

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No. 1812 of 2015

S.Ranjini

... Petitioner

Vs.

1. State of Tamilnadu,
Rep by its Secretary to Government,
Home Department,
Fort St. George,
Chennai - 600 009.
2. State of Tamilnadu,
Rep by its Secretary to Government,
Department of Higher Education,
Fort St. George,
Chennai - 600 009.
3. Thiruvallur University,
Rep by its Registrar,
Serkadu 632 115,
Vellore District.

..Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to constitute an Internal Complaints Committee as per Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 forthwith and forward the petitioner's complaint dated 18.09.2013 to the Committee for conducting an enquiry as per law, within a time frame fixed by this Hon'ble Court.

For Petitioner : Mr.S.Sathia Chandran

For Respondents: Mr.K.Dhananjayan
Special Government Pleader (For
R1&R2)

Mr.M.C.Swamy
for Mr.S.T.Rajan (For R3)

O R D E R

The relief sought for in this writ petition is for a direction to the respondents to constitute an Internal Complaints Committee as per Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter called "the Act") forthwith and forward the petitioner's complaint dated 18.09.2013 to the Committee for conducting an enquiry as per law.

2. The learned counsel appearing for the writ petitioner contended that the writ petitioner is working as a Staff member in the respondent University. The writ petitioner had submitted a complaint to the Registrar of Thiruvalluvar University on 18th September 2013 setting out certain allegations against one Mr.Thillaikannu, who was holding the post of Assistant Registrar, Controller of Examinations, Thiruvalluvar University.

3. On perusal of the copy of the complaint, this Court is of the firm opinion that the allegations set out in the complaint are serious in nature, warranting proper enquiry as per Law. However, no proper enquiry was conducted on the complaint and subsequently, Thiruvalluvar University Employees Union had also submitted a complaint before the Registrar, Thiruvalluvar University on 19th September 2013. The complaint submitted by the Union also narrates the entire chain of events and the nature of harassment caused by the said Thillaikannu, Assistant Registrar, Thiruvallur University. Since, no action was taken in accordance with procedures as contemplated under the said Act, the writ petitioner was constrained to move this writ petition under Article 226 of the Constitution of India.

4. The learned counsel appearing for the writ petitioner contended that the third respondent being an University was not sensitised the issue and no proper action was initiated as contemplated under the Act. Further, the guidelines issued by the Supreme Court of India in the case of Vishaka Vs. State of Rajasthan [(1997) 6 SCC 241] has not been followed. Contrarily, they have kept the complaint pending without any proper action. Thus, the prayer sought for in this writ petition is to be granted.

5. The learned counsel appearing for the third respondent submitted that soon after the receipt of the complaint, a Committee was constituted in proceedings dated 09.11.2011 with Dr.M.Chitra, Associate Professor, Department of Mathematics, Thiruvalluvar University and Dr. C. Anita, Assistant Professor, Department of English, Thiruvallur University as members of the Committee. However, the said Committee had not conducted any

detailed enquiry into the complaint and the matter stands there itself. Thereafter, it is stated by the third respondent that after the enactment of Act 14 of 2013, again the Thiruvalluvar University constituted a new Committee in proceedings dated 8th March 2017, which consists of

Presiding Officer:

1. Dr. M. Chitra, Associate Professor,
Department of Mathematics,
Thiruvalluvar University

Members:

1. Dr.C.Anita, Assistant Professor,
Department of English,
Thiruvalluvar University.
2. Ms.N.Thamizhini, Assistant Professor,
Department of English,
Thiruvalluvar University.
3. Mrs.P.Sasikala, Superintendent,
Thiruvalluvar University.
4. Mrs.N.Meenakshi,
Superintendent,
Thiruvalluvar University.
5. Ms.P.Malarmathi,
Asssistant Cum Computer Operator,
Thiruvalluvar University

After appointment of the newly constituted Committee on 8th March 2017, no further enquiry was conducted. It is relevant to extract the report of the two Member Committee.

"Committee Members:-

- (1) Dr.M.Chitra, Associate Professor,
Department of Mathematics, Thiruvalluvar
University
- (2) Dr.C.Anita, Assistant Professor,
Department of English, Thiruvalluvar
University

Ms.S.Ranjani working as a daily wager, in Controller of Examination Section Thiruvalluvar University, had given a complaint letter addressed to the Registrar, Thiruvalluvar University which was received by Deputy Registrar, Thiruvalluvar on 18.09.2013.

The Committee for the Prevention of Sexual Harassment, Thiruvalluvar University, received the complaint letter of Ms.S.Ranjani against Mr.R.Thillaikannu, Assistant Registrar, Finance Office, Thiruvalluvar University on 19.09.2013.

In this regard, the Committee sent the letter to Ms.S.Ranjani and Mr.R.Thillaikannu to appear before the Committee for an enquiry on 24.09.2013 at 4.00 pm. Mr.R.Thillaikannu appeared on 24.09.2013 and Ms.S.Ranjani did not appear for the same.

The Committee therefore decided to seek explanation from Mr.R.Thillaikannu on or before 26.09.2013. He gave his explanation in writing on 26.09.2013. The Committee again informed orally to Ms.S.Ranjani to appear before the Committee on 30.09.2013. On that day she had availed leave and did not appear for the same.

Therefore, the Committee for the Prevention of Sexual Harassment of Women decided, that the Allegation was a false one against Mr.R.Thillaikannu and ended the enquiry."

7. It is painful to state that on perusal of the report of the Two Members' Committee constituted for the purpose of conducting an enquiry into the allegations set out by the employees as well as by the Employees Union, there is absolutely no application of mind. The nature of the complaint and the merits in the complaint had not been discussed or adjudicated. Contrarily, by accepting the explanation of the delinquent, the enquiry was closed and on perusal of the report, this Court is unable to find that there was any enquiry notice to the Members of the Union, in spite of the Union submitted its separate complaint dated 19th September 2013. Thus, the manner in which the enquiry was conducted and the report was submitted is absolutely not in accordance with the provisions of the said Act. The third respondent University had not shown any sensitiveness in the issue and they have taken this kind of complaint in a casual manner. The attitude of the Registrar and other responsible officers is certainly to be deprecated. The enquiry report speaks that the complainant Ms.S.Ranjani did not appear before the Enquiry Committee, but it did not speak under what circumstances she had not appeared. It is the duty of the Committee to see that a proper enquiry is conducted or not. In such kind of allegation no employee will be allowed to escape from the clutches of law, which is an offence under the Act.

8. The learned counsel appearing for the third respondent contended that after receipt of the report from the Two Members

Committee on 3rd October 2013, a fresh Committee was appointed pursuant to the Act 14 of 2013 vide proceedings dated 22nd March 2017. However, the newly constituted Committee is also not in accordance with Section 4 of the Act. This apart, an Enquiry Committee constituted for the purpose of dealing with the complaint has not conducted any enquiry on the complaints submitted by the writ petitioner as well as the Employees Union.

9. But, however the two members' committee held that the allegation was a false one against Mr.R.Thillaikannu and ended the enquiry. This Court is unable to accept the manner in which the enquiry was conducted and the report submitted in this regard.

10. Violence against women is perhaps the most shameful human rights violation, and it is perhaps the most pervasive. It owns no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace.

11. "It is not enough to focus on the harm to women as sexual beings; the law must also address on women's systematic disadvantages ... and facilitate women's equal empowerment ... as creative, committed workers. We need an account of hostile work environment harassment that highlights its dynamic relation to larger forms of general hierarchy at work."

12. Feminism arose as a result of unequal laws created by men through whom women were denied certain fundamental rights. Simone de Beauvoir, a French philosopher, has been the most important feminist thinker. She has shown as how from the earliest times, men enslaved women due to their physical structure. Women, as it happened generally, became weak due to repeated child birth, so they were thought to be less important than the male members of the group.

13. This inferior and unequal status of women is the main reason behind sexual violence against them.

14. While gender violence is as old as humanity it is only in the past two decades that it has been publically recognized, systematically structured and legislated against to a significant degree. In 1990's such violence was finally admitted on international level with recognition of human rights issue. Internationally, the World Conference on Human Rights (1993) at Vienna, which was one of the main turning points in women's right, declared that human rights of women and of the girl child are inalienable, integral and indivisible part of universal human rights. The Vienna Declaration specifically condemned gender based violence and all forms of sexual harassment and exploitation. The Conference concluded that:

" The human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic and social and cultural life at national, regional and international levels, and eradication of all forms of discrimination on grounds of sex are primary objectives of the international community.... The world governmental and non-governmental organisations to intensify their efforts for the protection on human rights urges governments, institutions, inter-governmental and non-governmental organisations to intensify their efforts for the protection and promotion of human rights of women and the girl-child."

15. Sexual Harassment at the work place is an extremely sensitive issue. Foremost it is a taboo, due to the limitations of traditional gender hierarchies.

16. However, keeping in mind the principles of our great Nation, the Government thought it fit of enacting laws in this regard and accordingly, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted.

17. The Act provides protection against the sexual harassment for woman at workplace, for complaints of sexual harassment and matters connected therewith and incidental thereto.

18. The statement of objects and reasons are extracted hereunder:

"Statement of Objects and Reasons:

Sexual harassment at a workplace is considered violation of women's right to equality, life and liberty. It creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth.

2. The Constitution of India embodies the concept of equality under Articles 14 and 15 and prohibits discrimination on grounds of religion, race, caste, sex or place of birth or any of them. Article 19(1)(g) gives the fundamental right to all citizens to practise any profession, or to carry on any occupation, trade or business. This right presupposes the availability of an enabling environment for women, which is equitable, safe and secure in every aspect. Article 21, which relates to the right

to life and personal liberty, includes the right to live with dignity, and in the case of women, it means that they must be treated with due respect, decency and dignity at the workplace.

3. Article 11 of the Convention on Elimination of All Forms of Discrimination (CEDAW), to which India is a party, requires State parties to take all appropriate measures to eliminate discrimination against women in the field of employment. In its General Recommendation No.19 (1992), the United Nations Committee on CEDAW further clarified that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment at the workplace. India's commitment to protection and promotion of women's constitutional rights as well as respect for its obligations under various international treaties is unequivocal.

4. With more and more women joining the workforce, both in organized and unorganized sectors, ensuring an enabling working environment for women through legislation is felt imperative by the Government. The proposed legislation contains provisions to protect every woman from any act of sexual harassment irrespective of whether such woman is employed or not.

5. The Supreme Court of India in the case of Vishaka & Ors. V. State of Rajasthan & Ors. [1997 (7) SCC 323], also reaffirmed that sexual harassment at workplace is a form of discrimination against women and recognised that it violates the constitutional right to equality and provided guidelines to address this issue pending the enactment of a suitable legislation.

6. It is, thus, proposed to enact a comprehensive legislation to provide for safe, secure and enabling environment to every woman, irrespective of her age or employment status (other than domestic worker working at home), free from all forms of sexual harassment by fixing the responsibility on the employer as well as the District Magistrate or Additional District Magistrate or the Collector or Deputy Collector of every District in the State as a District Officer and laying down a statutory redressal mechanism.

7. The notes on clauses explain in detail the various provisions contained in the Bill.

8. The Bill seeks to achieve the above objectives.

19. The term "aggrieved woman" is defined in Section 2(a) of the Act as below:

(a) "aggrieved woman" means -

(i) 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 a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

20. The term "employer" was defined under Section 2(g) of the Act. The term "Internal Committee" means an Internal Committee constituted under Section 4 of the Act. Thus, the Internal Committee should be constituted pursuant to the requirements stipulated under Section 4 of the Act.

21. Section 3 deals with "Prevention of sexual harassment". Section 4 in Chapter II deals with constitution of Internal Committee, which is relevant for the case on hand.

22. Section 4 reads as follows:-

"4. Constitution of Internal Complaints Committee -

(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 Committee 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 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 organization;

(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 shall be women.

(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 of 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.

This clause provides for the constitution of Internal Complaints Committee. It provides that every employer of a workplace shall constitute, by an order in writing, a Committee to be known as the "Internal Complaints Committee". It further provides 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.

It also provides that employer shall nominate members of the Internal Committee which shall consist of-

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

(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 and (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. Out of these members at least one-half shall be nominated from amongst women.

It also provides that the term of the Presiding Officer and every Member of the Internal Committee shall be specified by the employer which shall not exceed three years from the date of their nomination and their fees or allowances for holding the proceedings of the Internal Committee, as may be prescribed by rules made in the behalf, shall be paid by the employer.

It also provides that the Presiding Officer or any Member of the Internal Committee shall be removed from the Committee, if he - (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, and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this clause.

23. Chapter IV deals with "complaint of sexual harassment" Under Section 9, a complaint has to be filed. Section 10 deals with "Conciliation" and Section 11 provides "Inquiry into complaint".

24. The "action to be taken during the pendency of enquiry" is contemplated in Chapter V. Sections 12 and Section 13 deal with Inquiry report. Section 14 prescribes "Punishment for false or malicious complaint and false evidence" and under Section 19 in Chapter VI deals with the Duties of employer.

25. The duties of the employer are enumerated under Section 19 in the following terms :-

"19. Duties of Employer : Every employer shall -

(a) provide a safe working environment at the workplace which 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 Internal Committee under sub-section (1) of Section 4;

(c) organize 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 may 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 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.

26. Section 26 provides Penalty for non-compliance of provisions of the Act. Where the employer fails to

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

(b) take action under sections 13, 14 and 22; and

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder,

he shall be punishable with fine which may extend to fifty thousand rupees.

27. Section 20 in Chapter VII deals with duties and powers of District Officer. The District Officer shall monitor the timely submission of reports furnished by the Local Committee; take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.

28. The Supreme Court of India in the case of Vishaka & Ors. V. State of Rajasthan & Ors. [1997 (7) SCC 323], also reaffirmed that sexual harassment at workplace is a form of discrimination against women and recognised that it violates the constitutional right to equality and provided guidelines to address this issue pending the enactment of a suitable

legislation. While dealing with various aspects of the matter, the Hon'ble Supreme Court held as follows:-

Page No. 247 Paragraph No.6:

"5. Apart from Article 32 of the Constitution of India, we may refer to some other provisions which envisage judicial intervention for eradication of this social evil. Some provisions in the Constitution in addition to Articles 14, 19(1)(g) and 21, which have relevance are:

Article 15:

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth - (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place or birth or any of them.

(2) * * *

(3) Nothing in this article shall prevent the State from making any special provision for women and children."

Article 42:

"42. Provision for just and humane conditions of work and maternity relief. The State shall make provision for securing just and humane conditions of work and for maternity relief."

Article 51-A:-

"51-A. Fundamental duties: It shall be the duty of every citizen of India.

(a) to abide by the Constitution and respect its ideals and institutions,,

(b) - (d)

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;"

6. Before we refer to the international conventions and norms having relevance in this field and the manner in which they assume significance in application and judicial interpretation, we may advert to some other provisions in the Constitution which permit such use. These provisions are:

Article 51:

"51. Promotion of international peace and security. The State shall endeavour to

(a)- (b)

(C) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and

Article 253:

"253. Legislation for giving effect to international agreements. Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

Seventh Schedule:

"List 1 - Union List

14. Entering into treaties agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries."

Page No. 249 Paragraph No.11:

"11. The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

"Objectives of the Judiciary:

10. The objectives and functions of the Judiciary include the following:

(a) to ensure that all persons are able to live securely under the Rule of Law;

(b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

(c) to administer the law impartially among persons and between persons and the State."

Page No. 250 Paragraph No.12:

12. Some provisions in the 'Convention on the Elimination of All Forms of Discrimination against Women', of significance in the present context are:

Article 12 :

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

xxxx
xxxx
(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

xxxxx
xxxxx

Article 24:

"States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognised in the present Convention."

Page No. 252 to 254 Paragraph No.17:

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 harassment in work places and that enactment of such legislation will take considerable time, It is necessary and expedient for employers in work places 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 work places and other institutions:

It shall be the duty of the employer or other responsible persons in work places 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 where under 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 work place 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:

(a) Express prohibition of sexual harassment as defined above at the work place 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 work places and no employee woman 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 Indian Penal Code 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 mis-conduct 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 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 member should be women.

Further, to prevent the possibility of any under 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 suitable manner.

10. 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.

29. The learned counsel appearing for the third respondent states that the procedures are followed from the year 2014 onwards. However, this Court finds that neither the Committee constituted for the purpose of dealing with the complaint had been in accordance with Section 4 of the Act, nor the complaints submitted by the writ petitioner and the Employees Union had been dealt with in accordance with provisions of the Act. In fact the enquiry report cannot be considered as a report at all, as it is a mere recording of proceedings and there is no discussion about the nature of the complaint and the allegations set out against the delinquent officer.

30. Such being the nature of the enquiry conducted by the University, this Court is of the opinion that all the officials of the administration of the respondent University are to be certainly responsible and accountable for this laxity and lacuna's Committee.

31. The learned counsel appearing for the third respondent now across the bar represented that the respondents will constitute a fresh committee in accordance with Section 4 of the Act and conduct enquiry in accordance with law.

32. Thus, this Court is of the opinion that such a Committee is to be constituted without any further delay and the mandatory procedures as contemplated under the Act are to be followed scrupulously and in strict sense.

33. Thus, the respondents are directed to constitute a Committee under Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 within a period of two weeks from the date of receipt of a copy of this order and thereafter conduct enquiry into the allegations set out in the complaint filed by the writ petitioner on 18th September 2013 and by the Employees Union on 19th September 2013 and initiate further action in this regard.

34. With this direction, the writ petition stands allowed with a cost of Rs.10,000/- and the cost amount to be paid directly to the writ petitioner by the respondent University within a period of two weeks from the date of receipt of a copy of this order and produce the acknowledgment before the Registrar(Judicial), High Court of Madras thereafter.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

may a

To

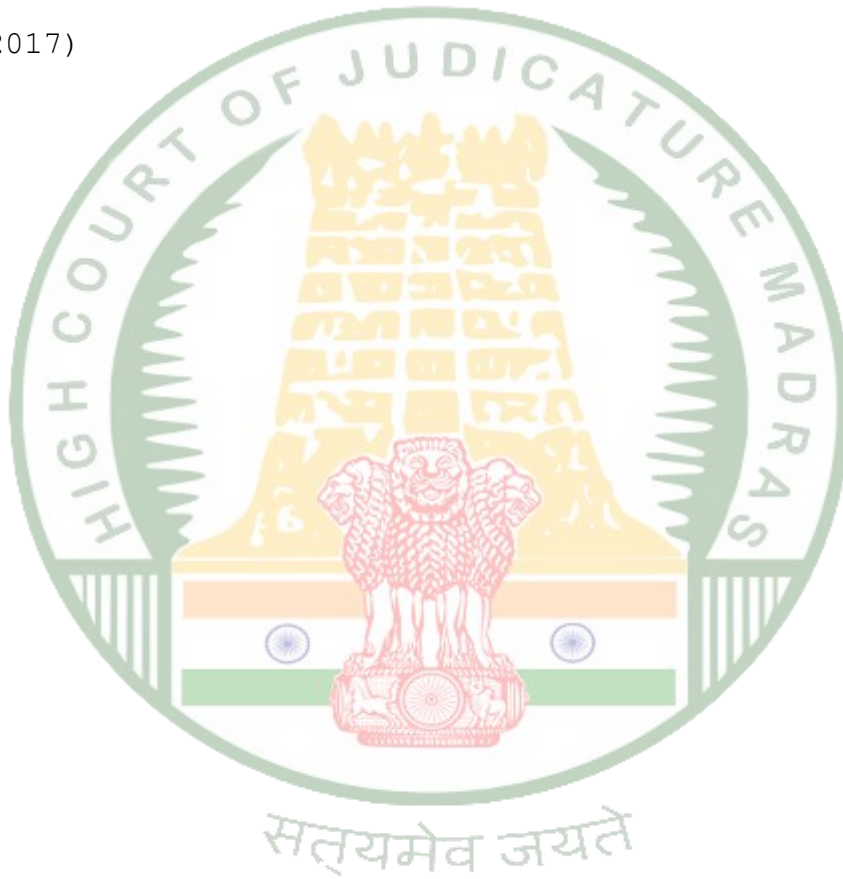
1. The Secretary to Government,
Home Department,
Fort St. George,
Chennai - 600 009.
2. The Secretary to Government,
Department of Higher Education,
Fort St. George,
Chennai - 600 009.
3. The Registrar,
Thiruvallur University,
Serkadu 632 115,
Vellore District.

4. The Registrar(Judicial)
High Court, Madras.

+1 CC to Mr.S. Sathiachandran, Advocate sr 59143.
+1 CC to Mr.M.C. Swamy, Advocate sr 59378.
+1 CC to The Govt . Pleader sr 60064.

W.P.No. 1812 of 2015

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sp(14/09/2017)



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