

W.P.(MD)Nos.13981, 9747 & 12601 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.11.2024

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

W.P.(MD)Nos.13981, 9747 & 12601 of 2024

and

WMP.(MD) Nos. 12247 of 2024

W.P.(MD)Nos.13981 /2024

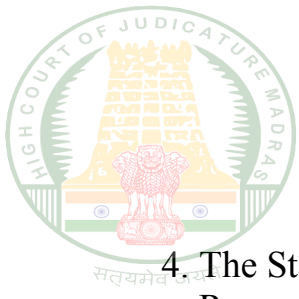
~~Dr. Supraja~~

...

Petitioner

Vs.

1. The State Represented by
The Principal Secretary to Government,
Ministry of Health and Family Welfare,
Namakkal Kavignar Maaligai,
Fort St.George, Chennai.
2. The Commissioner,
Indian Medicine and Homeopathy Department,
Chennai corporation child care centre,
Arignar Anna Government Hospital Campus,
Arumbakkam, Chennai.
3. The Principal,
Government Ayurveda Medical College and Hospital,
Chidambara Nagar,
Kottar, Nagercoil,
Kanyakumari District - 629001.



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

4. The State of Tamil Nadu,
Represented through its Secretary,
Government of Tamilnadu,
Social Welfare and Women
Empowerment Department,
Secretariat, Fort St. George,
Chennai.

5. Union of India,
Represented through its Secretary,
Ministry of Women and Child Development,
Government of India,
New Delhi.

6. State Women Commission,
Represented through its Chairperson,
Tamilnadu State Commission for Women,
Kalas Mahal, 1st Floor,
Chepauk, Chennai - 600 005.

7. National Commission for Women represented
through its Chairperson, Plot-21,
Jasola Institutional Area,
New Delhi - 110 025.

...

Respondents

(R4 to R7 in WP(MD).13981/2024
are Suo Motu impleaded vide
court order dated.28.06.2024)

Prayer in WP.(MD)No.13981 of 2024: Writ Petition is filed under Article 226
of the Constitution of India, to issue a Writ of CERTIORARIFIED
MANDAMUS, calling for the records in connection with 3rd respondent herein



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

vide his proceeding reference R.No.2795/E/2024 dated 24.06.2024 and quash the same and consequentially direct the respondents to reinstate the petitioner into service with all benefits.

W.P.(MD)No. 9747/2024

~~Dr. Resmi M Nair~~

... Petitioner

Vs.

1. The State Represented by
The Principal Secretary to Government,
Ministry of Health and Family Welfare,
Namakkal Kavignar Maaligai,
Fort St.George, Chennai.
2. The Commissioner,
Indian Medicine and Homeopathy Department,
Chennai corporation child care centre,
Arignar Anna Government Hospital Campus,
Arumbakkam, Chennai.
3. The Principal,
Government Ayurveda Medical College and Hospital,
Chidambara Nagar,
Kottar, Nagercoil,
Kanyakumari District - 629001
4. Dr.Clarence Davy
The Principal,
Government Ayurveda Medical College and Hospital,
Chidambara Nagar,
Kottar, Nagercoil,



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

Kanyakumari District - 629001

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5. Dr.Antony Suresh

6. The State of Tamil Nadu,
Represented through its Secretary,
Government of Tamilnadu,
Social Welfare and Women
Empowerment Department,
Secretariat, Fort St. George,
Chennai.

7. Union of India,
Represented through its Secretary,
Ministry of Women and Child Development,
Government of India,
New Delhi.

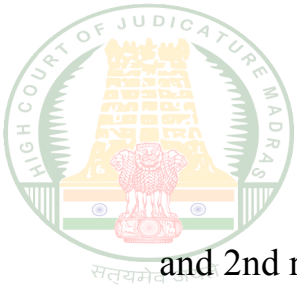
8. State Women Commission,
Represented through its Chairperson,
Tamilnadu State Commission for Women,
Kalas Mahal, 1st Floor,
Chepauk, Chennai - 600 005.

9. National Commission for Women represented
through its Chairperson, Plot-21,
Jasola Institutional Area,
New Delhi - 110 025.

... Respondents

(R6 to R9 in WP(MD) 9747/2024 vide
order dated.15.07.2024)

Prayer in WP.(MD)No.9747 of 2024: Writ Petition is filed under Article 226
of the Constitution of India, to issue a Writ of MANDAMUS, directing the 1st



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

and 2nd respondents herein to take disciplinary action as against the 4th and 5th respondents by forming an independent committee based on representation dated 26.10.2023.

W.P(MD) No. 12601/2024

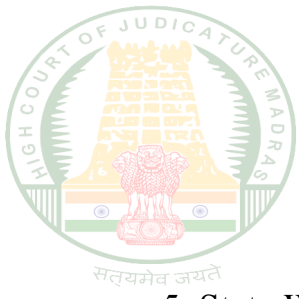
~~XXXXXX~~

...

Petitioner

Vs.

1. The Managing Director,
Arasu Rubber Corporation,
Nagercoil, Kanniyakumari District.
2. The General Manager,
Arasu Rubber Corporation,
Nagercoil,
Kanniyakumari District.
3. The State of Tamil Nadu,
Represented through its Secretary,
Government of Tamilnadu,
Social Welfare and Women
Empowerment Department,
Secretariat, Fort St. George,
Chennai.
4. Union of India,
Represented through its Secretary,
Ministry of Women and Child Development,
Government of India,
New Delhi.



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

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5. State Women Commission,
Represented through its Chairperson,
Tamilnadu State Commission for Women,
Kalas Mahal, 1st Floor,
Chepauk, Chennai - 600 005.

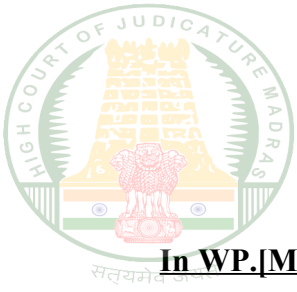
6. National Commission for Women represented
through its Chairperson, Plot-21,
Jasola Institutional Area,
New Delhi - 110 025.

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Respondents

(R3 to R6 are Suo Motu impleaded
vide court order dated.15.07.2024
in WP(MD).12601/2024)

Prayer in WP.(MD)No.12601 of 2024: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of CERTIORARIFIED MANDAMUS, to call for the records of the impugned proceedings passed by the second respondent in Se.Mu.Aa.No.Pa2/12261/21 dated 27.06.2022 and the consequential impugned appeal rejection order passed by the first respondent in Se. Mu. Aa.No. Pal/8231/22, dated 23.01.2023 and quash the same and consequently, direct the respondents to grant the petitioner all service and monetary benefits.



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

In WP.[MD] Nos.13981 & 9747 of 2024

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For Petitioner : Mr.Niranjan S.Kumar
: Dr.U.Nirmala Rani-*Amicus Curiae*

For Respondents : Mr.Veerakathiravanan, AAG assisted by
Mr.S.Shanmugavel, AGP
for RR1 to R3 in WP.MD.No.13981/24
: Mr.N.Ramesh Arumugam,GA
for RR1 to R3 in WP.MD.No.9747/2024
: M/s.David Sundar Singh
Ms. J.R.Annie Abinaya
for RR4 and 6 in WP.MD.No.13981/24
for R8 in WP.MD.No.9747/2024
: Mr.K.Govindarajan
for RR5 & R7 in WP.MD.No.13981/24
for RR7 & 9 in WP.MD.No.9747/24
: Mr.R.Karthic Rajan
for R5 in WP.MD.No.9747/24
: Mr.S.Bharathy Kannan
for R4 in WP.MD.No.9747/24

In WP.[MD] No.12601 of 2024

For Petitioner : Mr.K.Vamanan
Amicus Curiae : Dr.U.Nirmala Rani
For Respondents : Mr.A.K.Manikkan for RR1 and R2
: M/s.David Sundar Singh
J.R.Annie Abinaya for RR3 & 5
: Mr.K.Govindarajan for RR4 & 6



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

COMMON ORDER

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For the sake of convenient discussion and understanding the contents of this order is divided into seven parts as given below:

PART-I	Statement about the consent given by the petitioners	8
PART-II	Facts of the case and course of the events leading to the larger interest	10
PART-III	Submissions of the learned counsels of both sides and the <i>Amicus Curiae</i>	35
PART-IV	Discussion on the (i) Special features of the PoSH Act in comparison with the significant features of International legislations on similar subject (ii) March of law (iii) Various guidelines of the Supreme Court (iv) ground realities revealed through field research	42
PART-V	Limitations of legislative measures	103
PART-VI	Preventing factors to achieve the objects of the Act	112
PART-VII	Directions	128

PART -I

Statement about the consent given by the petitioners

Before proceeding to the facts and discussion in these matters, the reasons for disclosing the names of the aggrieved women, who are the petitioners in W.P.(MD).No.9747/2024 and W.P. 12601/2024, and who had given complaints alleging sexual harassment in their respective work places



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

have to be stated.

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2. When it was assured to the aggrieved women who are the petitioners in W.P.(MD).No.9747/2024 and W.P. 12601/2024 that their names and details leading to disclosing their identities will not be revealed in the cause title or the copies furnished to them, in view of the special provision under sec.16 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (in short -“PoSH Act”) to protect privacy. Surprisingly, the respective counsels for these petitioners submitted that these petitioners don't have any objection to mention their names and they wished it to be done in their best interest. They have also filed affidavits in this regard. Hence the names of these petitioners have been mentioned in the cause title and in the discussion wherever necessary.

2.1. However, in the event of media and press reporting, the names of these petitioners shall not be disclosed without their consent or by getting permission from this court.



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

PART- II

Facts of the case and course of the events leading to the larger interest

W.P. (MD) 13981/2024 and W.P. (MD) .No.9747/2024

3. ~~Dr. Supraja~~, who is the petitioner in W.P. (MD) 13981/2024 is working as an Assistant Medical Officer / in-charge of Residential Medical Officer of the third respondent Medical College Hospital. ~~Dr. Reshmi M Nair~~, who is the petitioner in W.P.(MD)No. 9747/2024 and is a colleague of ~~Dr. Supraja~~ and she is also working as an Assistant Medical Officer in the same hospital.

4. ~~Dr. Reshmi M Nair~~ (W.P.No.9747 of 2024) has filed the writ petition for seeking a writ of mandamus to direct the first and second respondents to take disciplinary action against the fourth and fifth respondents by forming an independent committee based on her representation. At the relevant point of time when the petitioner gave the complaint dated 16.10.2023 against the fifth respondent he was in-charge of Resident Medical Officer (RMO). The petitioner had to report to him for duty. As per the directions of the third respondent Principal, the petitioner was assisting the fifth respondent in his official works. By taking advantage of that proximity, the fifth respondent



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

developed unwelcome and sexually coloured conversations with her. On 16.10.2023, she had given a complaint against him to the third respondent Principal. The third respondent Principal did not take any action on the complaint. Instead on 17.10.2023, he called for explanation from the petitioner for lodging the complaint on 16.10.2023, on which day she was on leave.

5. The Personal Assistant of the Principal had also indulged in such kind of sexual harassment and the aggrieved persons have given complaints against him. Fifth respondent was alleged to have causing sexual harassment to the intern girls and they had given complaints to the principal.

6. As the principal was in the habit of shielding the perpetrators, the petitioner needed to lodge a police complaint against the fifth respondent. In pursuant to which a case has been registered. Subsequently, fifth respondent was arrested and later released. So far, no enquiry has been made through Internal Complaint Committee as per sec.11 of the PoSH Act, though she had given a representation in this regard on 26.10.2023. Neither Internal Committee inquiry has been initiated. So she had filed this writ of mandamus seeking



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

direction against the 1st and 2nd respondents to take disciplinary action against the 4th and 5th respondents by forming an independent committee based on the representation dated 26.10.2023.

7. When this case was taken up on 22.04.2024, this Court raised a concern as to whether there is an Internal Committee in the first place and whether the complaint was referred to Internal Committee (*Vishaka* Committee). Though this court has called for a status report from the second respondent Director of the department, the report was not filed until such time this court has passed orders in certain connected writ petitions including the writ petition filed by ~~Dr. Supraja~~ in W.P.(MD) No.13981 of 2024. I feel it is appropriate to state the details of those orders in due course, without affecting the flow of narration of facts now.

8. ~~Dr. Supraja~~, the petitioner in W.P.(MD) No.13981 of 2024 held the additional charge of the Residential Medical Officer (RMO) subsequent to the arrest of the fifth respondent (in W.P.(MD) No.9747 of 2024) and against whom ~~Dr. Reshma M. Nair~~ had given the police complaint. After ~~Dr. Supraja~~



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

assumed charge, she took cognizance of similar such complaints made by the interns and students of the institution against a Lab Attender and the fifth respondent in W.P.(MD) No.9747/2024. She tried to take steps to stop such misconduct. As the Principal was taking sides with the perpetrators, ~~Dr.Supraja~~ found it very difficult to ensure any action with her limited power.

9. The third respondent Principal who did not relish the pro-active spirit of ~~Dr.Supraja~~ retaliated by issuing various memorandum to ~~Dr.Supraja~~ calling for explanation and they were for flimsy reasons. On a complaint given by a third party, the principal had placed her under suspension on 24.06.2024. So she filed a writ petition in W.P.(MD) No.13981 of 2024 and challenged the order of suspension and the matter was ordered to be listed on 28.06.2024.

Subsequent Developments and incidental facts

10. On 28.06.2024, when the case was posted it is submitted that the commissioner had revoked the suspension after getting a report from an inspection team appointed by him, to inspect the hospital, make enquiries and find out the real facts behind these confusions.



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

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11. One male doctor by name Dr. Rajapandi who is functioning as the Head of the Department in the same medical college hospital had been in support of the aggrieved girls and colleague, when the principal was not in a mood to take any action. In fact ~~Dr. Reshmi M. Noir~~ had also told him about the harassment caused by the 5th respondent, as he was the Head of the Department. As Head of the Department Dr. Raja Pandi had taken some pro-active steps which were not appreciated by the principal. The principal called for explanation from him by shifting the blame and stating that he did not bring the allegations of sexual complaint to his knowledge at the earliest. He also directed Dr, Rajapandi to appear for an enquiry before him on a complaint sent by a third party.

12. Dr. Rajapandi had filed a Writ Petition in W.P.(MD) No.9739 of 2024 and stated that he was not given with the copy of the complainant and the principal has some malicious intention to initiate action against him. So he prayed a direction against the Government to consider his representation and appoint some other enquiry officer.



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13. As it appeared some power games was being played in a responsible Institution like a hospital, this court has passed an order after making observation in this regard and directed the concerned to consider his representation.

14. In view of the observation made in the above order about the apprehension of some power games in the institution and also taking cognizance of the fact that ~~Dr.Supraja~~ also suspended, the Government appointed an Inspection team comprising senior professors of outside Institutions to study the real facts behind the suspension of ~~Dr.Supraja~~. The team conducted the inspection by verifying the records and making enquiries and submitted a report stating that the principal has given a false statement.

15. Basing on the report of the inspection team, the order of suspension issued against ~~Dr.Supraja~~ was revoked and the period of her suspension has been treated as duty. In the order revoking suspension, the facts about the appointment of Inspection committee and the false statement made by the principal and as revealed by the inspection team have been mentioned. It is also



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

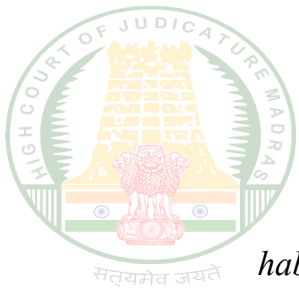
mentioned that there is no *prima facie* ground is seen to be present to place

~~Dr. Supraja~~ under suspension.

16. When the above facts were presented before this court on 28.06.2024 this Court took a serious note of the gross institutional insensitivity shown to the complaints of sexual harassment in a work place like a Government Hospital which falls under essential service category and revengeful action taken against employees who supported the cause of the aggrieved women and students, this court thought it fit to deal with the larger issue in the public interest and passed the following order for impleading the State and Union Government along with the State and National Women's Commission as parties and the order is reproduced as under;

“The petitioner has filed this writ petition challenging the order of suspension issued by the 3rd respondent. The learned counsel for the petitioner submitted that the order of suspension has been issued by the third respondent without authority and with malice.

2. The petitioner is an Assistant Medical Officer/in charge of Residence Medical Officer of the Government Ayurvedic Medical College and Hospital. It is alleged that the third respondent who is the Principal of the college has been in the



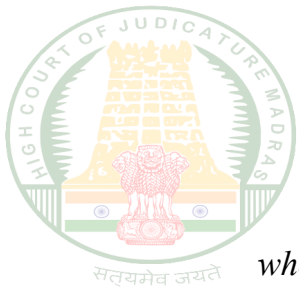
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habit of taking sides with a medical officer and a staff against whom sexual allegations have been made by the students and a female medical officer. An another doctor who had insisted to take action against those caused sexual harassment and supported the cause of the victims had also been harassed by placing him under suspension and he had filed a Writ Petition in W.P.(MD).No 9739/2024 to get appropriate relief. An order has been passed in the said writ petition by directing the first respondent to consider the representation of the petitioner in the said writ petition and also give proper direction to the third respondent.

3. In fact the doctor against whom the sexual harassment is made, has also filed a Writ Petition in W.P.(MD).No.9747/2024 for seeking the constitution of a Committee for enquiring her complaint. Since the respondent in the said writ petition has stated that the complaint is referred to Gender Sensitisation Internal Complaints Committee, an order has been passed on 11.06.2024 to submit a status report of the above enquiry.

4. Now this petitioner has filed this writ petition that herself and her colleagues including the petitioner in W.P.(MD).No.9747/2024 have been given with unnecessary troubles by the third respondent and he had even placed the petitioner under suspension.

5. It is submitted that false complaints and the pseudonymous complaints given by third parties were given undue significance and severe actions like placing the medical officers under suspension have been taken by the third respondent. In fact



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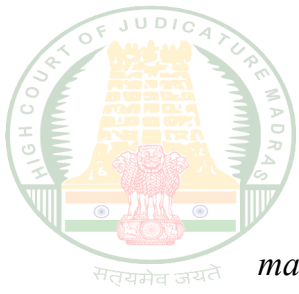
when the matter is taken up today it is brought to the notice of the Court that the second respondent had properly appraised the matter and passed an order dated 26.06.2024 by revoking the suspension order issued against the petitioner. The above order has been passed by appraising the ground realities and the observations made in the said order is also supportive to the contentions now made by the petitioner.

6. Even though the suspension of the petitioner has been revoked by the order of the second respondent dated 26.06.2024, the issue involves larger interest.

7. There are instances pointed out where women employees in work places or girl students in educational institutions, who report sexual harassment are either treated without due sensitivity or put to secondary victimisation. In fact their colleagues who support the complaining women staff or the students by showing empathy were also treated with vengeance by being insensitive or perverse superiors. The perpetrator and the superiors join in one team and commit all acts amounting to secondary sexual harassment.

8. This would defeat the very purpose and object of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act 2013 and this would be counter-productive to the interest of the working class irrespective of their sexes. Lack of harmony between male and female workers would spoil the fair work environment.

9. Hence a fair appraisal is needed as to whether the



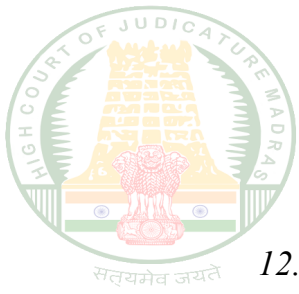
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mandates of the special legislation has been followed in all work places; whether there are hurdles in achieving its objectives and if so what causes such hurdles and what is the way forward. If no real progress is made even after the above special legislation is brought or the fence itself is used as whip in the hands of persons who are insensitive or perverse but at the helms of the affairs of the respective work place, that would require urgent measures.

10. So, I feel it is in the larger interest, the matter has to be heard elaborately by suo-motu impleading the following necessary parties.

- 1. State of Tamil Nadu, represented through its Secretary, Government of Tamilnadu, Social Welfare and Women Empowerment Department, Secretariat, Fort St.George, Chennai.*
- 2. Union of India, represented through its Secretary, Ministry of Women and Child Development, Government of India, New Delhi.*
- 3. State Women Commission, Represented through its Chairperson, Tamilnadu State Commission for Women, Kalas Mahal, 1 st Floor, Chepauk, Chennai-600 005.*
- 4. National Commission for Women represented through its Chairperson, Plot-21, Jasola Institutional Area, New Delhi- 110 025.*

11. Issue notice to the newly impleaded respondents, returnable in two weeks.



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

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12. Registry is directed to carry out necessary amendments in the cause title and list the matter on 15.07.2024 by tagging it along with W.P.(MD)No.9747 of 2024. “

17. When the matter was taken up on 15.07.2024, the learned counsel for the petitioner represented that despite the order revoking suspension of ~~Dr. Supraja~~ was issued and in the said order the period of suspension is ordered to be treated as ‘duty’ the request given by ~~Dr. Supraja~~ to the Principal to draw her pay for the said period was not even received by him.

18. However, Mr.Veeera Kathiravan, Additional Advocate General who made his appearance on the said day submitted that suitable instructions would be given to the principal from the side of the Government. By understanding the undesirable events taking place in the institution, he agreed that the matters involves larger interest.

19. On 25.07.2024 a status report was filed by the Director / Commissioner stating that the fifth respondent in W.P.No.9747 of 2024 has been relieved from the College on 05.07.2024. The fifth respondent had



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

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already filed a writ petition in W.P.No.6771 of 2024 to quash the order of suspension issued against him. On 01.04.2024 an order has been passed to consider his representation for revocation of suspension. Subsequently, the suspension against the fifth respondent was revoked and he was transferred to Theni District. It is informed to the court that he had been served with a charge memo on 15.07.2024 for initiating departmental action.

20.The third respondent principal who has been arrayed in his personal capacity as the 4th respondent in W.P. (MD). No.9747/2024 has filed his counter stating that the disgruntled persons have been filing various writ petitions challenging his posting as the principal and that they had induced these petitioners to raise false allegations against him. In view of the pro-active measures already taken by the government by appointing an external Inspection team and acting upon its report, the job of this court to appreciate the averments in the counter has been simplified and hence it is unnecessary now. This is more so in view of the fact that the actions taken subsequent to the orders of this court passed in W.P.(MD) No.9739 of 2024 and a few more interim orders granted in these matters have substantially remedied the grievances raised by



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

the petitioners. However, the principal is at liberty to raise the contentions which he made in the counter, in his explanation, if he is called upon to offer any explanation for the lapses on his part.

21. The facts, sequence of events and the orders passed by this court in the above petitions would show the herculean efforts taken by individual woman employees, because they dared to complain the sexual harassment without opting to sweep it under the carpet. The amount of time, money spent on litigation and the stress undergone during the course of these actions would show the insensitivity in implementing the mandates of the Act in terms of the objects of the PoSH Act.

22. Another shocking fact revealed in the status report filed by the director of Indian Medicine and Homeopathy is that the Internal Complaints Committee in the Government Ayurveda Medical College and Hospital has been constituted by the principal only on 23.02.2021 and later re-constituted on 08.05.2024. The Supreme Court had issued the *Vishaka* Guidelines and the directions in the year 1997 and the Act itself has come into force in the year



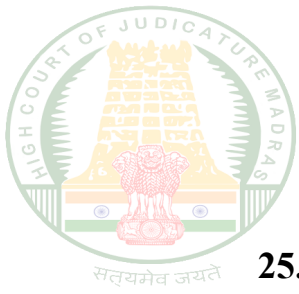
W.P.(MD)Nos.13981, 9747 & 12601 of 2024

2013, but the hard core reality is that there are Institutions which do not have an Internal Complaints Committee by taking it seriously.

W.P.(MD) No.12601 of 2024

23. A similar matter in W.P.(MD) No.12601 of 2024 has also be been listed on 15.07.2024 and it has also been ordered to be listed along with the above two writ petitions. The short facts and orders passed in W.P.(MD) No.12601/2024 as given in the following paragraphs would show the relevancy of tagging all the three matters together for the purpose of dealing with the larger issue, even though the substantial reliefs sought by the petitioners have been granted.

24. W.P.12601 of 2024 has been filed by ~~Ms.L.C.Vanitha~~ to challenge the order of punishment dated 27.06.2022, consequent to the finding of the Internal Committee that she had given a false complaint of sexual harassment against her superior and also the confirmation order of the appellate authority dated 23.01.2023.



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

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25. The petitioner has been working as a ministerial staff in the second respondent company which is a Government of Tamil Nadu undertaking. The first respondent in W.P.(MD). No.12601/2024 is the Managing Director and the second respondent is the General Manager of the Company. In pursuant to the Government Order dated 08.05.2021 issued during Covid pandemic all the Government Offices except the essential departments were under lock down between the period from 10.05.2021 to 21.05.2021. As the petitioner's company did not fall under the essential service and there is no transportation facility available, she did not attend the office during the said period. However, on 25.01.2021 she was issued with a show cause notice as to why her salary should not be withheld during her absence from 10.05.2021. Subsequently, she was given with a charge memo stating that she was on unauthorized absence from 10.05.2021 to 06.06.2021. The petitioner's request for allowing her to be at home due to pandemic was not considered. Being not satisfied with the explanation given by her, she was imposed with the punishment of stoppage of increment for one year and censure.

26. The petitioner has alleged that she anticipated the above order



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

because she was facing frequent harassment caused to her by the Divisional Manager. In fact she has stated the same in her explanation submitted to the memo issued to her. The petitioner has not challenged the order of punishment imposed on her on the allegation that she remained on unauthorized absence from 10.05.2021 to 06.06.2021 and that she did not stay in the Headquarters.

27. Her explanation that the above period fell during Covid lock down and that she could not stay in the Headquarters is not accepted by the authorities concerned. However, the above action or the consequent punishment were not the matters under challenge in this writ petition.

28. In the explanation submitted to the charge memo given to her, she has stated that she used to be harassed by the Divisional Manager and that he would abuse her with unparliamentary words with sexual content.

29. On 25.06.2021 she has given a complaint against the Divisional manager stating that he used to abuse her with unparliamentary words and other derogatory remarks which would amount to sexual harassment. On 26.06.2021,



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

she has given a complaint alleging the sexual harassment given to her by the Divisional Manager.

30. The first respondent Managing Director has referred the complaint to the Internal Committee and the Committee gave a report stating that the complaint was false and that it was given with a *mala fide* intention. On 25.02.2022, she was called for explanation for giving a false complaint. Thereafter, she requested a copy of the report vide her letters dated 11.03.2022, 17.03.2022 and 07.04.2022 and only thereafter, she was given with the required documents including a copy of the report. Subsequently, she was imposed with the punishment of stoppage of two years increment without cumulative effect. The appeal preferred by the petitioner also was rejected by confirming the order of punishment.

31. On 25.07.2024 when the matter was posted and upon hearing the arguments of both sides and perusing the materials an order was passed by granting the relief sought by the petitioner. The relevant part of the order itself is extracted below in order to avoid the repeat narration of the merits of the



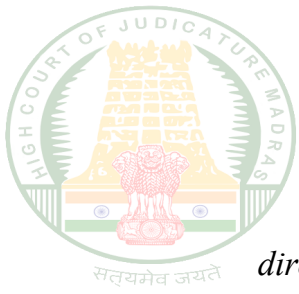
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12. Before advertizing into finding out the genuineness of a complaint alleging sexual harassment in work places, the employer is expected to ensure whether appropriate procedure for enquiring such complaints has been complied in accordance with the true letter and spirit of the PoSH Act. At the first instance when she was raising the allegations, she did not invite any action. She was given with the charge memo for not attending the office during the lockdown period. The petitioner did not give due intimation about her absence and she was not accessible in order to render effective assistance for executing any urgent and most essential works attached to her office.

13. The first time the petitioner raised the allegations of sexual harassment against her superior was during her explanation submitted to the charge memo issued on the allegation of being in unauthorized absence during lock down and not furnishing the contact address when not available in the head-quarters.

14. The petitioner has given a specific complaint on 26.06.2021. During that time she was transferred from the Office to factory premises. Thereafter on 20.07.2021 an Internal committee was constituted by having five members. In the letter of the respondent dated 20.07.2021 it is stated that the term for the earlier members had already been over and hence new members were inducted into the Internal Committee. The composition of the members would show that there is no external member and two members were working



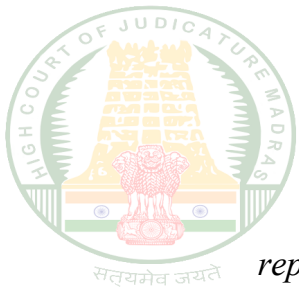
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directly under the control of person against whom the petitioner has given a complaint. Out of five members, one was a male member and he was the direct subordinate to the respondent in the complaint. All the five members were in lower posts than the post of the respondent in the complaint.

15. The petitioner has raised her objection stating that the committee did not comprise an external committee member and that the members are partial and biased. But her grievance was not considered by the respondents and the internal committee proceeded to submit its reply. The petitioner was not given with a copy of the report. Even before that she was given with a charge memo on the allegation that she had given a false complaint against her superior.

16. The charge memo dated 14.02.2022 would show that the charge memo itself is an enquiry report. The charge memo itself contains a finding that the petitioner has given a false complaint against the Divisional Manager. Having arrived at such a conclusion there is no point in seeking for any explanation from her. Even in the counter it is candidly admitted that the petitioner has received the charge memo on 25.02.2022 and thereafter she requested for the records relating to the Internal Committee's enquiry report and she was permitted to peruse the records only on 10.05.2022.

17. In Paragraph No.17 of the counter it has been specifically stated that on 11.03.2022, the petitioner requested for a copy of the final



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report of the Internal Committee and the same was sent to her only on 17.03.2022. It is very pathetic to see that a charge memo alleging false allegations has been given to the petitioner even before she was given with a copy of the Internal Committee's report. But the charge memo was issued on 25.02.2022. The copies of the other records like statement of witnesses were not given to her though she requested, but she was only permitted to peruse all the statements on 21.04.2022 and thus she could peruse the records only on 10.05.2022.

18. Petitioner's explanation submitted to the charge of false complaint has been rejected by the first respondent even though he happened to be the appellate authority. The memo dated 30.05.2022 would show that it was not issued by the second respondent but by the first respondent who needed to keep himself aloof from the disciplinary proceedings. If the appellate authority himself assumes the role of the disciplinary authority, it would presume an understanding between the disciplinary authority and the first appellate authority and that would affect the fairness in case she prefers to file an appeal. As the charge memo has the pre-conclusion about the allegation of false complaint the enquiry can only be a farce.

19. There are also some strong prejudicial content found in the Internal Committee's report and that would show the concerted action executed by the respondents by constituting the Internal Committee with members who can dance to their tune.



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20. *It is mentioned in the report that the petitioner has given a false complaint by wearing in a blanket of a woman. The petitioner is in fact a woman and the phrase wearing a blanket of a woman is demeaning. The Internal committee did not have the content of the cross-examination or the audio recording which the petitioner was alleged to have intended to use as an evidence. Instead of extracting the content of the audio recording between herself and one staff and making it as a material during enquiry, the Internal Committee has attributed motive against the petitioner that she had created false evidence. Without appreciating the materials on record and without appreciating the materials given by the petitioner, the Committee had made negative comments about the reliability of the said material.*

21. *In the final part of the report, the Committee has recommended highest punishment that should teach a lesson to persons like the petitioner. As per Sec.13 of PoSH Act, if the Internal Committee arrives at a conclusion that the complaint is true, then it should recommend the employer to initiate appropriate action against the respondent. Even the person against whom the allegations are proved, the Internal Committee can only make recommendation but it cannot recommend any punishment. If the Committee arrives at a conclusion that the allegations are false, again it can only recommend the employer to initiate action. But the committee had recommended a serious punishment in order to teach a lesson to the petitioner and this itself would show that the Committee has not acted*



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in an unbiased manner and the whole exercise in the name of Internal Committee was just biased and in violation of principles of natural justice. The Internal Committee has exceeded its jurisdiction by suggesting the punishment to the complainant.

22. What is still more curious is the averments made in the counter where it is averred that the petitioner was sleeping till 04.30 a.m. on 30.04.2021 in the office without attending any work and for which the Divisional Manager told the Lab Assistant whether the Managing Director would give salary for sleeping, but that has been misinterpreted by the petitioner in indescribable words. The above averment made in the counter is not even the findings rendered by the Internal Committee.

23. It would have been reasonable and understandable if the genuineness of the complaint is doubted, because the petitioner had made it only when she was called upon to give explanation to the charge memo for her absence during a phase of covid pandemic without any intimation to the Divisional Manager. Even that suspicion ought to have been cleared only by following the due procedure and by giving opportunity to the petitioner to be heard.

24. The composition of the Committee comprising members who are subordinate to the Divisional Manager without any external member and brushing aside the objection raised by the petitioner in this regard would also make the proceedings of the committee vitiated.



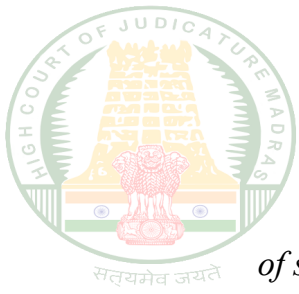
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There are enough materials even in the counter filed by the respondents to show that something had happened on 30.04.2021 which was prior to the issuance of the charge memo given on the allegation of absence to duty during lock down.

25. When there are prima facie reasons to believe about the possibility of some incident in all fairness, the respondents ought to have constituted a committee comprising of members as how it is prescribed under sec. 4 of the PoSH Act.

26. The punishment suggested in the report of the committee and executed through the impugned order of the second respondent and the double standard adopted in appreciating the explanation given by the Divisional Manager and the statement of the petitioner would also cause clouds on the fairness of the enquiry. While the committee had chosen to accept the explanation given by the Divisional Manager as a gospel of truth with all seriousness, the statement made by the complainant in her complaint alleging sexual harassment was expected to be proved with the evidence of other witnesses and materials which the committee was not willing to receive even when offered by the complainant.

27. In an improper, biased and slipshod enquiry of the Internal Committee which rendered a finding that the complaint is false, disciplinary action has been initiated without complying the principles of natural justice and that has resulted in the punishment



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of stoppage of two years increment without cumulative effect, slapped against the petitioner. The petitioner could have sought a prayer to set aside the report of the internal committee, but it appears she has not been advised so. As the committee itself has not been constituted in accordance with the mandates of sec.4 of the PoSH Act and the findings has been rendered in an improper and biased enquiry and the action consequent to the finding of the false complaint has not been taken in accordance with sec.14 of the Act, the report itself is vitiated and illegal. So the report can be ignored as non-est. And in all fairness the impugned orders are liable to be set aside.”

Common thread connecting these three cases:-

32. The facts involving these three petitions are like three stories falling under the same genre and exhibited on one screen. The lack of sensitivity and fairness on the part of the authorities who are bound to take action on the complaints of sexual harassment at work places is glaringly visible in these petitions.

33. One of the petitioners ~~Dr. Supraja~~ was being targeted in view of the sensitivity with which she wished to treat the complaints of sexual harassment against the students and a women doctor. Her colleague Dr.Raja Pandi also tasted the same water for showing empathy towards the complainants. The



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

other petitioner ~~Dr. Reshmi M. Nair~~ was needed to knock the doors of this court even to initiate an action on the complaint raised by her. Yet another petitioner ~~Yanika~~ was penalized for filing a complaint against her superior and in a hasty action initiated against her, she was slapped with the punishment of two years of stoppage of increment without cumulative effect on a report submitted by the Internal Committee, whose composition is not compatible to the mandates of the Act.

34. Even though the State and Central Governments along with the State and National Women's Commission were impleaded as parties in W.P.(MD)13981 of 2024, I felt that they should be added as parties in W.P.(MD) 9747 /2024 and W.P. (MD) 12601/2024 also and ordered to be posted along with W.P.(MD) 13981of 2024 to hear the arguments on the larger issue.

35. This court thought it fit that the inputs of a person who has the field level experience in the issues of offences against women including sexual harassment in work places should be appointed as an *Amicus Curiae*. So, Dr. U.Nirmala Rani, a women rights Advocate and an activist and who had done



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

her doctoral study on the victims of sexual harassment and authored a few books on the same subject was appointed as the *Amicus Curiae* in order to assist the court.

36. In the order dated 28.06.2024 in W.P.No.13981 of 2024. This Court has felt that a fair appraisal is needed as to the following two issues:

(a) whether the mandates of the special legislation has been followed in all work places?

(b) whether there are hurdles in achieving its objectives and if so what cause such hurdles and what is the way forward?

PART-III

Submissions of the learned counsels of both sides and the *Amicus curiae*:

37. Mr.Veera Kathiravan, learned Additional Advocate General had submitted that the State of Tamil Nadu is taking all possible steps for the effective implementation of the Act. In support of his submission he also produced the report of the Social Welfare and Women Empowerment Department. The report contained a letter of the Chief Secretary dated 16.02.2023 in letter No.3868035/SW3(2)/2023-2 and it had issued detailed



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

guidelines for Employers, District Officers, Nodal Officers in the State for strict implementation of the Sexual Harassment of Women at Workplace Act. It is further stated that capacity building programmes are being conducted with Legal Experts for Stake Holders for the awareness and sensitization of the Act and safety boxes have been placed in many work places.

38. As per the statistics supplied by the Government of Tamil Nadu, as on June 2024, 19,475 internal committee were formed in 38 districts, out of which, 6332 are in Government Departments and 13,143 are in private sectors. The statistics states that **so far 305 cases were registered** and 276 cases were enquired and 24 cases are pending. It also states that 13,789 awareness programmes were conducted and helpline 181 has been introduced for creating the safe environment for women and children. It is also claimed that due publicity has been given and women empowerment programmes are being conducted. It is further stated that 1047 Nodal Officers have been appointed in 38 districts.

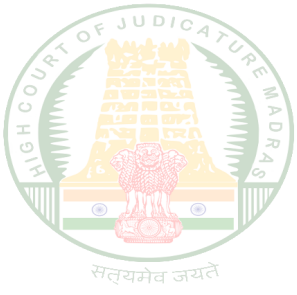
39. Despite all these measures, only 305 complaints have been received



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

from 19,475 Internal Committee, is a surprising figure. This would lead to a presumption that there were only less number of incidents of sexual harassment against women in work places and the State is spending its sources disproportionately. Or only less number of aggrieved women have given complaints. The course of the discussion would cull out the real fact for this less number of reported complaints.

40. Even among the women employees who have given complaints, some rush to court for seeking various directions including the direction to constitute the Committee in accordance with sec.4 of PoSH Act or to challenge the procedural violations or retaliatory action taken by alleging that the complaints were false. In fact, the cases in hand themselves are proof for this stark reality. Un-responsiveness, improper action coupled with unaccountability, lack of proper support, vindictive back action to stultify the complaints and to discourage the complainants or her supporters appears to be the order of the day and these negative features are glaringly visible in the cases in hand.



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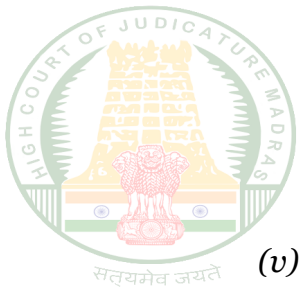
41. Dr.U.Nirmala Rani, the learned *Amicus curiae* has submitted from her field experience and the datas obtained from the filed level study conducted by Organizations working on the issues of women, that the following hurdles block the effective implementation and realization of the objects of the Act:

(i) *In several government organizations and private sectors the very constitution of the internal committee itself has not been done in accordance with the PoSH Act.*

(ii) *As per the information obtained by one of the Non-Governmental Organizations from a District Collectorate on the question of constitution of internal committee, they were given a reply that the Trade Unions have been addressed to form the Internal Committee. (A copy of the information dated 02.03.2022 furnished by the Information Officer of the District Industrial Centre of a District has been produced to show the same). It would only show that the authorities did not even know the basics about the internal committee and the significance of PoSH Act. The enforcing authority do take the non compliance seriously and no action has been taken so far.*

(iii) *Even in those places where internal committees are constituted they do not have a sign/ display board in order to show its existence.*

(iv) *Unorganized sectors do not have the awareness of PoSH Act, even when complaints are received actions are not initiated within the prescribed time limit.*



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(v) *Even though conciliation is at the option of the complainant, it is misconstrued that to have a conciliation process is mandatory.*

(vi) *The Internal committee members do not know the manner in which the enquiry should be conducted.*

(vii) *The basic level workers in unorganized sectors do not have any awareness about the act and they also do not have the wherewithal to fight and there is no support mechanism. In many places the internal committee members forced to discourage the complainants by having conversation in the employers presences.*

42. The learned *Amicus curiae* lamented that the Internal committee expects the production of witnesses to prove the allegations of sexual harassment which occur privately: the complications will be more severe, if the respondent happens to be the superiors and the mandatory time limit is not followed while conducting the enquiry.

43. The learned *Amicus curiae* further submitted that in compliance of Rule 13(a) of the PoSH Act, every organization is required to formulate and widely disseminate an internal policy for Prevention, Prohibition and Redressal of sexual harassment at the work place, in order to promote gender sensitive

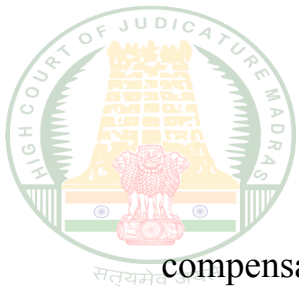


W.P.(MD)Nos.13981, 9747 & 12601 of 2024

safe space and remove the underlying factors which contribute towards a hostile work environment against women; but organizations do not take it seriously and frame any policy in compliance of the above requirement. The employers do not take it seriously to organize the workshops or awareness programs to sensitize the employees to the provisions of the Act and to disseminate information about the existence of the committee.

44. It is submitted by the *Amicus curiae* that many woman employees believe that only rape is a sexual harassment and they are ignorant about that verbal abuses, double entendre, comments, remarks and objectionable signs and gestures are also sexual harassment. Many victims do not know that they can give complaint through someone when it is not possible for them to give the complaint in person.

45. The other concerns raised by the learned *Amicus curie* are that there is no proper data available to ascertain the internal committee; copies of the reports not furnished to the victim; victim is not given with any assistance to lodge a police complaint when she intends to lodge a complaint; no



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

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compensation has been granted even when the same is proved; no mandatory mechanism is put in place in order to oversee the implementation of the provision of the Act; many woman employees do not report sexual harassment as they fear loss of job; the complainants are subjected to secondary victimization and they are compelled to withdraw the complaints and the victim blaming mindset has not changed in many places.

46. As per Section 12 of the PoSH Act, the perpetrator shall be transferred from the place where the occurrence is said to have occurred, at the request of the victim. But in many places the victim is transferred without notice. In many places the vindictive actions are taken against the complainant and they are punished by alleging that the complaint is false. Inappropriate or insensitive members of the committee spoil the whole purpose and they should not be allowed to remain as members of the Committee.

47. Ms. Annie Abinaya, the learned counsel for the Tamil Nadu State Women Commission also submitted similar concerns raised by the *Amicus curiae* as the hurdles in the way of effective implementation of the PoSH Act.



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

While agreeing that there is no Internal Complaints Committee in many of the Establishments and even in the existing committees, the members do not have the capacity to deal with the complaints and they do not instill confidence in the minds of the aggrieved women. It is further submitted that the advanced technology has not been used for the effective implementation of the Act.

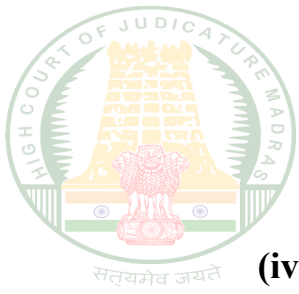
48. Ms.Annie Abinaya besides highlighting the various initiatives taken by the State Women Commission to spread awareness about the PoSH Act has also furnished the model draft Rules for PoSH Act. Though the Central Government has already framed its rules and notified, the State Government has not yet framed the rules so far.

Rest of the submissions are referred during the course of the discussion and as and when relevant points.

PART-IV

Discussions on the

- (i) Special features of the PoSH Act in comparison with the significant features of International legislations on similar subject**
- (ii) March of law**
- (iii) Various guidelines of the Supreme Court**

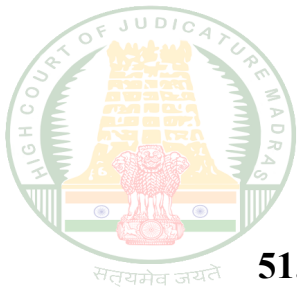


(iv) ground realities revealed through field research

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49. The civil society and the courts had taken serious note of the menace of sexual harassment against women in workplaces during the year 1997 when a woman worker in a village of State of Rajasthan was gang raped in front of her husband by some higher caste men of the village. The victim and her husband were subjected to secondary victimization when they approached the law enforcing officers to initiate action. Apathy and indifference was the only answer they got from all the stakeholders. Even when the charge sheet was filed against the accused, they were acquitted at the end of the trial on flimsy grounds.

50. Subsequently a writ petition has been filed before the Supreme Court as a class action by certain social activists and NGOs with the aim to focussing the attention towards this societal aberration, and assisting in finding suitable methods for realisation of the true concept of '*gender equality*'; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation. This was the origin of the birth of *vishaka* guidelines.



51. In fact these guidelines were governing the field until the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, (hereinafter called as Act or PoSH Act) was brought in the year 2012 and implemented in the year 2013.

52. The Act gives a wider inclusive definition to the terms '*aggrieved woman*' and '*sexual harassment*' and '*workplace*'. In view of the exhaustive and inclusive definition of the aggrieved woman, the act brings any woman coming into contact with a work place for any age under its ambit. If any such woman complains of any sexual harassment in a particular work place, the employer of that place has the responsibility to take it serious and cause it to be enquired by an Internal Committee or Local Committee as the case may be. So the Act make it possible that all women who have the grievance of sexual harassment at a work place, irrespective of the fact whether she is employed there or not.

53. Similarly the perpetrator against whom the allegations are made also need not be a person working in the work place. It includes any person who



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happens to be present in the precincts of the work place for any reason but causes sexual harassment on a woman who is present in that place. This is with a view to ensure that the business in any work place should be harmless to the women who is present in any work place and the discriminatory menace like sexual harassment shall not dissuade them from carrying out their functions in the work place or get any services from there. The protection given in this act is in addition to and not in derogation to any of the provisions of any other law in force (sec.28). The definition of ‘*aggrieved woman*’ as found under sec.2(a) of the Act is extracted below:

2. Definitions,

— (a) “*aggrieved woman*” means—

(a) *in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;*

(ii) *in relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house.*

54. The act of sexual harassment as defined under the act is exhaustive and inclusive of physical, verbal and non-verbal and it can be seen under sec. 2(n) of the Act is as below:

(n) “*sexual harassment*” includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—



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W.P.(MD)Nos.13981, 9747 & 12601 of 2024

- (i) physical contact and advances; or*
- (ii) a demand or request for sexual favours; or*
- (iii) making sexually coloured remarks; or*
- (iv) showing pornography; or*
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;*

55. The definition for ‘workplace’ under sec.2(o) of the Act is inclusive of every single establishment including the dwelling house where the domestic workers are employed. It is given as under:

- (o) “workplace” includes—*
- (i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;*
 - (ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;*
 - (iii) hospitals or nursing homes;*
 - (iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;*
 - (v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;*
 - (vi) a dwelling place or a house;*

56. Sec.3of the Act prohibits sexual harassment of any kind in any work



place.
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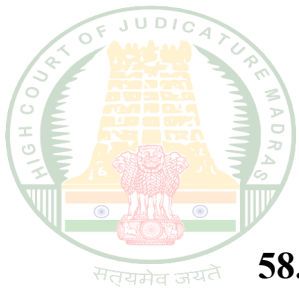
Sec.3 Prevention of sexual harassment.—

(1) No woman shall be subjected to sexual harassment at any workplace.

(2) The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:—

- (i) implied or explicit promise of preferential treatment in her employment; or*
- (ii) implied or explicit threat of detrimental treatment in her employment ; or*
- (iii) implied or explicit threat about her present or future employment status; or*
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or*

57. Though *Vishaka guidelines* mandated various measures to be taken by establishments to combat sexual harassment in workplaces, there is a lukewarm response and the insensitivity to the menace continues. It is upsetting that directions need to be given to the agencies even after several years to ensure that Internal Committees are in place. The Government and other stakeholders who are under the obligation to monitor the implementation of the mandates of the act, are complacent by sending advisory letters to the concerned authorities, without initiating any penal action under sec. 26 of the Act.



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58. Many of the work places do not have internal committees or they were not formed in strict compliance to the type of composition contemplated under sec.4 of PoSH Act. The external member in such committees is either absent or her/his presence is just formal. One external member is placed in several committees just for the sake of having them, without realizing the object of having them.

59. It was brought to the notice of this court by the learned *amicus curie* that even the Government officers do not have the knowledge about the features of Act. In a shocking response given to a social worker under RTI Act with regard to the constitution of internal committees in certain unorganised sectors, an information officer of a District Industrial Centre has given a reply stating that the *Trade Unions were addressed* to implement the formation of such committees. This sad state of affairs would show that there is no basic knowledge among the officers of the Government agencies about the Act and its essential ingredients.

60. From a research report submitted by the learned *amicus curie* before



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

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this court after a Field Inspection done by two Non Governmental Organization with regard to the existence of internal committee in 60 Institutions, it is seen that 39 Institutions do not have the committee; 5 Institutions did not come forward to furnish information as to whether they have such committee or not and only in 16 Institutions Committee are found to be in place. The female workers in 8 Institutions were reported to have faced sexual harassment; workers of only 10 Institutions were aware of the existence of internal committee; 28 Institutions did not know about the existence of such committee and only in 9 Institutions, the women members are present in the complainant committee and only 5 institutions had the women as the Chairperson of the internal committee.

61. It is further seen from the report that 8 Institutions had taken revengeful action against the complainants. Defamatory remarks have been made against the complainants in eight other institutions. In 2 institutions, the colleagues had come forward to depose evidence and in 19 institutions the colleagues did not come forward to depose evidence. Only 7 institutions have the outside members in the committee. In 20 institutions, there was no outside



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

member. Only 4 institutions had the information board about the existence of the committee. As per the information available, among the institutions which have committees, only 2 committees hold meeting every month; 3 committees hold meeting once in three months and one committee holds meeting once in a year and 2 committees do not convene meeting at all.

62. Yet another Research paper published by the Department of Criminology, Manonmanium Sundaranar University on a research work undertaken by one Dr.Padmini involving 1200 women employees working in public and private sector organisations, including victims and non victims between the age group of 21 to 53 years with the objective of identifying the form of sexual harassment in work places in Tamil Nadu, would state that 63.70% of the women employees were affected by “*quid pro quo*” (*this for that*) and the remaining 36.30% are affected by hostile work environment (pervasive and unbearable). 56.30% of the women employees have stated that sexual harassment had taken place in the form of “touching by offenders” and 33.0% by showing “pornography” and 11.5% through any other unwelcome physical, verbal, non-verbal conduct of sexual nature.



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63. The research further revealed that 60.70% of the women employees do not report the sexual harassment to the authority concerned. 26.30% of the women employees have reported it to the Head of the Department of the organisation; 8.5% of the women employees have reported to the internal complaints committee and the remaining 4.50% of them have reported the sexual harassment to the Police. Some of the reasons stated by the victims for not reporting the sexual harassment is “loss of job” (23.80) and “out of fear” (16.20). *13.40% of the women workers have stated that they did not experience sexual harassment because their office is women friendly and 11.80% have stated that they do not have such issues because there are more number of women workers.*

64. A glance of the above Research Reports, shows that the legislative measure of bringing a special legislation like PoSH Act have only limited impact in controlling the menace of sexual harassment in work places. It also reveals the negative repercussion faced by some of the aggrieved woman. The one and only consoling fact revealed through the research report is that those



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

institutions which have women friendly environment and where women workers are in larger numbers, there is no sexual harassment.

65. The research reports would convey the bitter truth that the Internal Committee mandated under the PoSH Act did not instill confidence in the minds of the affected women to come forward and give the complaint. Apart from the indifference and apathy in the minds of the members of the Committee, the influence exerted by the employers on the committee, reverse actions like retaliations are some of the secondary harassment caused to the victim women.

66. The frequent news paper reports about the horrible incidents of sexual violence in work places especially in certain type of industries and other similar reports of such incidents occurring in several parts of the country would also tally with the findings of the above research.

67. Another set of guidelines have been given by the Supreme Court in a ***Medha Kotwal Lele and Ors. Vs Union of India, (AIR 2013 SC 93)***, which is a



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

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public interest litigation filed by pointing out the shortfalls in implementing the *Vishaka* guidelines. It is further observed that women have limitless potential and they should have a healthy working atmosphere and mere lip service, hollow statements, inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment women, who precious half of the of our half most precious population and so the *Vishaka guidelines* cannot remain just symbolic. Continuous directions have been given by the Supreme Court in the said case.

68. The Supreme Court has also called for report from all the States and Union with regard to the compliance of *Vishaka* guidelines. Though series of directions have been given to various stake holders and they had also filed a report to the Supreme Court that they have complied the same, there are glitches and grey areas are seen to be present in each and every step of implementation of the guidelines.

69. With regard to formation of the Internal Committee and the type of composition of the Committee, Sec.4 of the Act lays down as under:



Sec. 4. Constitution of Internal Complaints Committee.

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(1) *Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”:*

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) *The Internal Committees shall consist of the following members to be nominated by the employer, namely: —*

(a) *a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:*

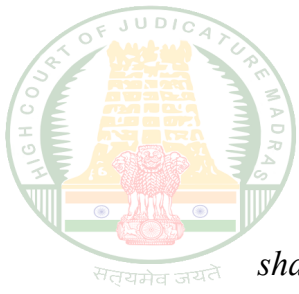
Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(b) *not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;*

(c) *one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:*

Provided that at least one-half of the total Members so nominated



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

shall be women.

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(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee,

—

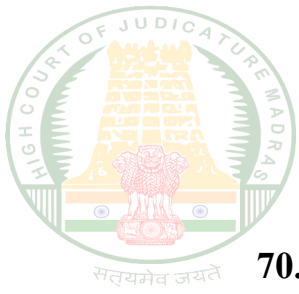
(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.



70. The reason and importance of having an outside member has been clarified by the Supreme Court in *Punjab And Sind Bank Vs Durgesh Kuwar AIR 2020 SC 3040* in the following words.

"Clause (c) of Section 4(2) indicates that one member of the ICC has to be drawn from amongst a non-governmental organization or association committed to the cause of women or a person familiar with issues relating to sexual harassment. The purpose of having such a member is to ensure the presence of an independent person who can aid, advise and assist the Committee. It obviates an institutional bias".

71. In respect of those institutions which have less than 10 workers or if the complaint is against the employer himself, the District Officer notified under sec.5 of the Act will constitute the committee known as '*local committee*' for receiving complaints of sexual harassment from those establishments. The composition of the local committee members, their tenure and other terms and conditions have been prescribed under sec. 7 of the Act.

72. Sec. 9 would prescribe the complaint mechanism. An aggrieved woman can make a complaint of sexual harassment at work place to the local committee or the internal committee as the case may be within 3 months from



the date of the incident. The above committees can also help the aggrieved woman to reduce the complaint in writing. And for any valid reasons to be recorded in writing the complaint can also be received after the expiry of three months and the committee has to get satisfied with the reasons for the delay.

73. In case an aggrieved woman is not able to make a complaint on account of her physical and mental incapacity or death, the legal heirs or such other person as may be prescribed can make a complaint. It will be worthwhile to read sec.9 along with rule 6 of the PoSH rules given as under:

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013

6. Complaint of sexual harassment. – For the purpose of sub-section (2) of Section 9,-

(i) where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by

- (a) her relative or friend; or*
- (b) her co-worker; or*
- (c) an officer of the National Commission for Women or State Women's Commission; or (d) any person who has knowledge of the incident, with the written consent of the aggrieved woman;*

(ii) where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by-

- (a) her relative or friend; or*
- (b) a special educator; or*



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W.P.(MD)Nos.13981, 9747 & 12601 of 2024

- (c) a qualified psychiatrist or psychologist; or*
(d) the guardian or authority under whose care she is receiving treatment or care; or
(e) any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;
- (iii) where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent;*
(iv) where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.

Can an Internal Committee effect conciliation on a complaint received? If so, when?

74. The internal committee/ local committee can try conciliation to settle the issue between the complainant and the respondent, **if the complainant prefers** to settle the issue and drop further action. It is explicit in Sec.10 that such a process may be at the request of the complainant. The option to choose the course of settlement is with the aggrieved woman and not with anyone else. Even such a conciliation effected at the request of the aggrieved woman, such settlements shall not be effected in terms of money.

75. Quite often it is complained that the members of the committee



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

construe this provision as a compulsive or mandatory process before initiating enquiry and think that conciliation should be initiated even if the aggrieved woman is unwilling for any settlement. It is also misused to underplay the serious complaints and compel the aggrieved woman to settle the issue even if she does not prefer to settle or does not find the terms of settlement reasonable or acceptable. So the conciliation or settlement can not be thrust on the aggrieved woman by wrongly construing or abusing the above provision given under sec.10 of the Act. For the sake of convenient and better understanding sec.10 of the act is extracted below:

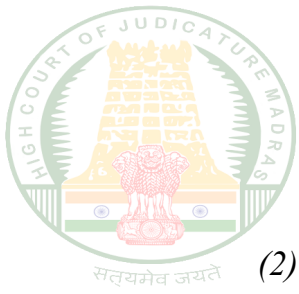
Section 10. Conciliation.

(1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:

Provided that no monetary settlement shall be made as a basis of conciliation.

(2) Where settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

(2) *to the aggrieved woman and the respondent.*

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(4) *Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.*

Technicalities involved in Inquiry of the Complaints under sec.11 of the Act:

76. As per sec.11, the complaints have to be enquired by the internal committee. If a respondent is an employee the inquiry to the complaint should be made in accordance with the provisions of the service rules applicable to the employee and if no such rules exist, in such manner as prescribed. In case of a domestic worker, the local committee after ascertaining the *prima facie* case shall forward the complaint to the police within a period of 7 days for registering the case under the penal code. The time limit of 7 days for sending the complaint to police is just to avoid the lackadaisical attitude of the local committee in delaying or avoiding to send the complaint to police. *This will not preclude the complainant from making a complaint on her own to police after or before 7 days.*

77. If any of the terms or conditions of settlement arrived by following



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

the conciliation process under sec.10(2) is not complied or violated by the respondent, the local committee or the internal committee shall proceed to enquire into the complaint or forward it to police as how the nature of the complaint and other attending circumstances demand.

78. In case both the complaint and the respondent are employees, they should be given with the opportunity of hearing and they shall be given with the copy of the findings of the committee in order to enable them to make any representation before the committee. If the respondent is charged for any offence on a complaint and after trial he is found to be guilty and convicted, the committee can order a payment of compensation as determined under sec. 15 of the Act.

79. Sec.15 of the Act would outline the factors to be considered for determining the compensation to be paid to the aggrieved woman. Among several factors, mental trauma, suffering and emotional stress caused to the aggrieved women along with loss of career opportunity, medical expenses incurred by the victim for physical or psychiatric treatment shall be considered



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

for fixing the compensation. The income and financial status of the respondent shall also be considered while determining the compensation and it can be allowed to be paid in one lump sum or in instalments depending on the feasibility of payment.

80. Though the committee has the power to award compensation, it can be allowed only after a full fledged inquiry and not during the process of conciliation by fixing any payment of money as a term of settlement. This is just to avoid false complaints which might be brought sometimes just to extract money from any innocent respondents.

81. For the purpose of making an inquiry under this provision, the Internal Committee/Local Committee shall have the powers as are vested in the Civil court for the purpose of summoning, enforcing the attendance of any person and examining them on oath, requiring the discovery production of the documents.

82. The time limit for completing the inquiry as prescribed would be 90



days. In order to have a glance at the provisions containing the vital aspects of

Inquiry and Inquiry report, the provisions under sec.11 and 13 are extracted as

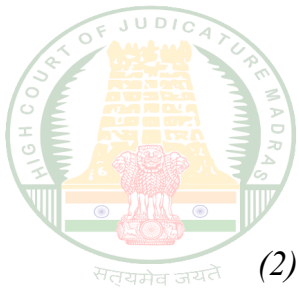
below:

Section 11. Inquiry into complaint.

*(1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint **in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed** or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:*

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.



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(2) *Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.*

(3) *For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—*

(a) summoning and enforcing the attendance of any person and examining him on oath;

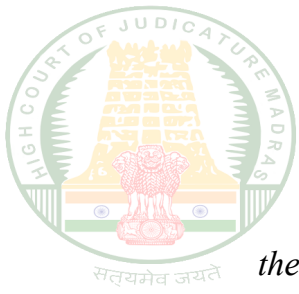
(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

83. As sec 11 of POSH Act mandates that in case the respondent is an employee, the Internal Committee or the Local Committee shall proceed to make inquiry into the complaint in accordance with the provisions of Service Rules applicable to the respondent. The Supreme Court while issuing continuous mandamus in *Medha Kotwal*, has issued the following direction.

“Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka’s case will be deemed to be an inquiry authority for



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

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the purposes of Central Civil Services (Conduct) Rules, 1964 (hereinafter called CCS Rules) and the report of the complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the rules.”

84. The Supreme Court has also directed that the industrial employment (Standing orders) rules should also be amended to consider the compliance committee as the enquiring authority for the purposes of the disciplinary action under their respective conduct rules and to treat the report of the committee as an enquiry report under the service rules.

85. In yet another order issued in the said case, the Supreme Court had directed to have a state level officer, either the secretary of Women and Child welfare department or any other suitable officer who is in charge and concerned with the welfare of woman and children in each state. The chief secretaries of the state are directed to appoint a nodal agent to collect details and to give suitable directions.

86. So far as the factories, shops and commercial establishments are concerned, the Labour Commissioner of each state will act as a nodal agent and



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

they shall collect the details regarding the compliance and ensure whether the committee is established in such institutions.

87. Subsequent to the above directions many States including the State of Tamil Nadu have amended the Civil Service Conduct Rules and Standing Orders for considering the compliance committee itself as the enquiry committee for the purpose of Civil Service Conduct Rules and their report as the enquiry report.

88. The state of Tamil Nadu has also made corresponding amendment to the Government servant conduct rules and to define the sexual harassment against women in work place as misconduct.

89. The Supreme Court has given further directions to the Bar council of India to ensure that all the Bar Associations and the persons registered with the state Bar Councils, Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory institutions are directed to follow the *Vishaka* guidelines.



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90. In compliance of the directions of the Supreme Court given in *Medha Kotwal* for amending the service rules, the Central Government has also amended the Central Civil service conduct rules (Central Civil Services(Classification, Control and Appeal) Rules 1965 to the effect that the internal committee inquiring into the allegations of misconduct of sexual harassment against women in work places, shall be deemed as Inquiry authority under the conduct rules and the report submitted by them would be considered as the inquiry report.

91. The State of Tamil Nadu had also amended the conduct rules by bringing Rule 20-B to the Tamil Nadu Government Servants' Conduct Rules, 1973. The above rule prohibits sexual harassment of any woman at the work place. It also imposes a duty on every government servant who is incharge of a work place to take appropriate steps to prevent sexual harassment to any women at such work place. For the sake of convenience, Rule 20(b) of the Tamil Nadu Government Servants' Conduct Rules,1973 is extracted hereunder for ready reference:-



“ 20-B. Prohibition of sexual harassment of working women:-

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(1) No Government servant shall indulge in any act of sexual harassment of any woman at the workplace.

(2) Every Government servant who is in charge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such workplace.

Explanation: For the purpose of this rule, (sexual harassment) includes such unwelcome sexually determined behaviour, whether directly or by implication as:-

(a) physical contact and advances; or

(b) demand or request for sexual favours; or

(c) sexually coloured remarks; or

(d) showing any pornography; or

(e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.”

92. Proviso to Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 has been brought by way of amendment from 20.09.2006. The above amended proviso would deem the complaints committee established for enquiring the misconduct of sexual harassment against women in workplaces as the inquiring authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold the inquiry as far as practicable in accordance with the procedure laid down in



these Rules.

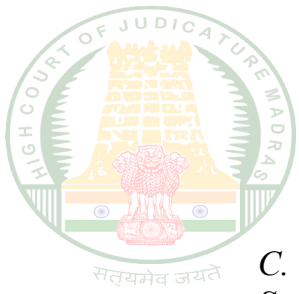
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93. In fact one of the duties of the employer as prescribed under sec.19(i) is to treat sexual harassment as a misconduct under the service rules and initiate action for such a misconduct. Rule 7 of the PoSH Rules would elaborate more about the manner of inquiry to be held under sec. 11 of the act.

94. In an important Judgment of the Supreme Court rendered in *Seema Lepcha Vs. State of Sikkim 2013 (11) SCC 641*, involving an aggrieved woman from Sikkim, the Court openly expressed its anguish that even after a lapse of several years, the guidelines in *Vishaka* were not implemented by the State especially in Sikkim and issued the following directions for giving wide publicity to the guidelines issued in *Visaka* and *Medha Kotwal*.

"A. The State Government shall give comprehensive publicity to the notifications and orders issued by it in compliance with the guidelines framed by this Court in Vishaka and the directions given in Medha Kotwal case by getting the same published in the newspapers having maximum circulation in the state every two months;

B. Wide publicity is given every month on Doordarshan station, Sikkim about various steps taken by the State Government for the implementation of the guidelines.



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

C. The Social welfare Department and the legal service of authority State of Sikkim shall also give wide publication and orders issued by the State Government not only for the government department of the State and its agencies/instrumentalities but also for the Private Companies.

Ground Realities and Difficulties:

95. Giving reasonable opportunity is quite often misunderstood as an opportunity given to the perpetrators to cause further harassment by making the complainant to stand for an unreasonable long cross examination for answering irrelevant and demeaning questions. Subjecting the aggrieved woman to such secondary victimization would only cause a reversal effect. It will only demoralize and deter the complainants from giving complaints. Instead of deterring the perpetrator from committing the act of sexual harassment, the perpetrators are emboldened to act in group by browbeating that nothing can contain their atrocities. If the complainant is compelled to blame herself for having given the complaint, that would frustrate the whole object of the Act. Majority of the women who take up career out side home face lot of challenges to strike a balance between career and family. In such circumstances, the aggrieved women cannot be expected to withstand a very long, humiliating and harassing inquiry process where the respondent was allowed to ask irrelevant



questions in the name of cross examination.

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96. Internal committee members are not trained experts or may not have similar expertise to handle such kind of inquiries by being on par with the inquiry authority appointed by the disciplinary authority.

97. Some of the defects and difficulties which have been enlisted by the learned *amicus curie* would show the ground realities with regard to the implementation of the mandates of sec.11 of the Act have been rephrased as below:

- i. *The Committee members do not have the competency to deal with the inquiry under sec.11 by understanding the spirit and purpose, especially the significance of the amendment to the conduct rules to deem the Internal Committee as the inquiry authority.*
- ii. *The aggrieved woman also can not have a legal expertise. The women who make complaints before the Local Committee are illiterate working in the unorganized sectors, who do not know whom to approach when affected.*
- iii. *The employers themselves present during such inquiries and coerce the Internal Committee/Local committee members to*



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W.P.(MD)Nos.13981, 9747 & 12601 of 2024

cut short the procedures. The employer sometimes engages in unnecessary chatting of sundry issues during the course of enquiry which makes the complaint and inquiry mechanism a mockery.

- iv. If the perpetrator and the aggrieved women are employees of the same office and establishment, it is difficult to expect co-employees to come forward and give evidence against the perpetrator.*
- v. If the delinquent is a senior level officer of the institution no employee would come forward and speak in favour of the victim, though they are very much aware of the incident.*
- vi. The complaints committee shall make inquiry into the complaint in accordance with the principles of natural justice. But there is no understanding about the extent and limit of fair opportunity and it is being used as a weapon in the hands of the delinquent to drag the proceedings.*
- vii. Inquiries are not completed within the prescribed time limit mandated under the Statute."*

98. The ground realities outlined are only a stark reminder of the inadequacies in tackling a social issue with the legislative measure alone. Unless the change comes from and within the social structure, it will be very difficult to achieve the object of ensuring gender equality in work places by



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

alleviating the menace of sexual harassment against women and ensuring an enabling environment.

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99. While focusing on the difficulties faced by the aggrieved women and understanding the inadequacies, the difficulties faced by the respondents before the incompetent inquiry committee cannot also be overlooked. One such grievance by a respondent was brought before the Supreme Court in *Aureliano Fernandes Vs. State of Goa reported in 2023 SCC OnLine SC 621*, by alleging that the respondent was not given with any adequate opportunity by the inquiry committee. By understanding the above grievance, the Hon'ble Supreme Court has issued series of directions to have a fair and proper inquiry under sec.11 of the PoSH Act by the Internal Committee or the Local Committee as the case may be.

100. In the said case the Hon'ble Supreme Court had observed that however salutary the act, that will not succeed in providing the immediate respect that woman would deserve at her work place, unless and until, there is strict adherence and proactive approach by all the State and non State actors



and if the working environment continues to remain hostile, insensitive and irresponsible to the needs of the woman employees, the Act can only remain as an empty formality.

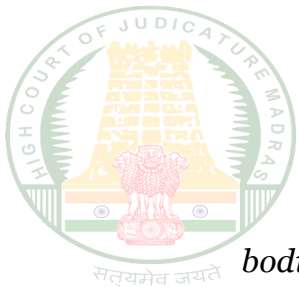
101. The directions given by the Supreme Court given in *Aureliano Fernandes* are extracted below:

“To fulfill the promise that the PoSH Act holds out to working women all over the country, it is deemed appropriate to issue the following directions :

(i) The Union of India, all State Governments and Union Territories are directed to undertake a time bound exercise to verify as to whether all the concerned Ministries, Departments, Government organizations, authorities, Public Sector Undertakings, institutions, bodies, etc. have constituted ICCs/LCs/ICs, as the case may be and that the composition of the said Committees are strictly in terms of the provisions of the PoSH Act.

(ii) It shall be ensured that necessary information regarding the constitution and composition of the ICCs/LCs/ICs, details of the e-mail IDs and contact numbers of the designated person(s), the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations and internal policies are made readily available on the website of the concerned Authority/Functionary/Organisation /Institution/ Body, as the case may be. The information furnished shall also be updated from time to time.

(iii) A similar exercise shall be undertaken by all the Statutory



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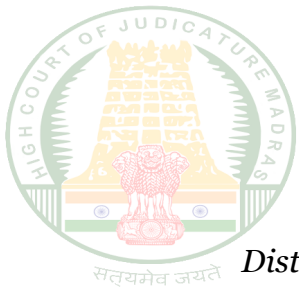
bodies of professionals at the Apex level and the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres and educational institutions and by government and private hospitals/nursing homes.

(iv) Immediate and effective steps shall be taken by the authorities/ managements/employers to familiarize members of the ICCs/LCs/ICs with their duties and the manner in which an inquiry ought to be conducted on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the Report submitted.

(v) The authorities/management/employers shall regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the ICCs/LCs/ICs and to educate women employees and women's groups about the provisions of the Act, the Rules and relevant regulations.

(vi) The National Legal Services Authority (NALSA) and the State Legal Services Authorities(SLSAs) shall develop modules to conduct workshops and organize awareness programmes to sensitize authorities/managements/employers, employees and adolescent groups with the provisions of the Act, which shall be included in their annual calendar.

(vii) 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/ICs established in the High Courts and



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

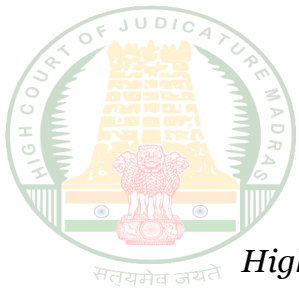
District Courts and for drafting Standard Operating Procedures (SOPs) to conduct an inquiry under the Act and Rules.

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(viii) A copy of this judgment shall be transmitted to the Secretaries of all the Ministries, Government of India who shall ensure implementation of the directions by all the concerned Departments, Statutory Authorities, Institutions, Organisations etc. under the control of the respective Ministries. A copy of the judgment shall also be transmitted to the Chief Secretaries of all the States and Union Territories who shall ensure strict compliance of these directions by all the concerned Departments. It shall be the responsibility of the Secretaries of the Ministries, Government of India and the Chief Secretaries of every State/Union Territory to ensure implementation of the directions issued.

(ix) The Registry of the Supreme Court of India shall transmit a copy of this judgment to the Director, National Judicial Academy, Member Secretary, NALSA, Chairperson, Bar Council of India and the Registrar Generals of all the High Courts. The Registry shall also transmit a copy of this judgment to the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and the Engineering Council of India for implementing the directions issued.

(x) Member-Secretary, NALSA is requested to transmit a copy of this judgment to the Member Secretaries of all the State Legal Services Authorities. Similarly, the Registrar Generals of the State



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

High Courts shall transmit a copy of this judgment to the Directors of the State Judicial Academies and the Principal District Judges/District Judges of their respective States.

(xi) The Chairperson, Bar Council of India and the Apex Bodies mentioned in sub-para (ix) above, shall in turn, transmit a copy of this judgment to all the State Bar Councils and the State Level Councils, as the case may be.”

The standard of reasonableness and fairness during Inquiry under sec.11

102. Fairness or reasonableness is always understood as the principle of natural justice. No doubt hearing the other side and being fair and reasonable should be the hallmark of any judicial, quasi judicial process. Even in such process, especially in departmental inquiries ‘one size fits for’ all formula can not be adopted for ensuring fairness and reasonableness. It all depends on the circumstances and the type of misconduct that is being inquired. As Internal Committee/Local committee are deemed to be inquiry authority within the meaning of the conduct rules of the concerned establishment, an understanding about ‘fair and reasonableness’ in such inquires is paramount.

103. In the above context, it is appropriate to refer the judgement of



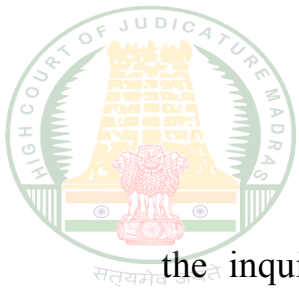
W.P.(MD)Nos.13981, 9747 & 12601 of 2024

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supreme court in the case of *Hira Nath Mishra and Ors. Vs. The Principal, Rajendra Medical College, Ranchi and Ors (AIR 1973 SC 1260)* . The

appellants of the above case were the Second Year students of the respondent college who were residing in a Hostel attached to the college. There was another Hostel for girl students. On one night some male students of the college were found sitting on the compound wall of the girls Hostel, and later they entered into the compound and were seen to be walking without clothes on them. They went near the windows of the rooms of some of the girls and tried to pull the hand of one of the girls. Some five of these boys then climbed up along the drain pipes to the terrace of the girls Hostel where a few girls were doing their studies. On seeing them the girls raised an alarm following which the students ran away. The girls recognized some of these male students and three among them were the appellants.

104. After an enquiry made by a committee, the male students were found guilty of gross misconduct and on the recommendation of the committee, they were expelled from the college. Some of the grounds raised by the male students are that the girls were not enquired in their presence and the copies of

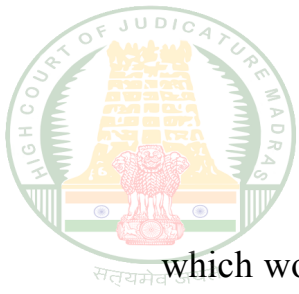


W.P.(MD)Nos.13981, 9747 & 12601 of 2024

the inquiry report were not given to them and that there is violation of principles of natural justice. When the matter came before the High Court, the High Court has held that the principles of natural justice is not inflexible and it may differ in different circumstances.

105. The Supreme Court while approving the above view by making reference to the judgement of the supreme court in *Union of India Vs P.K Roy* (ILLJ 633 SC), has held that the doctrine of natural justice can not be imprisoned within the straight-jacket of a rigid formula and its application depends upon several factors.

106. On taking note of the facts of *Hira Nath's* case, the Supreme Court has observed that the complaint made to the Principal related to an extremely serious matter as it involved not merely internal discipline but the safety of the girl students living in the Hostel under the guardianship of the college authorities. It is further observed that the authorities could not possibly dismiss the matter as of negligible consequence, because, if they did, they would have encouraged the male student rowdies to increase their questionable activities

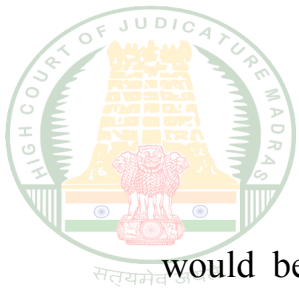


W.P.(MD)Nos.13981, 9747 & 12601 of 2024

which would, not only, have brought a bad name to the college but would have compelled the parents of the girl students to withdraw them from the Hostel and, perhaps, even stop their further education and hence the Principal was, therefore, under an obligation to make a suitable enquiry and punish the miscreants.

107. By being sensitive about the delicacy of the matter, the Supreme Court has observed that the authorities could not out rightly call the police as it would frighten the girl students and embarrass their parents and the college also can not be expected to co-operate with the police investigation by having concern about the reputation of the college. Having found the authorities are the *loco parentis* for all male and female students, the college has a greater responsibility to balance a situation and can not expect to hold the examination of the girl students in the presence of the girl students.

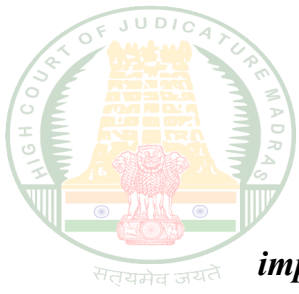
108. Firstly, the girl students would not be confident and fearless to depose evidence in the presence of the delinquent boys, as they would resort to retaliation, when the girls could be seen outside the college precincts. Same



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would be the reason for non-furnishing a copy of the inquiry report to the appellants. The male students were given with opportunity to give their evidence but they did not come forward to give any evidence. So the Supreme court convinced itself with the method of inquiry adopted by the college authorities in the given circumstance was fair and suiting to the overall interest of all the persons concerned. By drawing parlance from the collection of evidence behind the back of goondas, it is held that the rules of natural justice cannot remain static in all conditions. Para 11 of judgement which speaks the mind of the Supreme Court is extracted as below:

*“11. Rules of natural justice cannot remain the same applying to all conditions. We know of statutes in India like the Goonda Acts which permit evidence being collected behind the back of the goonda and the goonda being merely asked to represent against the main charges arising out of the evidence collected. Care is taken to see that the witnesses who gave statements would not be identified. In such cases there is no question of the witnesses being called and the goonda being given an opportunity to cross-examine the witnesses. The reason is obvious. No witness will come forward to give evidence in the presence of the goonda. **However unsavory the procedure may appear to a judicial mind, these are facts of life which are to be faced. The girls who were molested that night would not have come forward to give evidence in any regular enquiry and if a strict enquiry like the one conducted in a court of law were to be***

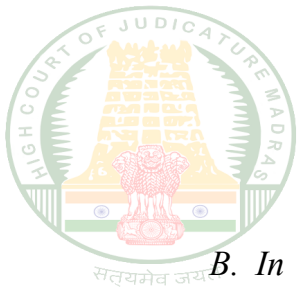


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imposed in such matters, the girls would have had to go under the constant fear of molestation by the male students who were capable of such indecencies. Under the circumstances the course followed by the Principal was a wise one. The Committee whose integrity could not be impeached, collected and sifted the evidence given by the girls. Thereafter the students definitely named by the girls were informed about the complaint against them and the charge. They were given an opportunity to state their case. We do not think that the facts and circumstances of this case require anything more to be done.”

109. On the very same concept of observance of the principles of natural justice, it is worth to mention the well thought out judgment of the High Court of Kerala held in *L.S. Sibiu v. Air India Limited 2016 (2) KLJ 434*. In the said court the court ventured to find out '*what manner the principles of natural justice have to be secured in the enquiry conducted in a complaint relating to the sexual harassment*' and held as below:

"A. The fundamental principles relating to the principles of natural justice is that when prejudicial statements are made, the same shall not be used against any person without giving him an opportunity to correct and contradict.



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B. In sexual harassment complaint, sometimes the complainant may not have the courage to depose all that has happened to her at the work place. There may be an atmosphere restraining free expression of the victim's grievance before the Committee.

C. The privacy and secrecy of such victims' also required to be protected. It is to be noted that verbal cross examination is not the sole criteria to controvert or contradict any statement given by the aggrieved before any authority.

D. Primarily, in a sexual harassment complaint, the committee has to verify and analyse the capability of the aggrieved to depose before them fearlessly without any intimidation. If the Committee is of the view that the aggrieved is feeble and cannot withstand any Cross examination, the Committee can adopt such other measures to ensure that the witness statement is contradicted or corrected by the delinquent in other manner.

E. The fair opportunity, therefore, has to be understood in the on text of an atmosphere of free expression of grievance. If the Committee is of the view that the witness or complainant can freely depose without any fear, certainly, the delinquent can be permitted to have verbal cross examination of such witnesses. In cases, where the Committee is of the view that the complainant is not in a position express freely, the Committee can adopt such other methods permitting the delinquent to contradict and correct either by providing a statement to the delinquent and soliciting his objections to such statement.



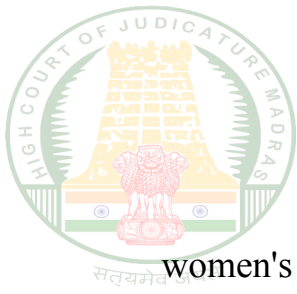
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110. On the same point in *U.S. Verma, Principal, DPS Vs. National Commission for Women (2009) DLT 557* pointed out that the employer should deal with the complaint with all sensitivity;

"Whenever such complaints of harassment arise, it is expected that the authority be it employer, regulator (of private enterprise, or agency, against which such complaint is made) is alive that such are outlawed not only because they result in gender discrimination, of the individual aggrieved, but since they create and could tend to create a hostile work environment, which undermines the dignity, self-esteem and confidence of the female employees, and would tend to alienate them. The aim of Vishaka was to ensure a fair, secure and comfortable work environment, and completely eliminate possibilities where the protector could abuse his trust, and turn predator, or the protector-employee would insensitively turn a blind eye"

Standard of a Reasonable Woman

111. In *Joseph Oncale vs Sundowner Offshore Services, Inc. 523 U.S 75(1998)*, the U.S. Supreme Court has observed that in the matter of complaints given for sexual harassment in work places, the standard of reasonableness is not the standard of reasonable man but *the standard of reasonable woman*. Now the question would arise what would be the reasonableness from a



women's perspective and how to identify the standard of a reasonable woman.

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112. The Delhi High Court in ***Dr. Punita K. Sodhi us Union Of India &Ors. 2010 172 DLT 409***, the High Court of Delhi has adopted the above principle and held that the Sexual Harassment Complaint needs to be viewed from the angle of the "***Victim's perspective***".

"The above decisions help in appreciating that a complaint of sexual harassment and sex based discrimination requires the body entrusted with the investigation of such complaint to undertake its task with the correct approach and sensitivity. Incidents of sexual harassment ought not to be viewed in isolation. The other parts of the complaint are as relevant in determining whether there was any Persistent conduct of the perpetrator which could be termed as sex based discrimination or harassment over a prolonged period. The humiliation faced by a victim of sexual harassment could remain with the victim. It is revisited and compounded when the victim and perpetrator have to continue to work in the same establishment. The balance in the power equation between the perpetrator and the victim could exacerbate the problem. The impact of such incidents of the continuing working relationship of the perpetrator and the victim will also have to be considered in examining whether the complaint made of sexual harassment, even if belated, is justified. In a complaint of sexual harassment and sex based



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harassment or discrimination, which persists over a length of time, the defence of limitation or laches may not find relevance".

UNITED KINGDOM:

113. Harassment in any form is prohibited in the United Kingdom. Sexual Harassment is a criminal offence under the ***UK Protection from Harassment Act, 1997***. Further Sexual harassment is also covered by the **UK Equality Act, 2010**.

114. Equality Act, 2010 consolidates various statutes and regulations which operated in the field of anti-discrimination law, and it also includes the ***Sex Discrimination Act of 1975 and the Employment Equality (Sex Discrimination) Regulations of 2005***.

115. The Equality Act defines the term "***harassment***" as under.

"Harassment"(1) A person (A) harasses another (B) if;

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of-
 - (i) violating B's dignity, or



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W.P.(MD)Nos.13981, 9747 & 12601 of 2024

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if;

I.A ***engages in unwanted conduct of a sexual nature***, and

II. the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if:

(a) ***A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,***

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account-

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are:



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W.P.(MD)Nos.13981, 9747 & 12601 of 2024

Age; disability; gender reassignment; race; religion or belief; sex; sexual orientation.

How to understand the standards of reasonable woman or women's perspective

116. It is not really a rocket science to understand the women's perspective, because all the complainants including the petitioners have been speaking in one voice that they are aggrieved due to the insensitivity, apathy and ridiculousness to which they are exposed. More often they are asked to bring witnesses for proving the allegations of sexual harassment, knowing full well that such harassment does not take place in public view. Popular women from various industries and women groups whose views are expressed in public forum and reported in dailies whenever there is an outcry after a large scale sexual violence is reported, also share the same concern.

117. The recently reported sexual violence and murder of a young female doctor of a Hospital at Calcutta during her night duty and the Report of Justice Hema Committee on the allegations of sexual harassment against women in Malayalam film industry have also generated such an outcry. Views expressed



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

during that time from all quarters and women from all walks were the hot news in the media. So women's perspective is neither too difficult to be discernable nor too deep to be unfathomable.

118. All aggrieved women and her empathizers only wish that the complaints of this nature should be dealt with due sensitivity and enquired by applying the principles of fairness with equitable knack and flexibility and without giving any scope for secondary victimization. They dislike the false empathy shown unto them just to convince them to sweep those incidents under the carpet. They deplore the unreasonable demand to bring eyewitnesses or exposing them to face the unreasonable and crooked questions of the perpetrators in the name of cross examination.

119. Nothing would prevent the inquiry authority from limiting or designing the fairness of inquiry, suiting to the situation on hand, but by recording reasons to do so. To ensure a supportive environment is not always a demand of the aggrieved woman from the employer alone but also from the colleagues, families and every social human being who share their existence in



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

this planet.

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Inquiry Report

120. After completion of the inquiry under sec.11, the Internal Committee/Local Committee as the case may be should provide a copy of the report of its findings to the Employer with in the 10 days of its completion. A copy of the same should be furnished on the parties to the enquiry, irrespective of the fact whether the allegations are proved or not. In case the allegations are not proved the committee shall recommend the employer/District Officer that no further action is needed.

121. If the allegations are proved the committee shall recommend the employer to take action in accordance with the provision of service rules and also recommend to deduct the compensation that is determined under sec. 15 and payable to the aggrieved woman. The recommendation of the Internal Committee/Local Committee shall be acted upon by the employer within 60 days from the receipt of the report.

122. So far as the Central Government and the State of Tamil Nadu is



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concerned both the conduct rules and service rules governing the respective government servants were amended to include sexual harassment against women as misconduct and the internal committee is deemed to be the inquiry authority under the discipline rules and its report is sufficient to issue second show cause before awarding punishment. And it has already been explained in the earlier part of this discussion made in respect of sec.11. Sec.13 of the Act is extracted under:

Section 13. Inquiry report.

(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the



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respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provide that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or as, the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

False complaints- Section 14

123. Even though the Act is women centric, there is also check and balance provision from preventing the misuse. At the conclusion of the inquiry if it is found that the allegations are false or the aggrieved woman or any person making the complaint has produced forged or misleading documents, it may recommend to take action against the woman in accordance with the service



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

rules.
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124. It is not in all cases which are proved to be false such recommendation be made. First of all, the recommendation is not mandatory but discretionary, as the word employed in the provision is 'may'. And only if it is proved during the inquiry that the complaint was given knowingly that it is false and intentional, the inquiry committee can make recommendation to the employer for initiating action and not otherwise. If such recommendation are made without any inquiry into the intention and recording a finding to that effect, it is illegal.

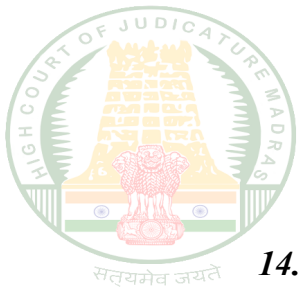
125. Many times the complainants may not prove the allegations in the complaint due to various reasons. The complainant might not support her case due to threat or intimidation or due to lack of sensitivity and empathy on the part of the internal complaint committee or due to the charged work place atmosphere or indifferent or the aggrieved woman might wish to retract by having concern of her personal safety or protect herself from the risk of losing the employment or with an apprehension of getting an unfavorable transfer at



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

the hands of an unreasonable employer etc. These insecurities may not allow the complainant to put her foot down and press her complaint. She can not expect her colleagues also to come forward and support her. In such circumstances, the complainant or any one who gives the complainant on her behalf may not be able to prove the allegation. But there is no malicious intention in giving the complaint. This will happen quite often when the perpetrators are very influential and authoritative in the work place or happens to be superior in rank of the complainant or her witnesses. Without considering these factors, the committee cannot simply recommend to initiate any action stating that the complaint is false.

126. To render a finding as to the intention of giving a false complaint would require a hearing by giving an opportunity to the complainant. Hence the aggrieved woman or any other complainant who gives complaint on her behalf or a witness needs to be put on notice and be allowed to make their submission before rendering a finding that the complaint given or document produced are given knowing fully well that they are false/forged and intentional. For the sake of better clarity, sec.14 is extracted below:



14. Punishment for false or malicious complaint and false evidence.—

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(1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, **it may recommend to the employer or the District Officer**, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

127. Sec16 prohibits publication or making known the contents of complaints, inquiry proceedings and the identity of the complainant. However information as to the justice secured can be disseminated without revealing the identity of the victim and causing any embarrassment or endangerment to her. Any violation of the conditions prescribed under sec.16 is punishable under sec.17 with penalty in accordance with the service rules or where no such rules exist, in such manner as may be prescribed.

Employer's Responsibility

128. In the changing economic landscape of India, more and more women are joining the work force. The periodic Labour Force Survey (PLFS) conducted by Social Sample Survey Office for the year 2023-2024 shows that there is a sudden increase of women joining in the work force. It is reported that women in labour force has doubled in the last seven years. In this evolving trend in the labour market, it is imperative to have a sound and safe work place environment for women workers.



Australian Law:

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129. The learned *amicus curiae* submitted that in the State of Australia vicarious liability is imposed on the employer for sexual harassment at work places. The remedies provided by the State of Australia for sexual harassment are found in the Australian Sex Discrimination Act, 1984. Under Section 106 of the said Act, vicarious liability is imposed on the employer for the sexual harassment at work place if the employer did not take all reasonable steps to prevent the employee from doing these acts.

130. According to the Australian Human Rights Commission, an employer is expected to have a sexual harassment policy and provide training for employees on how to identify and respond to sexual harassment, implement an internal complaints-handling procedure and take appropriate remedial action if and when a sexual harassment complaint is made.

131. In so far as to have and disseminate an internal policy for prohibition, prevention and redressal of sexual harassment at work places, intended to promote gender sensitive safe spaces and to remove underlying



factors, which contribute towards a hostile work environment against women is concerned similar is the case in India. However, there is no vicarious liability is prescribed under the act. Though the provision for recovery of compensation is provided under sec.15, it is seldom put to use.

132.The PoSH Act impose a lot of duties and responsibilities on the employers. It ranges from providing safe working environment for women workers to giving due publicity about the existence of the Internal Committee and then to conduct workshops and awareness programs at regular intervals for sensitizing women employees with the provisions of the act and orientation programs for the members of the Internal Committee.

133. Sec.19 would enlist the employer's duties and it is extracted as under:

Section 19. Duties of employer.

Every employer shall—

(a) provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace;

(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

Internal Committee under sub-section (1) of section 4;

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(c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

(d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

(e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

(f) make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made under sub-section (1) of section 9;

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;

(h) cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;

(i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

(j) monitor the timely submission of reports by the Internal Committee.

134. PoSH Rule 13 would describe the manner in which the workshops



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

and other awareness programmes need to be formulated, conducted and continued. For convenient understanding Rule 13 is extracted as below:

Rule 13. Manner to organise workshops, etc.

Subject to the provisions of section 19, every employer shall-

- (a) formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace intended to promote gender sensitive safe spaces and remove underlying factors that contribute towards a hostile work environment against women;
- (b) carry out orientation programmes and seminars for the Members of the Internal Committee ;
- (c) carry out employees awareness programmes and create forum for dialogues which may involve Panchayati Raj Institutions, Gram Sabha, women's groups, mothers' committee, adolescent groups, urban local bodies and any other body as may be considered necessary;
- (d) conduct capacity building and skill building programmes for the Members of the Internal Committee;
- (e) declare the names and contact details of all the Members of the Internal Committee;
- (f) use modules developed by the State Governments to conduct workshops and awareness programmes for sensitising the employees with the provisions of the Act."

135. Even though the act and rules describe in detail about the mandate



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

and pattern in which such duties of the employer have to be carried out, the reality remains different. The failure on the part of the employer to comply the mandates of the Act would also include the submission of the Annual report under sec.22. Failure of which will attract penal action under sec. 26.

136. Section 23 of the Act mandates the appropriate government to monitor the implementation of the Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace. It is held in ***R. Karuppusamy Vs The State Of Tamil Nadu in W.P. No. 28264/2017 dated 04-04-2024***, the Hon'ble Madras High Court has held that, if the government does not comply the requirement of sec.23, the aggrieved person can make a complaint to the appropriate authority and seek redressal.

137. The appropriate Government has to take measures to publicize the essential information has found in sec.24. Had the State Government really undertaken the said task and executed it in an objective manner, there won't be ignorance among the working community about the act and its features. In



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

order to show the responsibility of the Government sec.24 of the act is prescribed as under:

Section 24. Appropriate Government to take measures to publicise the Act.

The appropriate Government may, subject to the availability of financial and other resources, —

- (a) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace;*
- (b) formulate orientation and training programmes for the members of the [Local Committee].*

138. It is stated already that the violations of the mandatory directions of the act is punishable under sec.26. As per sec.27, an action under sec.26 can be taken only on a complaint made by the aggrieved woman or any person authorized by the Internal Committee or Local Committee in this behalf. The offences under this act is non-cognizable and are triable by a court not below the Metropolitan Magistrate or a Judicial Magistrate of the first class.



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

PART-V

Limitations of legislative measures.

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139. The growing trend of women participating in income earning activities is a positive sign for India which is low in Global Gender Gap Index, which is determined by the Health, Education, Economics and Political Participation of the women population. Among the four variables determining Global Gender Gap Index India has fared well in Health and Education of women. So far as the participation of women in Economic activities and decision making activities like politics, women's participation is less in India, when comparing to the best global gender standards. In certain sectors women workers are more in number than their counter-parts. The Periodic Labour Force Survey conducted by the Social Sample Survey Office for the year 2023-2024, reported that women in labour force has doubled in the last seven years. To encourage women by providing enabling work environment is essential for a welfare state.

140. Women have to balance between career and family, career and health, career and personal choices and these have always been challenging. Working women tries to balance all these challenges with at most agility.



However best she is in doing this, everything comes to a standstill and her dreams get shattered, if she happens to suffer sexual harassment at her work place.

141. If an aggrieved women prefers to give a complaint, the first objection will come from her own family, as they would apprehend the repercussion and further disturbances. If an aggrieved woman is capable of convincing her own family to give a complaint that itself is half won. Still, it is not easy for her to get the support from her own colleagues, as they would not take the risk of antagonizing the perpetrator if he is their colleague. If the perpetrator is superior to them, it is still worse that they would not dare to support her at the cost of losing their employment. Even if there is a special committee to enquire into such harassment, in view of the above stated reasons, the aggrieved woman would choose to adopt the same old practice of keeping it under the carpet. The bitter chocolate is often felt as a relief for herself, her family, her colleagues and sometime even for her employer.

142. The aggrieved women as in the instant cases, have dared to prefer



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

complaints to the Committee by breaking the first level barriers. Due to the insensitive and defensive attitude of the superior level officers, they were forced to file litigations in the court. In fact, directions are needed from the court even to constitute the Internal Complaints Committee and take up the complaint for enquiry. The aggrieved woman need to incur not only the cost of litigation, but also to undergo the agony of spending her valuable time, energy with an unformidable determination. If the respondent happens to be a '*powerful*' person who have clouts at all levels, she might need to face secondary harassment and its gravity would depend upon the influence and cadre of the respondent.

143. At some point of this nightmarish journey, the victim would start to feel that the pain inflicted due to sexual harassment is lesser than the pain given by the system where she lives. A strong woman who continues to fight would be viewed as an "*impractical being*" who did not know how to make terms with life or a person who do not know how to choose her battles. One or a few incidents of sexual harassment would take away her several days sleep and drain her resources. The end card may be success, but in reality, it can be a bad



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

bargain as she would have paid a hefty price of her life time. Sometimes she may even blame herself for being too tough to gain nothing. So, the career paths of women are not so smooth and shiny, to sleek easily.

144. The three member Committee constituted by the Government of Kerala under the head of Hon'ble Justice.Hema to study the issues faced by women in Malayalam Cine industry have filed its report and it is in public view. The report has stated that the sexual harassment is the worst evil faced by women in Malayalam cine industry. Following the report of the Committee, many women belong to the Cine Industry of other States had started to give voices by revealing many such harassment incidents and it was being reported in the dailies. The voices given by popular artists and other celebrities were filling the pages of the news report for sometime and no doubt were the best TRP (Target Rating Point) rated news.

145. Women from every other department especially the doctors from the Health department have opened up and demanded appropriate measures to prevent sexual harassment and women unfriendly work ambience in their



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

respective work places. The statistical datas maintained by the Government with regard to the number of complaints so far made under the PoSH Act does not tally with the loud voices that is being made by these women. That would only show that many women did not come forward even though they had experienced sexual harassment at some point of their career.

146. Women have to prove themselves by being successful at every stage, if their voices have to gain attention. She needs to stand out of the ordinary in order to prove herself at each and every stage of her career and to resolve each and every issue faced by her with indomitable courage and spirit. How can every woman be extra-ordinary? Or how to address the issues of those working women who are just normal and whose existence goes unnoticed and whose voices are feeble and come from the base level?

147. From the victim of Vishaka to the recently reported violence on Apaya, women folk send strong reminders that legislative advancement in addressing work place harassment did not do marvels. It was not that easy for the State to bring the Sexual Harassment of women at the work place



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

(Prevention, Prohibition and Redressal) Act, 2013, despite India ratified the Convention on Elimination of all forms of Discrimination Against Women (CEDAW) long ago. When there are obstacles even to bring out legislations and the legislations also do not cater to the ground level reality, where does the remedy lie?

148. Sensational news report sexual violence against women creates sudden flash of sensitivity in the society. And the social media takes it faster and louder, though it is short lived. The tremors and tides generated in the society demand a sudden response from the Government. Quite often the response pattern would be to bring a new legislation or make the existing penal legislation more stringent.

149. The opening sentence of the Statement of Objects and Reasons of the PoSH Act would state that the sexual harassment at workplace is considered as violation of women's right to equality, life and liberty and it creates an insecure and hostile work environment which discourages women's participation in career and thereby adversely affect their social and economic

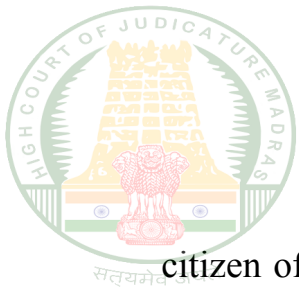


W.P.(MD)Nos.13981, 9747 & 12601 of 2024

empowerment and the goal of inclusive growth. The life with dignity is an indispensable part of right and personal liberty and hence, women deserve to be treated with due respect, decency and dignity at her work place.

150. The Committee on *Convention on the Elimination of All Forms of Discrimination against Women*(in short, “CEDAW”) in its general recommendation No.19(1992) has stated that the equality in employment can be seriously impaired when women are subjected to gender specific violence such as sexual harassment at work place. As India being a signatory of CEDAW, it had the obligation to enact the local legislation compatible to the International Conventions.

151. The PoSH Act is not a mere legislative advancement suiting to the changing society. It routed out from the obligation of the State owed to the international community and the state's assurance to its own citizens by promising gender equality, by having it as a fundamental right in the Constitution of India. As the Constitution of India is by the people and for the people. There cannot be any shifting of responsibility and each and every



citizen of India has to take it on his / her shoulder to ensure a society which is free from gender discrimination.

152. Under the PoSH Act, the employer has given with a responsibility of not only providing a safe working environment but also to organize workshops and awareness programmes to sensitize the employees and to impart orientation programmes for the members of the Internal Committee.

153. When talking about sensitization it has to be read along with the objects of the legislation. So sensitization does not only mean sensitizing the employees with the provisions of the PoSH Act. Each employee has to be sensitized to understand the justification for women's right to equality. Sensitizing women's right to equality cannot be achieved unless the stumbling blocks are removed.

154. The discussions of the earlier part of this judgement would also show that the legislative measures can only play a limited role in ensuring dignity and autonomy. In recent days, women from all walks have started to



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

give statements in unequivocal terms about sexual harassment prevailing in all work places, not just limited to any one industry or department. This creates a counter effect from the other lobby who would claim that women who complain sexual harassment in work places, do not exercise their options of not yielding to the sexual advances and some of them compromise for the sake of career growth and hence they are also equally contributive. But it is a fundamental duty for a citizen to remove the dilemma placed before a woman to choose between her own values and the stability of her career, by realizing the true meaning of progressive and egalitarian society. Ensuring such a dignity on a woman employee would no doubt enhances the dignity of other gender as well.

155. The advent of technology played both good and bad effects like how fire helps to cook or destroy. Causing harassment even by not being in the vicinity of a woman has become possible with the cyber equipment. The very same equipment are also used to disseminate useful information. Ultimately, it is the choice of the user to choose the informations. So, the technology can also be used for the purpose of spreading gender sensitivity and for enforcing work place discipline.

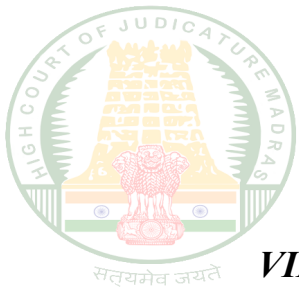


PART-VI

Preventing factors to achieve the objects of the Act:

156. The discussions so far made would show that multi-pronged approach and collaborative efforts are needed to alleviate the difficulties in realizing the objects of the PoSH Act. The facts and course of the cases involving the petitioners, research reports, ground realities and the hands on experience would crystallise the following factors as the obstacles preventing the progress towards gender justice.

- I. Deep rooted thoughts and societal construction about gender norms*
- II. Heterogeneous women population who do not have similar shared experiences (Intersectionality).*
- III. Misunderstanding about feminism and women empowerment*
- IV. Lack of age appropriate sexual education*
- V. Lack of professional approach towards gender reforms and gender sensitisation*
- VI. Shortfalls in the Government missionary to tackle gender discrimination which leads to violence against women*
- VII. Lack of institutional accountability–unchecked indifference in complying the legislative mandates*



**VIII. Presence of misogynist and gender insensitive persons at the
WEB COPY helm of the affairs**

IX. Perceptions that the affirmative actions like women centric legislations are gender biased and affect the interest of the men

X. Power dynamics of gender in work places and its adverse consequences

I. Deep rooted thoughts and societal construction about gender norms

157. Right from wearing the dresses of her choice and choosing the decibel of her voice there are some societal restrictions and expectations about a woman. 'A good woman', 'a family type woman' and 'a kind and caring woman' have got some fixed imagination in the minds of the society. A strong minded woman is often understood as harsh and her assertiveness is conceived as arrogance. Though self-assertion is not any one's exclusive paradise, not all women can be assertive without being prepared to give some price.

158. Whether or not a woman is a cause for any family dispute, religious or caste controversy, calamity due to natural disaster, internal unrest or wars between the countries, women's dignity will be the incidental causality and her bodies will be the parallel battlefields. Making women vulnerable is normalised



and carried on to generations together. Hence a woman is taught and cautioned

to be polite and careful in order to prevent her from getting into any trouble.

The presumed vulnerability about a woman is a reason for putting her at the receiving end.

159. Some women might prefer to be protected or continue to be vulnerable and some may choose to challenge the stereotype notions by pushing the barriers and breaking the glass ceiling. But it is not simply viewed as her personal option. Instead, it is looked as gross deviation from the gender norms.

160. When enlightened and empowered women question the suppression and claims their right, persons who owe her an answer and course correction, without realising this responsibility, resort to retaliatory action in order to '*teach a lesson*' and '*to put them in their place*' and the most vulgar form of retaliation is by causing sexual harassment.

161. Men who do not exhibit the so-called '*masculine*' behaviour also being teased as womanish. Telling '*sorry*' to a woman and '*crying*' due to



emotional pain is also considered as 'unmanly'. Men home makers and men who share the house-chores are called as hen-pecker. Change in gender roles are the interesting subject for social media trolls and gender jokes and are being enjoyed by both men and women in view of the unconcious gender bias. Men also compelled to wear the mask designed by others and thus become the victims of stereotypic notions and actions.

II. Heterogeneous women population who do not have similar shared experiences(Intersectionality)

162. It is generally believed that women will have similar shared experiences and they will understand each other's problem better than men. Though it is true to some extent, the back ground in which the women are placed makes a lot of difference. The experience of a career women can not be the same as that of a home maker. Women educated and employed in a city cannot have similar experiences like women who have rural background and live at a grassroot level by taking up a job in any unorganized sector or involving in agriculture and allied activities. For the tribal women, the geographical features of the place where they live itself will determine their

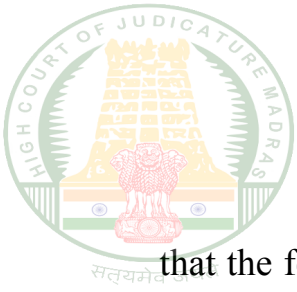


priorities. So the intricacies of the problems faced by each section of women cannot be understood properly even by the women of other sections and that again divide them. Availability of remedial measures and access to remedy are also different. So there is no uniformity in understanding the entitlement of rights and empowerment of each section and their support system.

III.Misunderstanding about feminism and women empowerment

163. In some quarters, Feminists are misunderstood as man-haters who often bully men, family breakers, attention seekers or media mongers who used to make slogans by standing on the street and raising some sort of protest to have more rights than men. Interestingly, some men understand that feminist women work hard to have a better level playing field in a patriarchal society and support them by being as feminists. There are feminist men and non-feminist women.

164. Some believe that feminism movements have completed their tasks and hence feminism is an outdated principle not too relevant in today's context where women have got almost all rights. Feminists find it difficult to convince



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

that the feminists goals are not achieved, so long as women are at the receiving end. Rarely they gain the mainstream support. Some join with political parties who have similar ideology. This makes them still more distanced from the common women, as they are identified as '*political*'. Thus, women are divided from a group which favours women's right and gives voice against violence against women. The more they are divided the more they are weak and vulnerable. However, it is not a question of bearing a label of feminist or not, but being sensitive to the ground realities of gender inequality and stand united against gender discrimination only matters.

165. And the other problem lies in the understanding the meaning of empowerment. The scales of empowerment is not uniform in all situations. Some women may believe that empowerment is predominantly related to the buying power of her family. It is at the option of the individual woman either to create avenues to generate her own income or depend on the income of the family. Empowerment parameter for this type of women is the possibility of their participation in the decision making process of the family. Unless she enjoys such a position in her family, there is no empowerment for them.

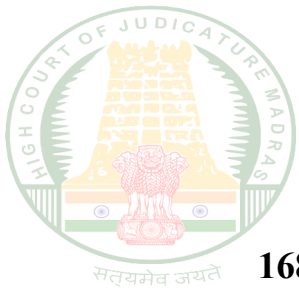


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166. No doubt education is an essential element for empowerment. Again it is at the option of an educated woman to get employed or not. A woman who is not educated but works as a unskilled labourer on daily wage basis can be more empowered than an educated woman who is not able to find any employment, when she faces a crisis in her life. As the standard of empowerment changes depending on the situation where a woman is placed, it is difficult to frame and implement one and only empowerment pattern.

IV. Lack of age appropriate sexual education

167. There is no fundamental understanding about Sex and sex, as there is no adequate sexual education in schools. When children get confused and curious, they try to explore information without any trusted guidance and get encountered with exploitive materials, persons and trapped. For generations together it is learnt to children that sex as something ashamed of and the discussion of which in the family should be avoided. Absence of adequate age-appropriate sexual education makes them vulnerable.



168. After the advent of Protection of Children from Sexual Offences Act, 2012 (POCSO Act), awareness is given to children as to how they should safeguard themselves from sexual harassment/exploitation. However, it is not adequate for the children to learn about decision making in the matter of sex. As children are going to be the adults, their deviant or aggressive behaviour while interacting with other sex or gender should be dealt at that stage itself in order to avoid the damage they might cause to the society at any future point.

V. Lack of professional approach towards gender sensitisation

169. There is no Government recognised or sponsored High Power Technical Committee to assist the Institutions and Establishments to get customised modules suiting to the demands of the respective institution for imparting awareness and conducting training programs on gender sensitisation. Except a few Corporate units which hire the services of persons specialised in Women/Gender Studies, Development Studies and specialised social work studies, other Establishments are not even aware of their existence. Due to the break in demand and supply chain, enrolment of students for Women Studies/Gender studies courses in some Universities/Centres is drastically

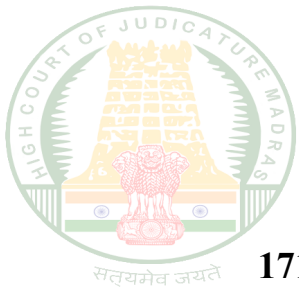


W.P.(MD)Nos.13981, 9747 & 12601 of 2024

reduced. If there is no adequate enrolment, there might be a risk of closing those disciplines. The concerned Departments in the Universities and centres may miss to get proper attention and encouragement from the concerned administrative sides in order to undertake better research and study projects. An innovative step taken towards women empowerment would face a downward trend of anti-empowerment. There is no authenticated knowledge bank available to the users to get technical informations. Lack of professional approach, sophisticated techniques and co-lateral assistance make the resources go waste without achieving the desired result.

VI. Shortfalls in the Government missionary to tackle gender discrimination which leads to violence against women

170. Directions are given by the Hon'ble Supreme Court right from *Visakato Aureliano Fernandez Vs. State of Goa and others* in respect of the strict implementation of the provisions of PoSH Act. Though it may not be fair to outrightly presume that there is a lack of intention on the part of the government machinery to implement the objects of the PoSH Act, the presence of inherent indifference cannot be denied.



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171. The State of Tamil Nadu has promptly amended its conduct and disciplinary rules as stated in the earlier parts. But so far it has not framed its State rules for the PoSH Act. All women welfare projects are entrusted with Social Welfare and Women Empowerment Department, which is also inclusive of Child welfare. Social welfare Department is already saddled with so many other functions and hence it can be difficult for them to monitor all the departments whether they carry out the implementation mandates of the Act. An exclusive department to care women development can be better serving in the area of women empowerment.

VII. Lack of institutional accountability – unchecked indifference in complying the legislative mandates

172. Even though the guidelines have been issued to follow the mandates of PoSH Act especially with regard to the composition of the Internal Compliance Committee and the conduct of enquiry by the Committee, their response remains to be lukewarm. As the above said field study reveals that the people at the helm of affairs are not even aware of the mandate to have an Internal Compliance Committee in an establishment.



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

WEB COPY 173. The penal part of the act is not utilised properly by the beneficiaries by giving due complaints. Even the Department continues to send advisory reminders and no coercive steps have been taken.

VIII. Presence of misogynist and gender insensitive persons at the helm of the affairs

174. Quite often things go out of hand because wrong persons are chosen to be present at right places. If a person who is a misogynist and who do not have the sensitivity to handle complaints of sexual harassment in work place, nothing will improve the work environment. Aggrieved women who make complaints can only imagine a Damocles' sword hanging on their head.

175. While appointments are made, there is no assessment made on the appointees to ensure whether they have the required degree of gender sensitivity in order to maintain a better harmony with the other gender in the work place. Even when people in responsible position who can be in the media glare do not hesitate some times to make gender insensitive statements. Though these acts are condemned no further action is taken to see the person does not



occupy the position. Unless gender sensitive assessment is made on the person who is in the offing to be appointed or promoted to and from each position in the work place the danger of a misogynist occupying the top most post can not be avoided.

IX Perceptions that the affirmative actions like women centric legislations are gender biased and affect the interest of the men

176. Before the enactment of PoSH Act, Men's Rights group demanded to have the PoSH Act as gender neutral and objected to have it a gender specific legislation. Though it is not outrightly denied that men did not face sexual harassment in workplaces, the role of a woman to cause such harassment on men was found to be near to nil. Research shows that men also face sexual harassment in workplaces but such kind of harassments are mostly same-sex harassment.

177. In an interesting research paper titled “*Are men sexually harassed? If so by whom ?*” published by Research Gate website in the year 1998, states that men experience potentially sexually harassing behaviours from other men. The literature on the above subject reveals that the harassment by a gay or bi-



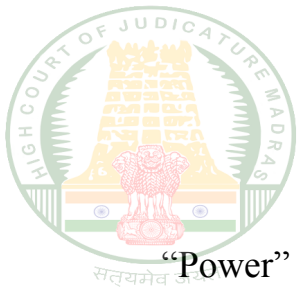
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sexual man appears to be less common due to the repercussions in mostly heterosexual work environments. The paper further revealed one type of sexual harassment against men is to enforce traditional masculinity by making fun of a man for acting effeminate or for being a gay man. Though one sample group of respondents identified women as offenders, their act of harassment is earning unwanted sexual attention.

178. As the women are already facing various harassment including sexual harassment due to aggressive attitude and discriminatory mindset, to have the PoSH Act as gender neutral could result in perpetrators making false sexual harassment allegations against victim women, to get an easy way out. Even when the act is women centric, they are facing secondary victimisation in the form of retaliation and group resistance. In the event of having it gender neutral, the victim woman can easily be branded as “perpetrators” and defeat the whole object.

X . Power dynamics of gender in work places and its adverse consequences

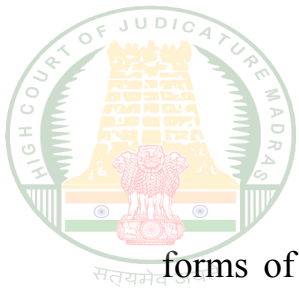
179. The word “Empowerment of women” encompasses the word



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“Power” which means a product comes out of a struggle. Work place is already a competitive environment. Every one aspires to walk fast in the career ladder and in that hurry they tend to overtake or push down others. Men were conveniently occupying the decision making positions, with a mindset that women are not optionally competent to higher level positions and they are meant for lower level position and that they should be less competitive to occupy those position involving decision making.

180. When more and more potential women enter to occupy higher positions in their career due to education, they are viewed as unnecessary intruders or competitors who should be easily pushed down or ignored in the first round itself. When women don't give up, it sets up a hostility against her, even before she realises its existence. This charged atmosphere acts as a breeding ground for unhealthy corrupt practices and any women who questions this, either in personal interest or in public interest becomes a target and will be hounded from all sides in all manner. If any exceptional woman continues to fight this mighty circle with courage and determination, she will be either singled out by her own colleagues who fear retaliation or be subjected to all



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

forms of active and passive harassment. One among several silencing tactics used against such a woman is sexual harassment.

181. Among various types of secondary victimisation caused to such a woman, the worst one would be an unanswered gossip question '*why she alone is in trouble, when every other woman is alright?*', revolving around her. The unhealthy corrupt practices adopted in work place is also a reason for sexual harassment. Hence, corrupt practices should be dissuaded in the work places by ensuring transparency in the matter of selection for promotion to any special position or project assignment by setting right the power dynamics.

Concluding Remarks

182. Though India has its own cultural complexity, it did not shy to register development in any sphere and it has been a fastly developing country. There are supporting voices from the global community in favour of India that it should be recognized as a super power, in view of its fastly growing economy. The might of this country has been proved in many areas, be that, it is agriculture, industrialization, technological advancement including space



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

mission technology, democratic governance, defence, family planning, health, education and so on. There is a phenomenal reduction of pendency of cases despite people judge ratio is not optimal.

183. All these developments were possible in a larger democracy like India by proper planning and budget allocation from time to time and by spreading a message across the world that India is going to be a paradise for ease of doing business. But the country finds it difficult to achieve such results in gender gap index. How long should every one hear that women empowerment has a long chequered history and because of the cultural complexities it can happen just slowly?

184. It is true that gender equality has cultural issues. Cultural complexities are indispensable in India in view of its diversity. But the culture in India was not resistant to permit western styles, culinary of various countries and technology. Adaptability of our citizens to technology is astounding. Mobile phones and internet did not take long to visit each Indian household.

185. India had dealt Covid Pandemic and its impact more efficiently than



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

any other country. Indian youth are very dynamic and Indian brains are in demand in any part of the world. Only when it comes to the gender issue, it does not happen fastly. It is very much an achievable goal and that too in a short time, provided steps in this regard are implemented sincerely and each and every citizen takes the responsibility for not delaying it due to his or her own indifference and insensitivity.

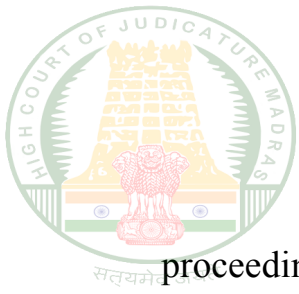
PART-VII

Directions

186. The petitioner in W.P.(MD)No.13981/2024 has already been given with the order of revocation and her only grievance was that even though her period under suspension has been treated as duty, her request to give salary for the said period has not been considered. Hence,

- (i) *The respondents 1 to 3 are directed to file a report as to the disbursal of her salary for the period under suspension within 4 weeks.*

187. The petitioner in W.P.(MD).No.9747/2024 has sought a direction against 1 and 2nd respondent to take disciplinary action against 4th and 5th respondent by forming independent committee. During the course of the



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

proceedings, it is reported by the 1 and 2 that Internal Committee has been formed and that disciplinary action has been initiated against the respondents 4 and 5. However, it is learnt from the submission of the learned counsel for the petitioner that enquiry is kept pending in view of the pendency of these writ petitions. Admittedly, this court has not stayed the enquiry to be made by the Internal Committee or by initiating any disciplinary action. In fact no observation has been made on the allegations made on the complaint and the committee appointed for enquiry need not have waited without continuing the enquiry. Hence the respondents are directed to continue the enquiry and finish the same as early as possible by giving reasonable opportunity.

188. The petitioner in W.P.(MD) No.12601/2024 has already been given with the relief vide order dated 25.07.2024 and the matter is kept pending only in view of the larger interest and hence no further order is needed to be issued in respect of the limited interest of the relief sought.

189. The following Directions are issued in the larger interest considering the various aspects dealt in the earlier parts of this order and also considering recommendations made by the State Women Commission



and the learned *amicus curiae*:

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I. (i) *As the State Government has not yet framed the rules for the PoSH Act. The State Women Commission has filed the model draft rules which are very exhaustive. The State Women Commission shall submit a copy of the draft rule to the state Government within 2 weeks and the State Government shall scrutinize the rules and make necessary changes if it deems fit and finish the approval and publish the approved rules and submit a report about the process in this regard during the next hearing.*

II. And the State Government is further directed to :

(i) *To create a Government official website by giving a reference numbers to each of the Complaints Committee and to upload the details of the same in the website in order to ensure transparency of their functions.*

(ii) *To create a dashboard to provide information about the number of committees, details of the members in the committee, number of complaints received, number of complaints resolved, number of reports submitted by the Internal Committee and the details of action taken by the establishment and the result of such action.*

(iii) *To file a report as to whether sufficient funds are being spent to carry out the functions under sec.24 of the Act and in case of insufficiency of funds, report about the steps taken to generate funds for the effective implementation of the mandates of the Act.*



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

WEB COPY To submit a report as to:

(i) *whether Gender budgets are allotted every financial year in terms of the G.O.(Ms)No.38 Social Welfare and Women Empowerment [SW2(2)] Department dated 08.07.2022 and whether it is properly utilized by the Departments / Institutions.*

(ii) *If so, what kind of enabling environment have been created in each department and Institutions by making use of the gender budget and how they have improved the quality of the work atmosphere, especially for women, given the specific nature of the Institution.*

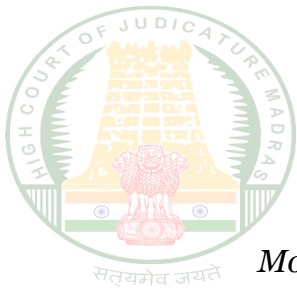
(iii) *whether gender budget cell mechanism is in place and whether they are available in each and every institution of the State.*

(iv) *whether the gender cell is carrying out its functions as suggested in the respective Government orders formulating the gender budget.*

(v) *whether the women workers in each department is aware of the availability of the gender budget cell.*

(vi) *The State Women Commission can check the ground realities by making visits to important Institutions like Educational Institutions, hospitals etc and file its report to the Government.*

(vii) *To form a State level Technical Committee with persons professionally qualified in the field of gender and skilled in preparing*



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

Module and evaluation questionnaire for the Gender sensitization awareness and Training programmes.

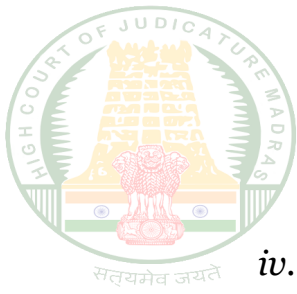
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III. All the Government respondents and both State and National Women Commissions are directed :

(i) To offer suggestions to compel gender sensitization and awareness for the employees and whoever comes into incidence of employment or avail services with the government and who take sensitization programs light or optional and for whom Government is spending its resources; and to prevent those who are paid with public money and indulge in gender discriminatory acts like sexual harassment against women in work places in violation of gender equality, which is a constitutional guarantee.

IV. The Government respondents are directed to file a feasibility report on the following:

- i. To include gender sensitization questions as part of competitive examination for employment under the State/ Union and other departments and Institutions.*
- ii. To have a pass in department and Institution specific gender sensitivity test along with pass in usual departmental account tests papers in order to get a pass for further promotion or get increment for any feeder cadre posts.*
- iii. To have similar basic level pass for persons working in basic service.*



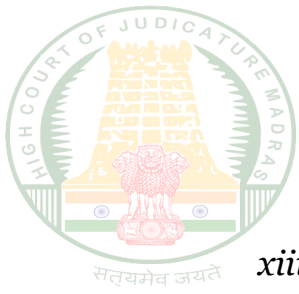
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- iv. *To make periodical assessment of gender sensitivity in order to avoid misogynic tendencies present in managerial positions in any institution by getting unchecked promotion.*
- v. *To do gender sensitization assessment on persons already in service in Government and other Government Institutions and other establishments by making necessary amendments to the conditions of respective service rules.*
- vi. *To mandate a gender sensitivity clearance certificate issued by a Technical Authorities (Gender) at the Central /State /District/ Taluk/ Village level as a condition precedent to get license to carry out any business, start any company, school, hospital industry or a shop, run any institution (profitable or not), practice any profession, for driving, to convene and register marriages in order to constitute a family etc., wherever incidence of paid or unpaid care work or employment arise and to amend the respective rules accordingly.*
- vii. *To form gender sensitivity audit squad to inspect any such work place to check whether the employees are sensitive enough to have a harmless relationship with other genders with the help of specially designed gender sensitivity evaluation tool (suited to the respective government work place) and recommend the authorities concerned for necessary action in case of finding below than the optimal level of gender sensitivity.*



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- viii. *To appoint Central /State /District /Taluk /Village level Technical Authorities (Gender) with persons having experience and special qualification to give guidance, advice and to review the progress of implementation and submit report to the concerned authorities and recommend actions to be taken against those machineries which do not follow the guidelines and to conduct training and issue certificate for undergoing training and for conducting the gender sensitivity evaluation tests.*
- ix. *To submit a report as to the feasibility of having a Separate department for Women Empowerment by separating it from the Social welfare and Women Empowerment, by considering the load of work and targets to be achieved.*
- x. *The State and National Women Commission shall be given with the responsibility of monitoring the implementation of the Act as an independent body and they shall conduct periodical research as to the implementation of the PoSH Act.*
- xi. *To maintain a register of outside members for the purpose of sec. 4(2) (c) and 7 (1) (c) of the Act, in order to avoid a same person occupying hundreds of committees under the above provisions.*
- xii. *To issue a warning circular to all departments /institutions/establishment for complying the mandatory requirements contemplated under POCSO Act and taken action in case of non compliance.*



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

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xiii.To submit a report on the gender sensitisation and age appropriate sexual education so far designed/given to the students studying in school and higher educational institutions.

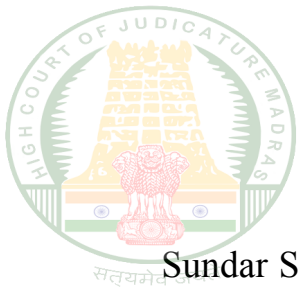
xiv.To file a report as to whether the government order issued in G.O.Ms.(D) No.83 dated 17.06.2021 has been implemented in all the schools in accordance with the guidelines issued for students safety and protection.

xv.To offer suggestions to generate funds to enforce the above functions by giving appointments to the persons qualified in the area of gender reform.

For example,

By imposing Gender reform surcharge/cess as similar as that of education surcharge/cess, etc.,

190. This court places its appreciation on record for the services of Mr.Niranjan S.Kumar the learned counsels for the petitioner who have rendered immense help by furnishing relevant information even when the case is taken in larger interest, Mr. Veerakathiravan Additional Advocate General who had rightly accepted the seriousness of the matter and furnished all relevant reports, Mr.S.Shanmugavel, Additional Government Pleader and Mr.N.Ramesh Arumugam, Government Advocate, for their valuable assistance, Mr.David



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

Sundar Singh and Ms.J.R. Annie Abinaya who had submitted model draft rules for the State to frame rules for PoSH Act along with other valuable materials.

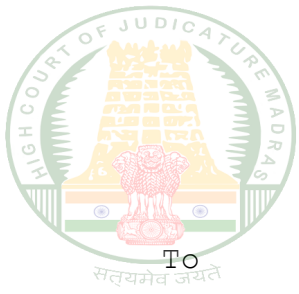
191. Dr.U.Nirmala Rani the learned *amicus curie*, who had furnished quality information and field level research reports by presenting them in a meticulously bound book like a research report deserves special appreciation for her ready acceptance to be the *amicus curiae* and the invaluable assistance.

192. The matter is ordered to be listed after 4 weeks to get a compliance and feedback report from the respective respondents.

21.11.2024

jrs

Internet: Yes/No
Speaking Order/ Non Speaking Order
Neutral Citation Case: Yes/No



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

WEB COPY

1. The Principal Secretary to Government,
Ministry of Health and Family Welfare,
Namakkal Kavignar Maaligai,
Fort St.George, Chennai.
2. The Commissioner,
Indian Medicine and Homeopathy Department,
Chennai corporation child care centre,
Arignar Anna Government Hospital Campus,
Arumbakkam, Chennai.
3. The Principal,
Government Ayurveda Medical
College and Hospital,
Chidambara Nagar, Kottar, Nagercoil,
Kanyakumari District - 629001
4. Dr.Clarence Davy
The Principal, Government Ayurveda
Medical College and Hospital,
Chidambara Nagar, Kottar, Nagercoil,
Kanyakumari District - 629001.
5. The Managing Director,
Arasu Rubber Corporation,
Nagercoil, Kanniyakumari District.
6. The General Manager,
Arasu Rubber Corporation,
Nagercoil, Kanniyakumari District.
7. The State of Tamil Nadu,
Represented through its Secretary,
Government of Tamilnadu,
Social Welfare and Women
Empowerment Department,
Secretariat, Fort St. George,
Chennai.



W.P.(MD)Nos.13981, 9747 & 12601 of 2024

WEB COPY

8.The Secretary
Union of India,
Ministry of Women and Child Development,
Government of India, New Delhi.

9.The Chairperson,
State Women Commission,
Tamilnadu State Commission for Women,
Kalas Mahal, 1st Floor,
Chepauk, Chennai - 600 005.

10.The Chairperson,
National Commission for Women
Plot-21, Jasola Institutional Area,
New Delhi - 110 025.

Copy to:

1. The Registrar General,
High Court of Madras,
Chennai.) (for circulating soft/hard copy of this order
) (to all the judicial officers in the State,
) (GSICC-I & II of the Principal Bench
) (and Madurai Bench of this Court and GSICC
) (chairperson of all the Districts after obtaining
) (permission from the Hon'ble Chief Justice.
- 2.The Director,) (for using its as a reference material for
Tamilnadu State Judicial Academy,) (Gender Sensitisation /PoSH Act sessions.
Rajaannamalai Puram,
Chennai.



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W.P.(MD)Nos.13981, 9747 & 12601 of 2024

R.N.MANJULA, J.

jrs

W.P.(MD)Nos.13981, 9747 & 12601 of 2024
and
WMP.(MD) Nos. 12247 of 2024

21.11.2024