



Writ Appeal No.2962 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

RESERVED ON : 28.02.2024

PRONOUNCED ON : 30.04.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.2962 of 2019 &
W.P.No.5140 of 2020
CMP.No.19207 of 2019 & WMP No.6070 of 2020**

W.A.No.2962 of 2019

Samuel Tennyson ... Appellant

Vs

1. The Principal & Secretary,
Madras Christian College (Autonomous)
Tambaram East, Chennai – 600 059.

2. The Convenor
Committee of Enquiry/Internal Complaints Committee,
(Gender Sensitization and Prevention of Sexual Harassment
of Women in Work Place, MCC)
Madras Christian College, (Autonomous)
Tambaram East, Chennai – 600 059.

3. J.S.Thanusri Rajalakshmi ... Respondents
Impleaded the third respondent vide Court order dated 22.08.2022 made in
CMP.No.21647 of 2019 in W.A.No.2962 of 2019.



Writ Appeal No.2962 of 2019

PRAYER: Writ Appeals have been filed under Clause 15 of Letter Patent against the order dated 13.08.2019 made in W.P.No.15145 of 2019.

WEB COPY

W.P.No.19207 of 2019

Samuel Tennyson ... Appellant
Vs

1. The Principal & Secretary,
Madras Christian College (Autonomous)
Tambaram East, Chennai – 600 059.

2. The Convenor
Committee of Enquiry/Internal Complaints Committee,
(Gender Sensitization and Prevention of Sexual Harassment
of Women in Work Place, MCC)
Madras Christian College, (Autonomous)
Tambaram East, Chennai – 600 059. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, to call for the records of the first respondent in its proceedings No.Nil, dated 14.08.2019, and quash the same.

For Appellant/ : Mr.V.Vijaya Shankar
Petitioner

For Respondents : Mr.P.John Zachariah for
M/s.Fox Mandal and Associates for R1

Mr.Sai Prasad for
M/s.Sai Raaj Associates for R2



WEB COPY



Writ Appeal No.2962 of 2019

Mr.Karthick Senior counsel for
Mr.Adithya Varadarajan for R3
COMMON JUDGMENTS

(Judgment of the Court was made by Mr.K.KUMARESH BABU., J)

This Intra Court Appeal had been preferred by the unsuccessful petitioner, wherein the learned Single Judge had upheld the report of the second respondent, viz., the fact finding report and the consequential second show cause notice issued to the appellant.

2.The Writ Petition on board is challenging the order of dismissal passed by the first respondent.

3.Heard Mr.V.Vijaya Shankar, learned counsel appearing for the appellant and petitioner Mr.P.John Zachariah learned counsel appearing for the first respondent, Mr.Sai Prasad, learned counsel appearing for the second respondent and Mr.Karthik learned Senior counsel appearing for Mr.Adithya Varadarajan learned counsel for the third respondent



Writ Appeal No.2962 of 2019

WEB COPY

4.Mr.V.Vijaya Shankar, the learned counsel appearing for the appellant/petitioner would submit that the appellant had been working as a Assistant Professor in Zoology Department in the first respondent college. He was originally appointed in the year 2011 under the Management cadre and from 13.06.2011, he was appointed as an Assistant Professor under the Government aided scheme. He would submit that the college had arranged for a study tour of the students of Zoology Department during January 2019. About 42 students participated and they were accompanied by seven teaching faculty including the appellant/petitioner and one non teaching faculty.

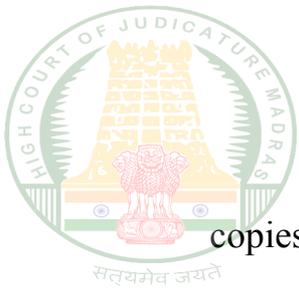
5.When that being so, after nearly two months, the appellant was surprised that the first respondent had initiated proceedings against the appellant and one another Professor under the provision of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. The appellant had submitted his explanation denying various allegations that had been made against him. He would further submit that the second respondent who was nominated to go into the



Writ Appeal No.2962 of 2019

complaints made by the students against the appellant and they had not followed the procedures prescribed. He would further submit that the appellant was made to wait outside, when the statements were being recorded by the complainant and at the fag end of the day, the appellant was called inside the room and the questions were put-forth by the Committee. He would further submit that he was not afforded with an opportunity to cross examine the alleged complainants/witnesses. He would submit that one of the complainant, who was the only person, who spoken against the appellant had a motive to indict the appellant, as the appellant had refused to sign her record note, as she had submitted the same beyond the time limit that had been granted to the students to submit their record notes.

6.He would further submit that the appellant had received the copy of the report from the first respondent issued by the second respondent. He would further submit that he was unaware of allegations made against him in the complaint as none of the copies of the complaints were supplied to him nor the statements of witnesses were supplied to him. Therefore, the appellant by a letter dated 29.04.2019 had sought for the



Writ Appeal No.2962 of 2019

copies of the statements and complaints which form part of the Committee's report. In may 2019, the first respondent had furnished various documents to him and that the petitioner had made a demand on 20.05.2019, since the complaints and the statements were only furnished to him, pursuant to his request, thereby he sought for a re-enquiry with permission to mark additional documents and to reopen the examination of witnesses on his side. He would submit that the same was denied by the first respondent and by notice dated 24.05.2019, the first respondent had issued a second show cause notice proposing to dismiss him from service.

7. He would submit that the enquiry conducted by the second respondent was contrary to the procedure laid down as he had been denied opportunity of hearing, which is in violation of principles of natural justice. He would further submit that the second show cause notice issued by the disciplinary authority namely the first respondent is opposed to all canons of service jurisprudence, as no charge memo had been issued to him indicating the charges and no enquiry officer had been appointed to conduct an enquiry.



Writ Appeal No.2962 of 2019

WEB COPY 8.He would further submit that even though in this Intra Court Appeal, the order of the learned single judge had been stayed, but, the first respondent had not permitted him to join duty on the pretext that the order of dismissal came to be passed immediately after the disposal of the Writ Petition. Hence, the appellant had preferred a Writ Petition challenging the order of dismissal passed by the first respondent, pursuant to the second show cause notice issued by the first respondent.

9.He would vehemently contend that when the appellant had issued an order on 04.03.2019, there was no whisper of any enquiry into the complaint. He would submit that the order dated 04.03.2019 itself was an order of punishment wherein warning was given to the appellant and further he was not assigned with any work such as valuation of answer scripts, and awarding internal marks and restrained from accompanying the students on study for a period of three years. He would submit that the said order itself is an order of punishment that too, without enquiry. In that context, he would submit that the first respondent ought not to have issued a



Writ Appeal No.2962 of 2019

WEB COPY

second show cause notice based upon the alleged enquiry report of the second respondent, as such, the same would amount to double jeopardy and that apart, it would amount to conducting the second enquiry on the same set of charges, which is against the well established principles of service jurisprudence.

10. He would further contend that none of the complaints nor the statements made by the witnesses before the second respondent were furnished to the appellant to defend his case effectively. The copies of the complaint and the statement of witnesses were furnished after the service of enquiry report and that too only after a request was made by the appellant. This itself would substantiate that no fair procedures have been followed by the second respondent at the time of conducting enquiry, which is in violation of principles of natural justice.

11. He would further submit that the second show cause notice and the consequential order of dismissal had been made by the first respondent only on the strength of the report of the Internal Complaints Committee. The



Writ Appeal No.2962 of 2019

same was challenged by the appellant on various grounds and there was no independent disciplinary proceedings that had been initiated by the first respondent in passing the order of punishment violating the principles laid down in the service jurisprudence namely that without initiation of any disciplinary proceedings, no employee should be issued with a major punishment of dismissal from service.

12.In support of his contention, the learned counsel appearing for the appellant had relied upon the judgment of the Hon'ble Apex Court in the case of *Dr.Vijayakumaran C.P.V., vs. Central University of Kerala* reported in *(2020) 12 SCC 426*. He would particularly rely upon the paragraphs 12 & 13 of the judgment to contend that the procedures laid down under the provisions of the enactment had not been followed and on that ground itself, the order of termination impugned, would have to be held to be illegal as being stigmatic without subjecting the appellant to a regular enquiry as per the service Rules.



Writ Appeal No.2962 of 2019

13.Further relying upon a judgment in the case of *Manonmanium*

WEB COPY *Sundaranar University vs. Dr.P.Govindaraju* reported in (2022) 3 CTC 465

he would contend that the Division Bench of this Court following the aforesaid judgment had taken a similar view.

14.Further relying upon a Division Bench of the Bombay High Court in W.P.No.9445 of 2019, he would contend that the Internal Complaint Committee namely the second respondent was only a fact finding Committee and that a regular departmental proceedings ought to have been initiated under the Act.

15.Hence, he would submit that the order impugned before us was also the fact finding report of the second respondent and the second show cause notice issued by the first respondent and the consequential order of dismissal passed by the first respondent would have to be interfered with by this Court.



Writ Appeal No.2962 of 2019

16. Countering his arguments, Mr.P.John Zachariah, learned

WEB COPY

counsel appearing for the first respondent would submit that as soon as the complaint of sexual harassment as against the appellant was received by the college and the college had passed an order giving a serious warning to the appellant apart from that without entrusting certain duties for a particular period. The said order cannot be termed to be an order of punishment as against the complaint. Thereafter, an Internal Complaints Committee was constituted to proceed with an enquiry on the complaints of sexual harassment. The appellant was served with a show cause notice enclosing the complaints received from the concerned students. The same was refuted by the appellant, which goes to contrary to his written response dated 01.04.2019 where under the reference indication to the letter issued by the Convenor of the second respondent was made along with the complaints dated 05.02.2019 and 08.02.2019. He would further submit that the appellant was allowed to have the assistance of an Advocate, who was present throughout the enquiry and it is not a case that the statement was recorded in the absence of appellant or his counsel. That apart, he would submit that the respective witnesses were all cross examined by the



Writ Appeal No.2962 of 2019

WEB COPY

appellant either by himself or through his counsel and the same were recorded by the second respondent Committee. He has also admitted that at the end of the enquiry, signatures were obtained from him in the record of proceedings. He would further submit that the objections raised by the appellant at the later stage were not raised by him at the initial stage i.e., on the date of enquiry or immediately thereafter. The ground raised by the appellant that the non-supply of complaints/statements of witnesses is an after thought.

17.He would further submit that there was no procedural lapse in passing the order of punishment. The terms and conditions of service of the appellant is covered by the agreement that he had entered upon with the college. He would further submit that of course the agreement provides for an opportunity of personal hearing, and would submit that the Hon'ble Apex Court in the case of *Medha Kotwal Lele & Ors, vs. UOI & Ors.*, reported in *(2013) 1 SCC 297*, had held that the report of the Complaints Committee, will be the report of enquiry officer appointed under the provisions of the service Rules and based upon which the disciplinary authority can proceed



Writ Appeal No.2962 of 2019

to pass orders. He would further refer to the provisions of The Sexual

Harassment of Woman at Work Place (Prevention, Prohibition and

Redressal) Act, 2013, and the Rules framed there under, to contend that

when there are no service Rules, then the Complaints Committee itself can

make a recommendation as to what could be the punishment that could be

inflicted upon the person, who had been found guilty of sexual harassment.

18. In that context, he would submit that based upon the fact finding report of the second respondent, the second show cause notice had been issued to the appellant, which has also been upheld by the learned Single Judge. Only thereafter the order of punishment had been passed and therefore, he would submit that there is no illegality or infirmity in the order impugned before this Court. In support of his contention, he would also rely upon the judgment of the Hon'ble Apex Court in the case of *Union of India vs. Dilip Paul* reported in *2023 SCC Online SC 1423*. Hence, he would pray this Court to dismiss the Intra Court Appeal as well as the Writ Petition.



Writ Appeal No.2962 of 2019

WEB COPY

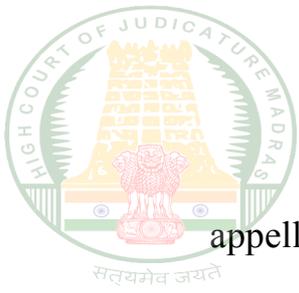
19.Mr.Sai Prasad, the learned counsel appearing for the second respondent would submit that on formation of the second respondent Committee based upon the complaints that had been received against the appellant, the Convenor of the Committee had forwarded a communication calling for written response by enclosing the complaints that had been received by the college. He would submit that in response to the said communication, the appellant had also sent a written response on 01.04.2019. A perusal of the same, would indicate that what has been stated by the appellant in claiming that the complaint copies were not sent to him will have to fall, as he himself admitted that he had been in receipt of the letter of the Committee enclosing the copies of the complaints of the students. He would further submit that the Committee had conducted a detailed enquiry and in examination of all the witnesses except one, the appellant was present. Since there was a request made by the complainant to depose only in the absence of the appellant, the appellant was requested to wait outside the room, but however his counsel was present during the deposition of the said witness. Thereafter, the appellant was permitted



Writ Appeal No.2962 of 2019

inside the hall and the cross examination was also recorded by the Committee.

20.He would further submit that the Committee had conducted enquiry on 06.04.2019 and 09.04.2019 and submitted its report on 17.04.2019. In the interregnum, if the appellant was aggrieved over the non-supply of complaints or the statements, then he could have immediately apprised the Committee for the same. Infact, he had been served with the copies of the complaint and he was present at the time of recording of the statements by the Committee. He would submit that the present averments about non-supply of materials are all an after thought which should not be entertained by this Court. He would further submit that based upon the statements made by the respective students, who had suffered at the hands of the appellant and their cross examination, a detailed finding of fact had been submitted by the second respondent to the first respondent recommending for initiation of action at the hands of the first respondent. Therefore, he would submit that there has been no procedural violation in conducting the enquiry and all opportunities have been given to the



Writ Appeal No.2962 of 2019

appellant to defend himself effectively. The entire original files relating to the recording of statement and other communication between the Committee and the appellant were placed before this Court.

21.Mr.Karthik learned Senior counsel appearing for the impleaded party, who was also a complainant and who had deposed against the appellant would submit that what that had been narrated by her before the Committee are all true facts and therefore, he would support the case of the respondents 1 & 2.

22.We have considered the rival submissions made by the respective parties and perused the materials placed before us including the original files produced by the second respondent Committee.

23.From the analyses of the arguments made by the learned counsel appearing for the appellant, he had raised the following contentions:-

a) that the copies of the complaints were not furnished to him;



WEB COPY



Writ Appeal No.2962 of 2019

b)that the enquiry had not been properly conducted by the second respondent, since the appellant had not been provided with the statement of witnesses and not given an opportunity of cross examination of the witnesses, as the Committee itself had recorded the statements;

c) The first respondent had not issued any charge memo and called for an explanation and based upon the report of the fact finding authority, who is not an enquiring authority, had issued a second show cause notice based upon which an order of punishment had been passed.

24.As regards to the non-supply of the complaints, as rightly pointed out by the learned counsel appearing for the college as well as the Committee, the appellant in his written response to the initial notice of the second respondent Committee, had referred to the complaints received from the students which is extracted hereunder :-

Page No.17/32



WEB COPY



Writ Appeal No.2962 of 2019

Ref:- Your letter dated 28.03.2019, enclosing copies of the complaints received on 5th & 8th February 2019, from the students of the III B.Sc., Zoology Department.

25. Further a perusal of the entire response would show that the appellant had submitted his written response to each and every paragraphs of the complaints against him. Therefore, we are of the view that the appellant had made a false allegation that he had not been supplied with the copies of the complaints and in that context, we hold that the appellant had been infact supplied with all the complaints.

26. As regards to the contention that the Complaints Committee had not conducted a fair and proper enquiry, we had the benefit of the original proceedings that had taken place during the course of the enquiry by the second respondent. From going through the files, we could see that the Committee had not violated any of the basic principles of natural justice. Statement of every witnesses had been recorded along with the cross examination by the respective delinquents. On a reading of the report of the finding of fact together with the statement of witnesses that were examined



during the course of enquiry, we conclusively conclude that there has been no infraction in the enquiry proceedings that had been conducted by the second respondent. From the reading of the statement that has been recorded along with the cross examination it could be seen that sufficient opportunities had been afforded to the appellant and he cannot be heard to say that he had been denied of the opportunities.

27. With regard to the contention of procedural violation of non issuing a charge memo in imposing a punishment we would analyse the law on the subject. Till the Hon'ble Apex Court judgment in case of *Vishaka and Ors., vs. State of Rajasthan & Ors.*, reported in (1997) 6 SCC 241, there was no mechanism with regard to dealing with cases of sexual harassment. The Hon'ble Apex Court had framed guidelines and norms in that aspect. For better appreciation, the relevant paragraphs in the aforesaid judgments framing such guidelines and norms are exacted hereunder:-

17. The GUIDELINES and NORMS prescribed herein are as under:

HAVING REGARD to the definition of “human rights” in Section 2(d) of the Protection of Human Rights Act, 1993,

TAKING NOTE of the fact that the present civil and penal laws in India do not *adequately* provide for specific protection of women from sexual



WEB COPY



Writ Appeal No.2962 of 2019

harassment in workplaces and that enactment of such legislation will take considerable time,

It is necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the employer or other responsible persons in workplaces and other institutions:

It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition:

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

- (a) physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually-coloured remarks;
- (d) showing pornography;
- (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive steps:

All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:



WEB COPY



Writ Appeal No.2962 of 2019

(a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.

(b) The rules/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. *Criminal proceedings:*

Where such conduct amounts to a specific offence under the Penal Code, 1860 or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator *or their own transfer*.

5. *Disciplinary action:*

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. *Complaint mechanism:*

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

7. *Complaints Committee:*

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special



WEB COPY



Writ Appeal No.2962 of 2019

counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.

8. Workers' initiative:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

9. Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. Third-party harassment:

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

18. Accordingly, we direct that the above guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These writ petitions are disposed of, accordingly.



WEB COPY

28. In the case of **Medha Kotwal Lele & Ors, vs. UOI & Ors.**, reported in **(2013) 1 SCC 297**, the Hon'ble Apex Court had apart from the above guidelines issued further directions. For better appreciation, the relevant paragraph is extracted hereunder:-

44. In what we have discussed above, we are of the considered view that guidelines in Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place:

44.1. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (by whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings, etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

44.2. The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing



WEB COPY



Writ Appeal No.2962 of 2019

Orders) Rules shall now carry out amendments on the same lines, as noted above in para 44.1 within two months.

44.3. *The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and State level. Those States and/or Union Territories which have formed only one committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such committees an independent member shall be associated.*

44.4. *The State functionaries and private and public sector undertakings/organisations/bodies/institutions, etc. shall put in place sufficient mechanism to ensure full implementation of Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] guidelines and further provide that if the alleged harasser is found guilty, the complainant victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.*

44.5. *The Bar Council of India shall ensure that all Bar Associations in the country and persons registered with the State Bar Councils follow Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] guidelines. Similarly, the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the*



WEB COPY



Writ Appeal No.2962 of 2019

guidelines laid down by Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] . To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as the Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] guidelines and the guidelines in the present order.

29.Pursuant to the aforesaid judgment, the Government of India had also promulgated The Sexual Harassment of Woman at Work Place (Prevention, Prohibition and Redressal) Act, 2013, and also the Rules. Section 13 envisages that the Internal Committee on coming to the conclusion that the allegation against the delinquent has been proved, it shall recommend to the employer to take action for sexual harassment, as a misconduct in accordance with the provisions of the service Rules applicable to the respondents and when no such service Rules have been made in such manner as may be prescribed. Section 19 mandates that it is the duty of an employer to treat sexual harassment as a misconduct under the service Rules and initiate action for such misconduct. Rule 9 of the



Writ Appeal No.2962 of 2019

WEB COPY

Rules envisages that except in cases, where service rules exists, if the complaints committee arrives at a conclusion that the allegations have been proved, then it shall recommend to the employer to take any action including written apology etc., including termination.

30.It is an admitted case that the employment of the appellant with the first respondent is governed by an agreement as envisaged under Sub-Rule 2(I) of Rule 11 of the Tamil Nadu Private Colleges (Regulation) Rules 1976. Clause 7 of the agreement deals with the manner in which the action should be initiated for inflicting a punishment of dismissal, removal, reduce in rank or termination. It also envisages a personal hearing.

31. From a conjoint reading of the said clause 7, it would draw us to the conclusion that an employee should not be contemned in violation of principles of natural justice and the well settled principles of *audi alteram partem*.



Writ Appeal No.2962 of 2019

32.A reading of the judgment of the Hon'ble Apex Court in the case of

WEB COPY

Medha Kotwal Lele, referred supra, particularly paragraph 44.1 which had been extracted supra, it had held that the findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or an enquiry leading to a disciplinary action, but should be treated as a finding/report in an enquiry into the misconduct of the delinquent in sexual harassment cases. It had mandated that such procedure should be incorporated in the service Rules.

33.The Hon'ble Apex Court in the case of **Union of India & Ors., vs. Dilip Paul** reported in **2023 SCC Online SC 1423**, after referring to the aforesaid judgment and also a judgment of the Hon'ble Apex Court in the case of **Sakshi vs. Union of India** reported in **(2004) 5 SCC 518**, had disapproved the observations of the High Court (whose order was challenged therein) and had held that if such observations were to be accepted, it would reduce the findings of the Complaints Committee to a mere recording machine. For better appreciation, the relevant paragraphs are extracted hereunder:-



WEB COPY



Writ Appeal No.2962 of 2019

75. There appears to be neither any statutory bar nor any logic to restrict the power of the complaints committee to put questions to the witnesses only to the context enumerated in the aforesaid provision. The complaints committee being an inquiry authority and in some sense equivalent to a presiding officer of the court as inferred from Sakshi (supra), must be allowed to put questions on its own if a proper, fair and thorough inquiry is to take place.

76. If the observations of the High Court are accepted, it would lead to a chilling effect, whereby the complaints committee which is deemed to be an inquiry authority would be reduced to a mere recording machine.

34.The judgments relied upon by the learned counsel appearing for the appellant cannot be applied to the facts of the present case, since a reading of the said judgment would show that the facts in those cases are different to the facts of the present case on hand.

35.From the conjoint reading of the judgment of the Hon'ble Apex Court extracted supra, we are of the view that the disciplinary authority is bound by the findings of fact given by the internal complaints committee viz., the second respondent herein. The second respondent is a fact finding enquiry authority and the report of the committee is held to be a report of an enquiry authority based upon which a disciplinary action by the first



Writ Appeal No.2962 of 2019

respondent can be initiated. If the arguments of the learned counsel

appearing for the appellant are to be accepted in that regard, it would only

create a situation where the affected victims of sexual harassment would be

again put to an embarrassment to once again to substantiate their case

before an another authority or otherwise, the appellant would again contend

that there was no evidence available to the departmental enquiring authority

to give a report. Therefore, even though we have arrived at a different

conclusion than what has been arrived at by the learned Single Judge, we

find no merits both in the Writ Appeal as well as Writ petition.

36.In fine, the Writ Appeal and the Writ Petition are dismissed.

However, there shall be no order as to costs. Consequently, connected

Miscellaneous Petitions are closed.

(R.S.K.,J.)

(K.B., J.)

30.04.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation:Yes/No

pbn

Page No.29/32



WEB COPY



Writ Appeal No.2962 of 2019



Writ Appeal No.2962 of 2019

WEB COPY To

1. The Principal & Secretary,
Madras Christian College (Autonomous)
Tambaram East, Chennai – 600 059.

2. The Convenor
Committee of Enquiry/Internal Complaints Committee,
(Gender Sensitization and Prevention of Sexual Harassment
of Women in Work Place, MCC)
Madras Christian College, (Autonomous)
Tambaram East, Chennai – 600 059.



WEB COPY



Writ Appeal No.2962 of 2019

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

Pbn

Writ Appeal No.2962 of 2019 &
W.P.No.5140 of 2020

30.04.2024