

Workplace Sexual Harassment and Bullying: A Case Analysis

- Supreme Court ruling on November 25, 2021, 2020da270503 -

I. Facts

1. Parties and Relevant Circumstances

The Plaintiff (P) was a contract employee for C Children's Hospital Sponsorship Association (hereinafter referred to as the "Association") from around March 2014. P was responsible for selecting and determining the scope of support for child patients to receive support from the Association. The Defendant (D) was an outpatient professor at C Hospital and an Association director. D planned and conducted events for the Association and sometimes directly instructed or severely reprimanded Association employees in relation to their work.

On October 15, 2015, the day of a charity golf event hosted by the Association, P rode in a passenger car driven by D near D's home and traveled with D to the golf course, located in Icheon City. Afterwards, P assisted D with his duties in the VIP room provided at the golf course clubhouse for the event. After the event ended that evening, P sat in the back seat of D's passenger car, driven by a substitute driver, along with D for the ride back to D's home.

On the following day, October 16, 2015, P visited the manager (E) of the Association's office, and reported that she had been sexually assaulted by D on three occasions: (1) in the VIP room the day before, (2) inside D's car after the event ended, and (3) repeatedly over time in the workplace. On the same day, at E's direction, P prepared a list of incidents when D had harassed her and submitted it to E in an Excel file. On October 27, 2015, P filed a criminal complaint with the police regarding the sexual assault incidents. Although the prosecutor indicted D, he was later found not guilty.

2. Plaintiff (P)'s Claim

A. On October 15, 2015, at 2:05 PM, while in the golf course's VIP room, D ordered P to bring a tree branch to hit P with as punishment. P did so, and D proceeded to break it and then used it to strike P's buttocks, causing physical pain. Furthermore, at the same time and place, D sexually harassed P with remarks such

as "Your skin is so white. You used to be skinny, but now you've put on weight."
"Your legs are so thin and white. Are you using whitening cream? Do you shave your body hair?" and "Do you have a boyfriend? Why have you gained weight? You don't work properly and your mind is elsewhere."

B. On the same day, while in the car on the way back, D verbally reprimanded P and sexually harassed her by inserting his finger into her right ear and using an empty plastic water bottle to poke her on her chest.

C. From April 3, 2015, to October 2015, D called P to the examination room at C Hospital, where he worked as an outpatient medical practitioner, and asked her to sit on a wheelchair and pulled her closer and tapped on her thighs.

D. D accused P, office manager E of the Association, a former employee, and P's lawyer who testified against him for sexual harassment, of submitting falsified evidence to the court by manipulating the facts. P claimed that it was an illegal act of secondary harm against P that abused the legal procedures.

3. Defendant (D)'s Claim

D denied the sexual harassment allegations leveled by P in the relevant criminal case and stated the following regarding what had occurred in the VIP room on October 15, 2015: D asked P to bring a tree branch to use as a punishing cane to hit her, saying that she had ruined the charity event. P brought a large branch that was over one meter long to the VIP room. When D asked her how many times she wanted to be hit, P said three times, and D broke the branch. P appeared to be crying, and D apologized to her for making her cry. P continued to fake cry, so D put his hand on her shoulder to stop her from lowering her head further and getting closer to her face to find out if she was really crying or not. When he saw that she was smiling, D grabbed P by the upper part of his elbow and pushed her away. During this process, D found out that P had a fat body, so D told P something to the effect of gaining weight On the same day and in the same place, D made remarks to P about P's calves, asked whether P had a boyfriend, and remarked about P's skin and use of skin-related products. At the above golf course, D once recommended that P use hot spring water to bathe.

4. Summary of the First Court Ruling¹

¹ Seoul Central District Court ruling on Aug. 27, 2019, 2018gadan5252208

P claimed that D had sexually harassed her and reported the people who had witnessed the actions to the police, both of which amounted to illegal actions against P. P claimed compensation for mental suffering under the tort liability of Article 750 of the Civil Code. However, the court dismissed P's claim due to insufficient evidence.

5. Appeal (Original trial)²

P appealed the decision, arguing that even if D's conduct mentioned in one of P's claims did not constitute "coercive sexual assault through the abuse of power," additional actions that D had intentionally committed against P during the investigation and trial constituted "illegal and inappropriate behavior equivalent to physical or verbal sexual harassment and bullying or harassment within the workplace" or "secondary acts of harm towards a victim of assault, insult, or sexual violence." Therefore, D had an obligation to compensate for damages caused by those illegal acts against P. However, the appellate court found that the evidence submitted by P in the first trial and additional evidence submitted remained insufficient to back up P's claims.

II. Details of Supreme Court Ruling³

The Supreme Court cited labor laws regarding workplace harassment and sexual harassment to make a decision in this case. "Sexual harassment refers to behavior by a civil servant, employee of a public entity such as a state agency, local government or school, or employee, employer or superior at a workplace, or related to employment, using one's position or related to sexual conduct or sexual demands, etc., to make the other party feel sexually humiliated or disgusted, or to impose disadvantage or condition benefits on them. Here, the unwanted "sexual conduct" refers to physical, verbal, and visual acts related to physical relationships between men and women or physical characteristics of men or women that can objectively cause an average person in the same position to feel sexually

(Compensation for damage).

² Seoul Regional District Court ruling on Sept. 18, 2020, 2019na54179 (Compensation for damage).

³ Supreme Court ruling on Nov. 25, 2021, 2020da270503.

humiliated or disgusted according to sound common sense and practices of the community. Furthermore, if a person in a higher position exceeds the proper scope of work and causes physical or mental pain to other employees or worsens the work environment through the use of his or her position or relationship in the workplace, this amounts to illegal "harassment at the workplace" and the cause of civil liability against the defendant for illegal acts against the victimized employee."⁴

The Supreme Court acknowledged the consistent statements of the plaintiff and the defendant regarding workplace harassment and sexual harassment, which had been dismissed in the lower court due to a lack of evidence. "The claims that harassment in the workplace had occurred on the day of the voluntary event in the VIP room is mostly not disputed by D, and a significant portion of it was actively admitted by D in the related criminal case. In addition, considering the specificity and consistency of P's statement and the details of the victim statement summary sheet, as well as the timing and process of P reporting the damage to the support group and reporting to the investigative agency that she was suing D, and D's response in the related criminal case, there is ample room to find that P's claims about verbal sexual harassment in the same time and place are highly likely to be true."

The Supreme Court rejected the decision of the lower court and introduced the labor law definition of workplace harassment and sexual harassment in this case, rather than sexual assault by the employer. The Supreme Court stated, "Furthermore, D's behavior, which has been claimed to constitute harassment in the workplace or verbal sexual harassment, is conduct that exceeds the proper scope of work by D, a superior at the workplace, in an employment relationship, using his or her position to harass or treat other employees unfairly or to create a hostile working environment, and constitutes a violation of the Labor Standards Act."

III. Commentary

1. Difference between Sexual Assault and Sexual Harassment

⁴ Supreme Court ruling on Apr. 12, 2018, 2017doo74702; Sept. 16, 2021da219529.

P accused D of sexual harassment and forced sexual contact through the use of work-related power in a VIP room and in a vehicle on October 15, 2015. However, D was found not guilty of the criminal charges, as this case fell under the category of workplace harassment and sexual harassment according to the Labor Standards Act, which should have been reported to the Ministry of Employment and Labor. P reported the case to the police as sexual assault, but the judgment was based on the difference between sexual assault and sexual harassment. Article 10 of the Sexual Violence Crimes Prevention Act defines forced sexual contact through the use of work-related power as "the use of hierarchical or authoritative power to engage in unwanted sexual contact against a person who is under one's protection or supervision in relation to work, employment, or other relationships." The Supreme Court defines sexual assault as "an act that objectively violates sexual morality and would cause sexual shame or disgust for an ordinary person, infringing upon the victim's sexual freedom."⁵ In other words, for sexual assault to be a criminal offense under the law, there must be violence or coercion that violates the victim's sexual freedom." In contrast, Article 2 of the Equal Employment Act defines workplace sexual harassment as "the use of one's position as an employer, superior, or worker to sexually harass another worker by making sexual advances or engaging in sexual behavior that causes sexual humiliation or disgust." Therefore, sexual harassment does not violate the victim's sexual freedom, but rather refers to behavior in which a superior or a worker harasses another worker through the use of their position or work-related language or actions. The current law imposes imprisonment or a fine for forced sexual contact through work-related power, and administrative fines for workplace or sexual harassment.

2. Burden of Proof

In cases of workplace harassment or sexual harassment, the burden of proof is crucial. Generally, it lies with the person making the claim, and if they fail to prove it, they lose the case. However, according to Article 30 (Burden of Proof) of the Equal Employment Act, "the burden of proof in disputes related to this Act shall be borne by the employer." Therefore, in matters related to this law, if an employee claims they have a grievance or have suffered damage, they only need to provide evidence that could lead judges or members of the labor commission to reasonably

⁵ Supreme Court ruling on Dec. 24, 2014, 2014do6416; Sept. 26, 2013, 2013do5856.

infer that the problems are related to the law.⁶ In this particular case, even though the employer and the victim provided different explanations for the occurrence of harassment and sexual misconduct, the Supreme Court recognized P's claims of workplace harassment and sexual harassment as true, as it was reasonable to assume that such events had occurred.

3. Implications of the Ruling

The lower court ruling was dismissed as it mistakenly classified the case as falling under "sexual assault through coercion in the workplace" and failed to address the actual issue of "workplace harassment and sexual harassment." However, the Supreme Court ruled that the harassment and sexual misconduct committed by the superior in this case were not a result of work-related power dynamics but rather stemmed from the use of superior position or relationship in violation of labor standards, causing physical and mental pain to employee P. As a result, the Supreme Court overturned the lower court's ruling and acknowledged the workplace harassment and sexual harassment. Furthermore, the Supreme Court ruled that D's actions constituted "workplace harassment" and went beyond the acceptable boundaries of work, resulting in physical and mental pain for P, as well as "sexual harassment," which caused P to feel sexually humiliated or disgusted, both of which fall under the category of illegal acts under Article 750 of the Civil Code. Therefore, D was ordered to compensate P for the mental damages caused by his illegal actions.

⁶ Kim, El-lim, "Employer's Responsibility for Sexual Harassment in the Workplace - Supreme Court Decision 95da39533, February 10, 1998," in *Labor Case Law: 100 Cases, First Edition*, Korean Labor Law Association, Parkyoungsa, 2014.