the employer / person in charge of the factory to ensure that there is adequate CCTV coverage of the premises including all places where women employees may be required to visit in the course of work during their shift and that such CCTV footage is stored for at least 45 days.
- The employer / person in charge of the factory is required to ensure that women employees are employed in a batch of 10 at the minimum and also that the total number of women employees engaged in any night shift is at least two-thirds of the total strength. Further, in any night shift, one-third of the supervisory staff should be women. An additional responsibility is cast on employers to appoint at least 2 female wardens per night shift who would act as special welfare assistants.
- Transportation facilities, equipped with CCTV cameras, are required to be provided to women employees from and to their residence.
- In addition to the above, factories are required to have sufficient women security at entry and exit points, sufficient number of rest rooms and separate canteen facilities for women employees, appropriate medical facilities, and an emergency vehicle (where there are more than 100 women employees employed in a night shift).

As per the Notification, the women employees employed in factories shall, through their representatives, have a meeting with their employer once in 8 weeks, and the employer will make all reasonable endeavors to redress their grievances. The employer will also be required to submit a fortnightly report to the Inspector of Factories providing details of employees engaged during night shifts. Where there is an untoward incident at the premises, the employer shall ensure that the same is also notified to the local police and the Inspector of Factories.

Comment

The Notification comes after the Government of Goa did away with the restriction imposed by the Factories Act on the state government while varying the limit on the working hours for women. Indeed, the measures taken by the state government, including the requirements pertaining to redressal of complaints of sexual harassment raised by women and provision of transportation facilities during the night, can be said to be a step in the right direction to promote gender diversity at the workplace. However, certain conditions such as ensuring a certain number of women employees and women supervisors in a particular night shift could have been imposed on a best endeavour basis to provide some breather to employers.

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