



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2018

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAMW.P(MD)No.5182 of 2013

K.Hema Latha

... Petitioner

Vs

- 1.State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort. St. George, Chennai-9.
- 2.The Director of Elementary Education,
O/o.Director of Elementary Education,
DPI Campus,
Chennai.
- 3.The District Elementary Educational Officer,
O/o.The District Elementary Educational Officer,
Theni District,
Theni.
- 4.The Assistant Elementary Educational Officer,
O/o.The Assistant Elementary Educational Officer,
Theni District,
Theni.
- 5.Mr.Selvanandam,
Head Master,
Gurukkal Middle School,
Chinnamanoor,
Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the Respondent No.2 to constitute a Complaints Committee and take action against the Respondent No.5 as per the Judgment of the Hon'ble Supreme Court in AIR 1997 SC 3011 in Visaka vs. State of Rajasthan within the time frame fixed by this Court.

For Petitioner

:Mr.T.Lajapathi Roy

For R1 to R4

: Mr.M.Muthu,

Additional Government Pleader

For R5

: Mr.M.C.Samy

**ORDER**

The relief sought for in this writ petition is for a direction to direct the second respondent to constitute a Complaints Committee and take action against the fifth respondent as per the Judgment of the Hon'ble Supreme Court in AIR 1997 SC 3011 in Visaka vs. State of Rajasthan.

2.Subsequent to the Judgment of the Hon'ble Apex Court of India, the Parliament has enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

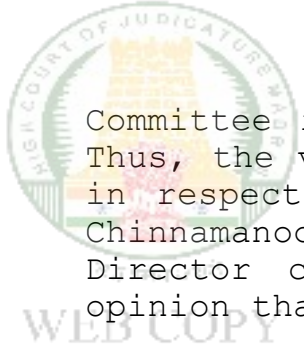
3.Thus, this Court has to deal with the present writ petition based on the said Act. The learned counsel appearing on behalf of the writ petitioner states that in respect of the complaint given by the writ petitioner, the Official Respondents had not taken appropriate action in accordance with the provisions of the Act. Contrarily, they have constituted an Internal Complaints Committee, which is not in consonance with Section 4 of the said Act. Thus, a fresh Committee to be constituted for the purpose of conduct an enquiry.

4.The learned Additional Government Pleader appearing on behalf of the official respondents states that the enquiry was conducted under the Chairmanship of the Joint Director of Elementary Education and the women members also had participated in the Internal Complaints Committee. The Committee conducted an enquiry at Chennai in the office of the Joint Director of Elementary Education and submitted a report on 08.03.2014 dropping all the allegations against the fifth respondent in this writ petition.

5.The learned counsel appearing on behalf of the fifth respondent states that the writ petitioner and the fifth respondents are close relatives and belong to same village and working in the same School. This apart, there are certain personal animosities between the writ petitioner and the fifth respondent and certain family disputes are also in existence.

6.However, the learned counsel on behalf of the writ petitioner states that the present complaint is unconnected with the other disputes between the writ petitioner and the fifth respondent and the complaint is in relation to Sexual Harassment and therefore, the same is to be dealt with in accordance with the Act.

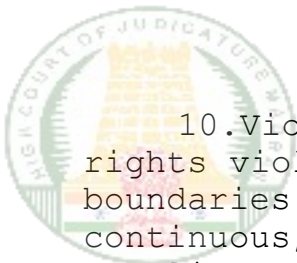
7.This Court perused the copy of the report submitted by the Internal Complaints Committee, dated 10.04.2014. On a perusal of the same, this Court is of an opinion that the Internal Complaints Committee has entirely carried away with the judgment of the Criminal Court, in which the fifth respondent was acquitted on benefit of doubt. However, this Court is able to realize that the manner in which the enquiry was conducted, was not in accord with the provisions of the Act. This apart, the Constitution of the



Committee itself was not in consonance with Section 4 of the Act. Thus, the very enquiry was improper in the eye of law. This apart, in respect of the allegations of Sexual Harassment took place in Chinnamanoor, Uthamapalayam Taluk, Theni District if the Joint Director conducted an enquiry at Chennai, this Court is of an opinion that such a procedure adopted itself is untenable.

8.A victim cannot be made to suffer to attend such an enquiry by travelling more than 500 kms at Chennai. This itself amounts to a harassment. The enquiry ought to have been conducted at least in the District Headquarters. However, this Court is totally not satisfied with the conduct of the public authorities and the manner in which the enquiry was conducted in this kind of sensitive issues. On a perusal of the copy of the enquiry report, it unambiguously portrays that the officials have simply dropped the allegations based on the criminal Court judgment, wherein the fifth respondent was acquitted on technical grounds. It is the duty of the authorities to see that every sexual harassment complaint given by the women employee is to be treated in a proper manner and an enquiry is conducted in accord with the provisions of the Act. However, no such efforts had been taken by the respondents 1 to 4 and they had conduct an enquiry in a casual manner by predetermining certain issues and disputes, which were in existence between the petitioner and the fifth respondent. Such an approach was unwarranted and the public authorities are bound to act in a fair and unbiased manner. Issues cannot be predetermined in respect of such complaints and each and every complaint must be dealt with in accordance with law and the authorities must deal with the case with open mind. At the outset, this Court is of an opinion that the Constitution of the Internal Complaints Committee and the conduct of enquiry by that committee in the present case is absolutely in violation of provisions of the Act itself.

9.In respect of the other disputes between the writ petitioner and the fifth respondent, this Court need not go into the details. Thus, personal disputes are unconnected with the Sexual Harassment complaint. Even if there are some untruthful statements that also to be enquired into and the authorities competent are duty bound to cull-out the truth in respect of the allegations set out in the complaint. After all, it is the minimum expectation that the public authorities show some sensitiveness in such issues, more specifically, in Educational Institutions wherein, young children are studying. Such sensitiveness is certainly required for the purpose of maintaining the minimum discipline and decorum, in such institution upon which whole nation rest its future. The parents of such young children are also under the impression that the authorities will provide a conducive and clean environment in the Educational Institutions. If such expectations are not fulfilled, then the public authorities are failing in their duty to uphold the constitutional perspectives and the statutes which all are in force for the purpose of maintaining the Educational Institutions across the country.



10. Violence against women is perhaps the most shameful human rights violation, and it is perhaps the most pervasive. It knows 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.

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11. "It is not enough to focus on the harm to women as sexual beings; the law must also focus 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 through 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 behind 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 of 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, intergovernmental 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. For most it is taboo, due to the limitations of traditional gender hierarchies.

16. However, keeping in mind the principles of our great Nation, the Government thought 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.

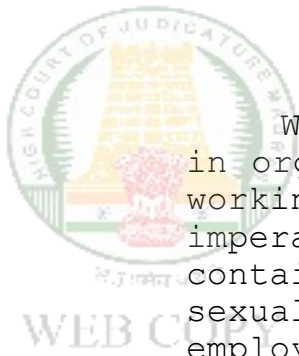
18. The Statement of objects and reasons are extracted hereunder:

"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 pre-supposes 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 States 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 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.



With more and more women joining the workforce, both in organized and unorganized sectors, ensuring an enabling working environment for women though 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.

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.

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".
<https://hcservices.ecourts.gov.in/hcservices/>
Section 4 Chapter II deals with constitution of Internal Committee, which is relevant for the case on hand.



22. Section 4 reads as follows:-

23.

"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):

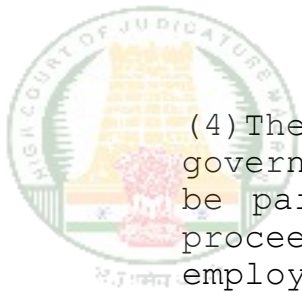
Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;

(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 nongovernmental 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 onehalf 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 convinced for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or © 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 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 Section 12 and Section 13 deals with Inquiry report. Section 14 prescribes "Punishment for false or malicious complaint and false evidence" and Chapter VI Section 19 deals with the Duties of employer.

25. 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:



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 deals 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 xxxxxx xxxx

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

xxx xxxxxx 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.

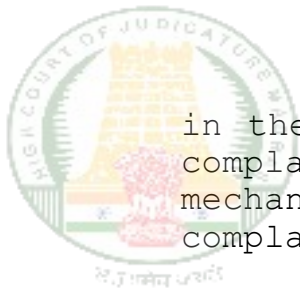
In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

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.

26. Thus, all the aspects in this regard is unambiguously provided in the Act itself. Such being the provisions enacted for the welfare and protection of women at workplace, it is the duty of the employer to see that such an environment is created for the purpose of creating the society in which women can work in peace and put their efforts for the development of our great nation and contribute their services.

27. Pursuant to the Act, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was also notified. The Rule 7 provides manner of inquiry into complaint. The manner of taking action for Sexual Harassment is also provided under the Rules. It is needless to state that the Internal Complaints Committee while undertaking the process of enquiry has to conduct the enquiry in the manner prescribed under the Act and Rules.

28. May that it be, this Court is of an opinion that all complaints of Sexual Harassment given by the Women employees are to be dealt with in accordance with the Act and Rules. There cannot be any violation or deviation by the competent authorities in this regard.

29. Undoubtedly, the writ petitioner had submitted a complaint against the fifth respondent. Even, when the present writ petition is taken up for final hearing, the writ petitioner is vigorous in pursuing her complaint. During the writ petition hearing on 05.03.2018, the petitioner herself was present before this Court and the District Elementary Educational Officer was also present for the purpose of production of files before this Court.

30. Even at that point of time, the petitioner has not given up her complaint and willing to participate in the enquiry to be conducted by the Committee properly constituted in accordance with the Act. This being the position, this Court is of an opinion that the respondents 1 to 4 are bound to conduct an enquiry by following the procedures contemplated under Act and Rules.

31. The earlier committee constituted and conducted an enquiry was headed by the Joint Director of Elementary Education, Office of the Director of Elementary Education, Chennai. All the members are the officials of the Elementary Educational Department. Thus, the earlier committee which conducted an enquiry was acted not in consonance with the provisions of Section 4 of the Act and the



report of the committee cannot be accepted as valid since the same is not in accordance with the provisions of the Act. Thus, the report of the Committee is to be rejected in-limni.

32. In respect of maintaining the discipline and decorum in the Educational Institution, this Court has to consider the spirit of Section 12 of the said Act. Section 12 of the Act enumerates, action during pendency of enquiry. The Act says that during the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to transfer the aggrieved woman or the respondent to any other work place.

33. No doubt, the Act provides that the transfer of aggrieved woman or the respondent shall be made on written request. However, this Court has to consider the peculiar facts and circumstances of the present case.

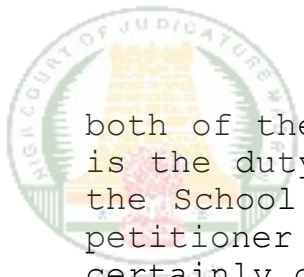
34. The learned counsels appearing on behalf of the writ petitioner as well as the fifth respondent had hotly contested that there are certain family disputes between the writ petitioner and the fifth respondent. Further, it is contended that both of them belong to the same village and working in the same school. Thus, there is every possibility and likelihood of further clash between the members of the families of the writ petitioner and the fifth respondent.

35. The learned counsel for the petitioner also states that the supporters of the writ petitioner as well as the supporters of the fifth respondent are in the process of fighting with each other.

36. Further, this Court has to consider the sensitiveness of the issue and further, the larger public interest in respect of the maintenance of discipline and decorum in a School wherein the young children are studying. If these incidents are permitted to happen in the school premises, then certainly it may not be conducive for providing education in peaceful atmosphere. Thus, the interest of administration are also to be protected.

37. Under these circumstances, if not under Section 12 of the Act, the competent authorities namely the respondents 1 to 4 are empowered to invoke their powers under the Service Rules, so as to transfer the writ petitioner as well as the fifth respondent on administrative grounds.

38. The learned counsel for the petitioner states that as per Section 12 of the Act consent of the aggrieved woman is required. Further, the petitioner and the fifth respondent are receiving Government salary and working as a public servant. This being the factum, the competent authorities namely the respondents 1 to 4 can effect administrative transfer in the interest of the School and in the interest of the public in general and in view of the fact that



both of them are creating lot of issues in the School premises. It is the duty of the Court to see that the young children studying in the School are not affected on account of the disputes between the petitioner and the fifth respondent. Such a situation is to be certainly considered as a public interest.

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39. This Court has found that the Government as well as the Director of Elementary Education are not taking steps for the constitution of the Internal Complaint Committee as per Section 4 of the Act. Now, it is mandatory on their part to constitute committee to deal with such complaints of Sexual Harassment of Women at Workplace.

40. In view of the discussions made in the aforementioned paragraphs, this Court is inclined to pass the following orders:-

(i) The respondents 1 to 4 are directed to constitute a appropriate Internal Complaints Committee in consonance with Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, within a period of three weeks from the date of receipt of a copy of this order.

(ii) The Internal Complaints Committee constituted has to conduct an enquiry in accordance with the procedures contemplated under the Act and Rules and, by providing reasonable opportunity to all the parties concerned and submit a report within a period of eight weeks from the date of constitution of the Internal Complaints Committee.

(iii) The respondents 1 to 4 are directed to effect administrative transfers, both in respect of the writ petitioner as well as the fifth respondent and both of them shall be transferred to any other institution during the pendency of the enquiry to be conducted by the Internal Complaints Committee.

(iv) The respondents 1 & 2 are directed to issue appropriate circular/instructions to all the subordinate authorities to constitute appropriate Internal Complaints Committee in accordance with Section 4 of the Act, within a period of six weeks from the date of receipt of a copy of this order.

41. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CO)

/True copy/



TO

- 1.The Secretary,
Department of School Education,
Fort. St. George, Chennai-9.
- 2.The Director of Elementary Education,
O/o.Director of Elementary Education,
DPI Campus,
Chennai.
- 3.The District Elementary Educational Officer,
O/o.The District Elementary Educational Officer,
Theni District,
Theni.
- 4.The Assistant Elementary Educational Officer,
O/o.The Assistant Elementary Educational Officer,
Theni District, Theni.

+1CC TO M/S.M.MUTHU, ADVOCATE, SR NO.54371
+1CC TO M/S.T.LAJPATHI ROY, ADVOCATE, SR NO.54127
+1CC TO M/S.G.RAJARAMAN, ADVOCATE, SR NO.53852
+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.54582

W.P(MD)No.5182 of 2013
8.03.2018

am

MS/SV-MMS/SAR-1/27.03.2018/19P.9C