



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.11.2017

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) No.1084 of 2015

and

M.P. (MD) .No.1 of 2015

1.T.Kumar ... Appellant

Vs.

1.The Chair Person,
The Gender Sensitisation &
Internal Complaint Committee,
I Additional District Judge (PCR),
Trichy.

2.S.Bhuvaneshwari

(2nd respondent impleaded as per the
order of this Court dated 01.16.2016
made in C.M.P. (MD) .No.2645 of 2016
in C.M.A. (MD) .No.1084 of 2015.)

... Respondents

Prayer: Appeal filed under Section 18 of Sexual Harassment of Women at work place (Prevention, Prohibition and Redressal Act, 2013 to set aside the order passed by the respondent dated 05.08.2015.

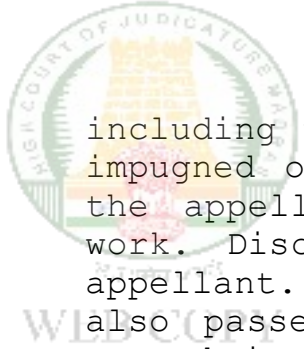
For Appellant : Mr.C.Vakeeswaran

For Respondents : Mr.Pala Ramasamy for R1
No Appearance for R2

JUDGMENT

Heard the learned counsel on either side.

2.The appellant is a Court Staff. A lady staff gave a complaint dated 27.04.2015 against the appellant alleging sexual harassment on the part of the appellant. The appellant is said to have misbehaved with her on 24.03.2015 and 28.03.2015. The matter was placed before the Gender Sensitisation & Internal Complaint Committee. The Internal Sub Committee conducted a fact finding enquiry. It submitted its report to the effect that while there appears to be truth in the allegation of the complainant that the appellant herein misbehaved with her on 24.03.2015, it did not want to express any opinion with regard to the alleged happening on 28.03.2015. The Chair Person of the Gender Sensitisation & Internal Complaint Committee, perused the material on record



including the report of the Internal Sub committee and passed the impugned order dated 05.08.2015. Pursuant to the impugned order, the appellant has been transferred from his original place of work. Disciplinary action was ordered to be taken against the appellant. The appellant was admonished and a restraint order was also passed against him. Contending that this order has been passed in gross violation of the principles of natural justice, this appeal has been filed.

3.The entire files have also been produced before me. It is seen therefrom that the said lady staff gave a complaint on 27.04.2015 alleging that the appellant herein misbehaved with her on 24.03.2015 and 28.03.2015. The Internal Sub Committee recorded her deposition on 13.05.2015. It is clear from the record that the Internal Sub Committee recorded her deposition behind the back of the appellant and not in his presence. The summon was issued to the appellant directing him to appear on 14.05.2015. The appellant appeared before the Committee. His submission was subsequently recorded. He also filed his written submissions levelling a very serious charge. Since the matter concerns the integrity of the institution, I do not want to dwell more on the defence put forth by the appellant.

4.Instead, this issue can be resolved by invoking Rule 7(4) of Sexual Harassment of women at Work Place (Prevention, Prohibition and Redressal) Rules, 2013. Rule 7 deals with the manner of enquiry into complaint. Rule 7 (4) states that the Complaints Committee shall make an enquiry into the complaint in accordance with the principles of natural justice. Rule 7 (5) states that the Complaints Committee shall have the right to give an ex parte decision on the complaint if one of the parties failed to turn up. Legal practitioners are not allowed to represent the parties at any stage of the proceedings before the Complaints Committee. We can therefore safely conclude that the statutory scheme envisages holding an enquiry in the presence of both the parties. If an allegation is made against a person, the person who is charged with sexual misconduct must be given an opportunity to cross-examine the person making the allegation. In this case, the complainant gave her version behind the back of the appellant. The appellant was not afforded the opportunity of cross-examining her. The appellant was examined by the Sub Committee only after the complainant had already given her testimony. While so, the Chair Person of the Gender Sensitisation & Internal Complaint Committee had given a finding that the allegation against the appellant herein had already been proved. In other words, the appellant stands condemned even without affording him due opportunity. Merely recording his defence version will not amount to grant of sufficient opportunity. Unless, the person making the allegation is put to cross-examination, the truth would never come out.



5. Therefore I set aside the impugned order dated 05.08.2015 passed by the Chair Person of the Gender Sensitisation & Internal Complaint Committee, in so far as it holds that the allegation against the appellant stands proved. It is however made clear that the appellant cannot take advantage of this order for getting transfer to the earlier place of work. The transfer order passed against the appellant will stand. It is also made clear that the disciplinary action initiated against the appellant shall go on.

6. This Civil Miscellaneous Appeal is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Chair Person,
The Gender Sensitisation &
Internal Complaint Committee,
I Additional District Judge (PCR),
Trichy.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

S. Bhuvaneswari,
D/o. R. Shanmugam,
Office Assistant,
Special Court for Trial Cases
under prevention of Corruption Act, Trichy.

+1cc to Mr. C. VAKEESWARAN, Advocate, SR. 85915

C.M.A. (MD) No. 1084 of 2015
and
M.P. (MD) No. 1 of 2015
08.11.2017

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KK/SV MMS/SAR 2/30.11.2017/ 3P-5C/