

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

AND

HON'BLE Ms JUSTICE J.UMA DEVI

+ Writ Petition Nos.34418 and 44927 of 2017 and 2537
of 2018

% Date: 25-10-2018

Smt. A.

... Petitioner

Vs.

\$ 1. The Registrar (Admn.), High Court of Judicature
at Hyderabad

2. The Registrar (Enquiries), High Court of Judicature
at Hyderabad

... Respondents

! Counsel for the Petitioner: Mr. G.U.R.C. Prasad

Counsel for Respondents: Mr. Swaroop Oorilla,
Standing Counsel

< Gist:

> Head Note:

? Cases referred:

AIR 1961 SC 1457

¹ AIR 1964 SC 1013

¹ AIR 1965 SC 1150

¹ 1979 (3) SCC 135

¹ 1978 (3) SCC 119

¹ 2014 SCJ Online (Mad) 2670

¹ 1996 (1) SCJ 566

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE Ms JUSTICE J.UMA DEVI

**Writ Petition Nos.34418 and 44927 of 2017 and 2537 of
2018**

Common Order: *(per V.Ramasubramanian, J.)*

The petitioner has come up with the above writ petitions challenging in the first writ petition, a Charge Memo issued for major penalty proceedings, challenging in the second writ petition, the refusal of the respondents to grant permission to her to engage a legal practitioner to defend herself in the enquiry and challenging in the third writ petition, an order passed by the Enquiry Officer on an objection taken by the writ petitioner to the marking of certain documents.

2. Heard Mr. G.U.R.C. Prasad, learned counsel for the petitioner and Mr. Swaroop Oorilla, learned Standing Counsel for the respondents.

3. The petitioner was originally selected and appointed as a Steno-Typist in the Court of the Magistrate at Narsapur in West Godavari District, on 22-6-1994. Later, she was transferred to the Court of the Subordinate Judge, Narsapur, where she had to work under a Judicial Officer by name K. Basava Raju.

4. The case of the petitioner is that she was subjected to sexual harassment and was raped repeatedly by the Judicial Officer, forcing her to make complaints. By April 1995, the officer made a request and got transferred to another District.

5. It is the case of the petitioner that even after transfer, the officer continued to spread rumours about the petitioner, which led to an aborted attempt by the petitioner to commit suicide.

6. Though no proceedings were initiated against the officer, a criminal complaint was registered in Crime No.96/1996 against the Judicial Officer on 29-6-1996, for offences punishable under Sections 376 and 417 IPC.

7. The case was made over to the Mahila Court, Visakhapatnam, in the year 1999 and after the examination of the witnesses, it was transferred to the Court of the III Additional Sessions Judge, Visakhapatnam on 14-12-2001 and renumbered as Sessions Case No.228 of 2001.

8. After trial, the Sessions Court delivered a judgment dated 23-8-2002 holding the Judicial Officer guilty of the offences punishable under Sections 376 and 417 IPC and he was sentenced to simple imprisonment for 3 years and to pay a fine of Rs.1,000/- for the offence under Section 376 IPC and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/- for the offence under Section 417 IPC. Both sentences were directed to run concurrently.

9. On the basis of the judgment of the Criminal Court, the High Court recommended the dismissal of the Judicial Officer from service. Accepting the recommendations of the High Court, the Government issued orders in G.O.Ms.No.41,

Law Department, dated 22-3-2003, dismissing the officer from service.

10. However, the Judicial Officer filed a criminal appeal in Criminal Appeal No.971 of 2002. During the pendency of the appeal, an interesting turn of events took place. It appears that the petitioner was convinced (by whom is irrelevant) to compound the offence punishable under Section 417 IPC. She was made to move an application in CrI.M.P.No.513 of 2008 in the pending Criminal Appeal No.979 of 2002 seeking to compound the offence punishable under Section 417 IPC. The application was allowed, the offence under Section 417 IPC was compounded and the Judicial Officer was acquitted of the offence.

11. Fortunately for the petitioner and unfortunately for the Judicial Officer, the offence under Section 376 IPC is not compoundable. Had it been compoundable, the issue would have been buried fathom deep.

12. After the offence under Section 417 IPC was compounded, it became easy for the judicial officer to convince the court to go into the question of consent on the part of the petitioner with regard to the charge of rape and to get acquitted by a judgment dated 14-3-2008. While acquitting the judicial officer, this court recorded certain curious findings touching upon the conduct of the writ petitioner herein. The findings are as follows:

“19. I have gone through the bunch of letters, which have been marked as Ex.P-1. The text of the letters indicates that they travelled beyond the relationship of the Officer and the Steno-Typist. Their conduct is condemnable. Both are to be held responsible for overstepping their official association. It is not a case to pardon the act of the victim-P.W.1 and fasten criminal liability on the appellant/accused. Certain admissions made by P.W.1 in cross-examination suggest that both of them accommodative to each other. For better appreciation, I may refer the evidence of P.W.1 in her own words and it is thus:

“... The accused used to visit me at Bheemavaram once in a month or once in two months, after he transferred to Visakhapatnam. We used to treat him as our family member. My brother did not object for our privacy or for the visits of the accused. I did not send Laxmipatthi to Visakhapatnam when the accused stopped to visit me since January, 1996...”

This statement creates a doubt on her version that she was subjected to sexual intercourse inspite of her resistance. The conduct of P.W.1 in continuing her association with the appellant/accused even after his transfer from Narsapur to Visakhapatnam in April, 1995 for a period of about an year clearly suggests that her questionable relationship with appellant/accused at any rate is not against her will. Therefore, the evidence brought on record is wholly insufficient to conclude that P.W.1 was not a consenting party.”

13. We do not know how far the above findings will stand the scrutiny of superior Courts, when it comes to sexual harassment at workplaces. The definitions of ‘rape’ and ‘consent’ have undergone a lot of changes and it is the person who is in a dominant position, who should explain his conduct in winning over the consent of the victim. It must be remembered that the petitioner was a new recruit, having been appointed to the post of Steno-Typist in June, 1994 and

the alleged incidents started happening immediately thereafter. A Judicial Officer certainly holds a dominant position vis-à-vis a Steno-Typist working under him and hence the way the conduct of the petitioner came to be critically looked at by the learned Judge while dealing with the criminal appeal, leaves much to be desired.

14. We are conscious of the fact that we are not dealing with an appeal as against the judgment of the learned Judge in the criminal appeal, that ended in the acquittal of the Judicial Officer. But we are obliged to take note of the observations in the judgment of the learned Judge which we have extracted above, since those observations have caused a collateral damage viz., that of initiation of departmental proceedings against the petitioner.

15. After the acquittal of Judicial Officer by this Court in Criminal Appeal No.979 of 2002 by the judgment dated 14-3-2008, the petitioner was issued with a Charge Memo dated 15-5-2009. These charges were based entirely upon the observations of the learned Judge in the judgment in the criminal appeal. The Articles of charges read as follows:

“Articles of Charges:

Charge (1): That you, **Mrs. A**, while working as Steno-typist, at Subordinate Judge’s Court, Narasapur, West Godavari District had sexual intercourse with Sri K.Basava Raju, formerly Subordinate Judge, Narasapur, without resisting the advances made by the said officer to have intercourse with you and were a consenting party for the said illicit act in the office premises at Narasapur and also at various other places as admitted in your deposition

as P.W.1 in S.C.No.228/2001 on the file of Mahila Court, Visakhapatnam and thus indulged in an act of unbecoming of a government servant by behaving in a manner derogatory to the prestige of the judiciary and guilty of misconduct under Rule 3 of A.P. Civil Services (Conduct) Rules, 1964.

Charge (2): That you, **Mrs. A**, while working as Steno-typist, Subordinate Judge's Court, Narasapur, West Godavari District knowing that Sri K.Basava Raju, formerly Subordinate Judge, Narasapur, was already married and having two children and living with his wife, prevailed upon him to marry you during the subsistence of his marriage and thereby attempted to contract marriage with a married person which contravenes Rules 3 and 25 of A.P. Civil Services (Conduct) Rules, 1964 and thus you are liable for penalty under Rule 9 of A.P. Civil Services (CCA) Rules, 1991.

Charge (3): That you, **Mrs. A**, while working as Steno-typist, at Subordinate Judge's Court, Narasapur, West Godavari District tried to bring force on Sri K.Basava Raju, formerly Subordinate Judge, Narasapur, to marry you during the subsistence of his marriage by consuming sleeping pills, which contravenes Rules 3 of A.P. Civil Services (Conduct) Rules, 1964, thus you are liable for penalty under Rule 9 of A.P. Civil Services (CCA) Rules, 1991."

16. That the charges were based entirely upon the judgment in the criminal appeal, can be seen from the fact that in Annexure-II to the Charge Memo, only two documents were relied upon, in support of the charges. The first document was the deposition given by the petitioner herself as P.W.1 in the criminal case. The second document was the judgment in the criminal appeal. Even Annexure-I to the Charge Memo clearly indicated that the basis of the charges

were – (i) the petitioner's deposition in the criminal case and (ii) the judgment in the criminal appeal.

17. Shocked at the turn of events, the petitioner filed a writ petition in W.P.No.12475 of 2009 on the file of this Court. Though this Court ordered notice in the first instance and granted interim stay on 29-6-2009, the writ petition was later dismissed on 13-7-2010. The petitioner challenged the dismissal of the writ petition, in S.L.P. (Civil) No.28293/2010, but the special leave petition was also dismissed.

18. Therefore, the petitioner filed her written statement of defence on 15-11-2010 to the Charge Memo. Thereafter, nothing happened for a full period of 7 years. However, a Memo dated 26-9-2017 came as a bolt out of the blue, informing the petitioner of the appointment of the Enquiry Officer as well as the appointment of the Presenting Officer. The petitioner was directed to submit a list of documents within five days and the Enquiry Officer also fixed a date for the appearance of the petitioner. Therefore, the petitioner has come up with a writ petition, in W.P.No.34418 of 2017, challenging not only the Memo dated 26-9-2017 but also the Charge Memo dated 15-5-2009.

19. Before the Enquiry Officer, the petitioner sought permission to engage a counsel. Permission was rejected by proceedings dated 28-11-2017 forcing the petitioner to come up with a second writ petition in W.P.No.44927 of 2017.

20. In the course of the enquiry, the Presenting Officer filed a Memo seeking to summon the Section Officer in the Establishment Section for the purpose of marking the deposition given by the petitioner in the criminal case. When the petitioner objected, the Enquiry Officer overruled the same by a docket order dated 06-01-2018. Challenging the said order, the petitioner came up with the third writ petition in W.P.No.2537 of 2018.

21. Since the first writ petition is the substantial one and the other writ petitions will survive for adjudication only in the event of the dismissal of the first writ petition, we shall first take up W.P.No.34418 of 2017. In the event of our coming to the conclusion that this writ petition deserves to be dismissed, we shall take up the other two writ petitions.

22. As stated earlier, this writ petition challenges the Charge Memo and it must be remembered that the present writ petition is a second writ petition challenging the very same Charge Memo. The first writ petition was dismissed and the special leave petition filed against the same was dismissed by the Supreme Court. Therefore, we may have to first address ourselves to the question whether this writ petition is barred by the principles of *res judicata*.

23. The first writ petition in W.P.No.12475 of 2009 was filed immediately after the issue of the charge memo. The challenge to the charge memo, as seen from paragraph 4 of the judgment dated 13-07-2010, was only on two grounds

namely (i) that the deposition of a person in a criminal case cannot be the basis for the initiation of the disciplinary proceedings under Rule 20 and (ii) that there was inordinate delay of 15 years in the initiation of proceedings, as the incident that led to the charge memo happened in 1994. Both these grounds of attack to the charge memo were rejected by this Court, solely on the basis of the observations made in the judgment dated 14-03-2008 in Criminal Appeal No.979 of 2002. Therefore, on a cursory glance, it would appear that the writ petition W.P.No.34418 of 2017 challenging the very same charge memo dated 15-05-2009 may be barred by *res judicata*.

24. But, we must keep in mind two subsequent developments that have taken place after the dismissal of W.P.No.12475 of 2009 by the judgment dated 13-07-2010. They are (i) that after the dismissal of the writ petition, the writ petitioner submitted her written statement of defence to the charges, on 15-11-2010 and (ii) that after sitting over the written statement of defence for nearly 7 years, the High Court decided to proceed with the enquiry and issued three memos of dated 26-09-2017, appointing a Presenting Officer, appointing an Enquiry Officer and directing the petitioner to submit a list of documents.

25. In other words, the first writ petition was filed, even before a written statement of defence was submitted by the petitioner to the charge memo. Let us now see whether this

subsequent event is of any significance in terms of the Rules and let us also see whether the submission of the written statement of defence would alter the cause of action so substantially from the previous one, enabling the petitioner to maintain a second writ petition.

26. In order to find out an answer to the above question, we must take a look at the scheme of Rule 20. For the purpose of the present case, we shall briefly summarise the scheme of Rule 20, from the stage of initiation of disciplinary proceedings up to the stage of appointment of the Enquiry Officer. The scheme is as follows:

- (i) Once it is proposed to hold an enquiry under Rule 20, the Disciplinary Authority should draw up or cause to be drawn up in terms of sub-rule (3), the substance of the imputations of misconduct into definite and distinct articles of charges.
- (ii) Thereafter, the Disciplinary Authority should deliver, in terms of sub-rule (4), a copy of the articles of charges to the Government Servant, requiring him to submit a written statement defence within such time not exceeding 10 working days;
- (iii) On receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charges which are not admitted. Alternatively, the Disciplinary Authority may appoint an Inquiring Authority under sub-rule (2).

(iv) under Sub rule-(2), an order for an enquiry is made, only when the Disciplinary Authority forms an opinion that there are grounds for inquiring into the truth of any imputation of misconduct.

27. Therefore, it is clear that after the submission of the written statement of defence under sub-rule (4), some kind of a consideration of the defence takes place under sub-rule (5) (a) read with sub-rule (2). This becomes necessary at least to find out what are the charges that are admitted and what are the charges not admitted.

28. In this case, the scrutiny of the written statement of the defence submitted by the petitioner on 15-11-2010 assumed significance in view of the something that happened after the judgment dated 14-03-2008 in the Criminal Appeal, but before the issue of the charge memo on 15-05-2009. The incident that happened in between was that the Judicial Officer concerned, after his success in the Criminal Appeal moved the High Court for reinstatement. It may be recalled that he was dismissed from service by G.O.Ms.No.41, dated 22-03-2003, pursuant to his conviction by the trial Court. Therefore, after his acquittal by the judgment dated 14-03-2008, the Judicial Officer sought reinstatement and he was reinstated into service by G.O.Ms.No.158 Home Department dated 3-10-2008. However, a departmental enquiry was initiated against him with the issue of a charge memo. The charge memo against the Judicial Officer was issued much

before 15-05-2008, the date of issue of the charge memo against the petitioner.

29. Six charges were framed against the Judicial Officer. This happened prior to the issue of the charge memo against the petitioner. In the enquiry that followed, charge No.2 was held not proved and the other charges against the Judicial Officer were held proved. Therefore, by an order in G.O.Ms. No.137 Law dated 20-12-2012, the Judicial Officer was imposed with the penalty of dismissal from service. The six charges framed against the Judicial Officer were as follows:

“Articles of Charge:

Charge No.1:

That you Sri K.Basava Raju, formerly Subordinate Judge, Narsapur, West Godavari District, now reinstated into service by virtue of G.O.Ms.No.158, Home (Courts.C) Department, dt.03-10-2008 and waiting for order of your posting as Senior Civil Judge, while working as Subordinate Judge, Narsapur, stated to have behaved in an indecent manner with **Mrs. A**, a newly recruited stenographer posted to work under you, by touching her hands, breasts, checks and used to kiss her, while she was attending to the dictation work in between 8.30 A.M and 10.00 A.M., in the chamber attached to the court of Sub Judge, Narsapur, and when the said stenographer scared off you and used to run away from the chamber, as she was new to employment, you used to accost her to return to the chamber and used to express angry and threaten her for running away from you. Thus you misbehaved with a Subordinate employee, who was working under you, which act of yours if proved or established would amount to grave misconduct, unbecoming of a judicial officer within the meaning of rule-3 (c) (e) of Andhra Pradesh Civil Service (Conduct) Rules, 1964.

Charge No.2:

That you Sri K.Basava Raju, formerly Subordinate Judge, Narsapur, West Godavari District, now reinstated into service by virtue of G.O.Ms.No.158, Home (Courts.C) Department, dt.03-10-2008 and waiting for order of your posting as Senior Civil Judge, while working as Subordinate Judge, Narsapur, applied for commuted Medical leave for thirty (30) days from 27-09-1994 to 26-10-1994 and after few days of your joining to duty, you started giving dictation to **Mrs. A** between 8.30 A.M to 10.00 A.M and all of a sudden you stopped dictation and caught hold of her hand, dragged her towards the toilet of your chamber, inspite of her resistance, laid her on the floor of the toilet and forcibly had sexual intercourse against her will, thus you exceeded your limits as a Judicial Officer, acted in a manner which is derogatory to the prestige of Judiciary, which act of yours, if proved or established would amount to grave

misconduct, unbecoming of a Judicial officer within the meaning of rule 3 (c) (a) of Andhra Pradesh Civil Service (Conduct) Rules, 1964.

Charge No. 3:

That you Sri K.Basava Raju, formerly Subordinate Judge, Narsapur, West Godavari District, now reinstated into service by virtue of G.O.Ms.No.158, Home (Courts.C) Department, dt.03-10-2008 and waiting for order of your posting as Senior Civil Judge, while working as Subordinate Judge, Narsapur, had sexual intercourse with **Mrs. A**, newly recruited Stenographer and posted to work in your court, against her will in the toilet of the chamber of Sub Court, Narsapur and later threatened her, that if she raises any cries, you would propagate that she has taken you to the toilet and she herself offered you to have sexual intercourse with her, thus you blackmailed your subordinate staff i.e., **Mrs. A**, Stenographer of Sub Court, Narsapur, which act of yours, if proved or established would amount to grave misconduct, unbecoming of a judicial officer within the meaning of rule 3 and 3 (c) of Andhra Pradesh Civil Service (Conduct) Rules, 1964.

Charge No.4:

That you Sri K.Basava Raju, formerly Subordinate Judge, Narsapur, West Godavari District, now reinstated into service by virtue of G.O.Ms.No.158, Home (Courts.C) Department, dt.03-10-2008 and waiting for order of your posting as Senior Civil Judge, while working as Subordinate Judge, Narsapur, continued the illicit relationship / intimacy with **Mrs. A**, Stenographer of the Court, while you were working as Sub Judge, Narsapur and also after your transfer as Principal Senior Civil Judge, Visakhapatnam, by visiting Narsapur and Bhimavaram, frequently and has sexual intercourse with her and developed illicit intimacy with her, luring her, her mother and brother, that you will marry her, after your promotion as Additional District Judge and subsequently you informed about your unwillingness to marry her, inspite of the illicit relationship/ intimacy continued with her for a long time, deceived her, which acts of yours, if proved or established would amount to grave misconduct, unbecoming of a Judicial Officer within the meaning of rule 3 & 3 (c) (a) of Andhra Pradesh Civil Service (Conduct) Rules, 1964.

Charge No.5:

That you Sri K.Basava Raju, formerly Subordinate Judge, Narsapur, West Godavari District, now reinstated into service by virtue of G.O.Ms.No.158, Home (Courts.C) Department, dt.03-10-2008 and waiting for order of your posting as Senior Civil Judge, while working as Subordinate Judge, Narsapur, continued your illicit intimacy / relationship with **Mrs. A**, Stenographer of Sub Court, Narsapur, inspite of your transfer to Visakhapatnam and used to make correspondence with the said stenographer, **Mrs. A**, by writing letters to her dated.20-06-1995, 26-07-1995, 19-08-1995, 22-08-1995, 11-09-1995, 07-10-1995, 23-11-1995, 14-12-1995, 27-12-1995, 11-05-1995 and 23-02-1996 and tried to be in touch with her through your correspondence. Thus you exceeded your limits and continued the illicit relationship with your subordinate staff, which a judicial officer ought not have developed or continued, which act of yours, if proved or established would amount to grave misconduct, unbecoming of a Judicial Officer within the meaning of rule 3 of Andhra Pradesh Civil Service (Conduct) Rules, 1964.

Charge No.6:

That you Sri K.Basava Raju, formerly Subordinate Judge, Narsapur, West Godavari District, now reinstated into service by virtue of G.O.Ms.No.158, Home (Courts.C) Department, dt.03-10-2008 and waiting for order of your posting as Senior Civil Judge, while working as Subordinate Judge, Narsapur, initially has sexual intercourse with **Mrs. A**, Stenographer of the Court, thereafter got yielded her to your lust and had intercourse with her several times at Narsapur and also in the RTC Guest House and private lodge at Rajahmundry and subsequently deceived and discarded her, when she approached you at your official residence in the District Court premises at Visakhapatnam on 22-04-1996, moving the marriage proposal with you, but you and your wife scolded and necked out **Mrs. A**, in the presence of Sri L.Kedarachary, the then I Senior Civil Judge, Visakhapatnam, due to which stenographer, **Mrs. A**, made an attempt to commit suicide by swallowing 20 sleeping pills in front of your official residence in District Court premises, Visakhapatnam, preparing a suicide note, addressed to the Hon'ble Chief Justice, High Court of Andhra Pradesh, Hyderabad, and hospitalized. Thus, you deceived her luring her that you will marry but subsequently discarded her, which act of your, if proved or established would amount to grave misconduct, unbecoming of a judicial officer within the meaning of rule 3 & 3 (c) of Andhra Pradesh Civil Service (Conduct) Rules, 1964.

30. Though the aforesaid six charges were framed against the Judicial Officer long before a charge memo was issued to the petitioner, the administration never thought it fit to hold a joint enquiry. In fact, if the findings of this court in the criminal appeal could form the basis of the disciplinary proceedings against the petitioner, they equally formed the basis for the proceedings against the judicial officer also. Both of them were pulled up by this court in the criminal appeal, as equally guilty of wrong doing. But, the administration thought fit to proceed first against the Judicial Officer. In the inquiry so held against the Judicial Officer, all charges except charge No.2 were held proved and he was dismissed from service by the order dated 20-12-2012.

31. Therefore, three things namely (i) the initiation of disciplinary proceedings against the Judicial Officer, long before the initiation of proceedings against the writ petitioner;

(ii) the nature of the explanation offered by the petitioner in her written statement of defence dated 15-11-2010 and (iii) the dismissal of Judicial Officer by G.O.Ms.No.137, dated 2012-2012, seemed to have weighed with the administration, not to proceed with the inquiry as against the petitioner, for a full period of 7 years from the date of submission of the written statement of defence dated 15-11-2010 and the date of appointment of the Inquiry Officer on 26-09-2017. The administration was justified in putting the proceedings against the writ petitioner in cold storage after the receipt of her written statement of the defence on 15-11-2010 and the dismissal of the Judicial Officer on 20-12-2012, since at least charges 1 and 3 against the Judicial Officer were sufficient to show that the charges against the petitioner cannot stand. In other words, once it is found in the enquiry held against the Judicial Officer that he was guilty of sexual misconduct against a stenographer and of adopting coercive tactics, the petitioner cannot be proceeded against for any complicity. The first charge framed against the Judicial Officer, which we have extracted above, shows that even when the writ petitioner resisted the advances made by the Judicial Officer and ran away from the chambers, the Judicial Officer accosted her to return to the chamber and threatened her with serious consequences. The third charge proved against the Judicial Officer and which we have extracted above, shows that whenever the petitioner cried, the Judicial Officer

threatened her and even blackmailed the subordinate staff. Even the charges 4, 5 and 6 show that the Judicial Officer was guilty of coercion, intimidation, undue influence and enticement. Once the Judicial Administration has come to the conclusion, in the proceedings against the Judicial Officer that he was guilty of such things, none of the charges framed against the petitioner can really stand. Today, if any of the charges framed against the petitioner are to be held proved even partially, then the findings recorded against the Judicial Officer in respect of the charges listed above, would have to fall like a pack of cards.

32. Therefore, the situation that prevailed when the petitioner filed the first writ petition in the year 2009 challenging the very same charge memo, has undergone a radical change after the year 2012 with the dismissal of the Judicial Officer under G.O.Ms.No.137, dated 20-12-2012. The realisation that dawned upon the judicial administration and which made the charge memo against the petitioner being put in the back burner appears to have disappeared suddenly in September 2017 when the administration decided to proceed with the inquiry against the petitioner. Therefore, the original challenge to the charge memo and its failure cannot be held against the petitioner, especially when the Judicial Officer concerned was held guilty of charges that have the effect of completely destroying and annihilating the charges framed against the petitioner. Therefore, the present writ petition

cannot be said to be barred by principle of *res judicata*, as a fresh cause of action has arisen, with the disciplinary proceedings against the Judicial Officer culminating in an order of penalty in the year 2012.

33. As pointed out by the Constitution Bench of the Supreme Court in ***Daryao v. State of U.P.***¹, the rule of *res judicata* is founded upon considerations of public policy. Two principles namely (i) that finality should attach to binding decisions of courts and (ii) that individuals should not be vexed twice over the same cause, were held to form the foundation of the rule of *res judicata*.

34. But, in ***Amalgamated Coal Fields Limited v. Janapadha Sabha***², a Constitution Bench warned that special and original forms of *res judicata* such as constructive *res judicata* propounded in Section 11 of the Code of Civil Procedure should not generally be applied to writ petitions under Article 32 or 226. However, this decision was distinguished by another Constitution Bench in ***Devilal Modi v. Sales Tax Officer, Ratlam***³.

35. In ***Hoshnak Singh v. Union of India***⁴, the Supreme Court held that a subsequent writ petition filed against an order passed after availing an alternative remedy pursuant to an order passed in the first writ petition, is not

¹ AIR 1961 SC 1457

² AIR 1964 SC 1013

³ AIR 1965 SC 1150

⁴ 1979 (3) SCC 135

barred by *res judicata*. Therefore, the inaction on the part of the administration, especially after perusing the written statement of defence dated 15-11-2010 and after the order of dismissal of the Judicial Officer, has given rise to a separate cause of action which is different from the one on the basis of which the first writ petition was filed.

36. In ***Workmen v. Board of Trustee of Cochin Port Trust***⁵, the court made certain important observations, which may be relevance. Hence, they are quoted as follows:

"But the technical rule of res judicata, although a wholesome rule based upon public policy, cannot be stretched too far to bar the trial of identical issues in a separate proceeding merely on an uncertain assumption that the issues must have been decided. It is not safe to extend the principle of res judicata to such an extent so as to found it on mere guesswork. To illustrate our view point, we may take an example. Suppose a writ petition is filed in a High Court for grant of a writ of certiorari to challenge some order or decision on several grounds. If the writ petition is dismissed after contest by a speaking order obviously it will operate as res judicata in any other proceeding, such as, of suit, [Article 32](#) or [Article 136](#) directed from the same order or decision. If the writ petition is dismissed by a speaking order either at the threshold or after contest, say, only on the ground of laches or the availability of an alternative remedy, then another remedy open in law either by way of suit or any other proceeding obviously will not be barred on the principle of res judicata. Of course, a second writ petition on the same cause of action either filed in the same High Court or in another will not be maintainable because the dismissal of one petition will operate as a bar in the entertainment of another writ petition. Similarly even if one writ petition is dismissed in limine by a non-speaking one-word order 'dismissed', another writ petition would not be maintainable because even the one-word order, as we have indicated above, must necessarily be taken to have decided impliedly that the case is not a fit one for exercise of the writ jurisdiction of the High Court. Another writ petition from the same order or decision will not lie. But the position is substantially different from a writ petition dismissed either at the threshold or after contest without expressing any opinion on the merits of the matter; then no merit can be deemed to have been necessarily and impliedly decided and any other remedy of suit or other proceeding will not be barred on the principle of res judicata."

37. It must be remembered that the principle of *res judicata* as enunciated in Section 11 CPC is not exhaustive or enumerative of its various facets. *Res judicata* is a principle that recognises two different types of estoppels namely cause of action estoppel and issue estoppel. If tested on the

⁵ 1978 (3) SCC 119

touchstone of these two types of estoppels, it will be clear that neither of them would apply to the case on hand.

38. There is no cause of action estoppel in this case, since there were compelling circumstances for the judicial administration to abort the disciplinary proceedings, as against the petitioner, especially after holding the judicial officer guilty of charges that are completely opposite to the imputations of misconduct alleged against the petitioner. There can also be no issue estoppel in this case, since the whole gamut of law relating to sexual harassment of woman at work places has undergone a sea change after the decision of the Supreme Court in **Visakha v. State of Rajasthan (AIR 1997 SC 3011)**. It must be pointed out that the decision in **Visakha v. State of Rajasthan** was rendered by the Supreme Court on 13-08-1997. The First Information Report on the complaint made by the writ petitioner against the Judicial Officer, was made on 09-06-1996, at least one year before the decision in **Visakha**.

39. Unfortunately, no steps were taken to constitute a committee as recommended by the decision in **Visakha** and hence, the criminal case against the Judicial Officer took off only from 2001. Neither the decision of this Court dated 14-03-2008 in Criminal Appeal No.971 of 2002 filed by the Judicial Officer nor the decision of this Court dated 24-06-2009 passed in W.P.No.12475 of 2009 filed by the writ petitioner, took note of **Visakha** guidelines. Therefore, the

grievance of the writ petitioner with regard to the sexual harassment at her work place, was never examined as the one and only issue that required examination, either in the criminal appeal filed by the Judicial Officer or in the departmental proceedings initiated against the petitioner. Hence, there is also no issue of estoppel.

40. It is an irony that the judgment dated 14-03-2008 passed in Criminal Appeal No.971 of 2002 even while describing the petitioner herein as a victim, has paved the way for the admonition of her conduct and the initiation of disciplinary proceedings against the victim. Thus, the case on hand has become a typical example of secondary victimisation, on the platter of which, the issue arising in the case was never examined. Hence, we have no doubt in her mind that the present writ petition challenging the charge memo is not barred by *res judicata*.

41. Once it is clear that the writ petition in W.P.No. 34418 of 2017 challenging the charge memo dated 15-05-2009 is not barred by *res judicata*, then it follows as a corollary that the validity of the charge memo can be tested on the touchstone of the well established principles. A charge memo can normally be challenged either on the ground of lack of jurisdiction or on the ground that the imputations of misconduct are completely vague or on the ground that the imputations of misconduct, even if admitted, do not tantamount to a misconduct under the Government Servants

Conduct Rules or on the ground that the very same imputations formed the basis of a previous enquiry that has already been concluded. These principles are only illustrative and not exhaustive.

42. The case on hand may not strictly fall within the parameters indicated in the preceding paragraphs. But it has certain peculiarities. We have already extracted the six charges framed against the Judicial Officer, all of which except charge No.2 were held proved against the Judicial Officer. If the Judicial Officer has already been held guilty of the charges-1 and 3 to 6, the charges framed against the petitioner cannot stand. This can be understood easily if charges 1 and 3 to 6 framed against the Judicial Officer are presented side by side in a tabular column along with the charges framed against the petitioner herein.

Charges held proved against the Judicial Officer	Charges now framed against the petitioner
Charge No.1: That you Sri K.Basava Raju, formerly Subordinate Judge, Narsapur, West Godavari District, now reinstated into service by virtue of G.O.Ms.No.158, Home (Courts.C) Department, dt.03-10-2008 and waiting for order of your posting as Senior Civil Judge, while working as Subordinate Judge, Narsapur, stated to have behaved in an indecent manner with Mrs. A, a newly recruited stenographer posted to work under you, by touching her hands, breasts, checks and used to kiss her, while she was attending to the dictation work in between 8.30 A.M and 10.00 A.M., in the chamber attached to the court of Sub Judge, Narsapur, and when the said stenographer scared off you and used to run away from the chamber, as she was new to employment, you used to accost her to return to the chamber	Charge (1): That you, Mrs. A, while working as Steno-typist, at Subordinate Judge's Court, Narasapur, West Godavari District had sexual intercourse with Sri K.Basava Raju, formerly Subordinate Judge, Narasapur, without resisting the advances made by the said officer to have intercourse with you and were a consenting party for the said illicit act in the office premises at Narasapur and also at various other places as admitted in your deposition as P.W.1 in S.C.No.228/2001 on the file of Mahila Court, Visakhapatnam and thus indulged in an act of unbecoming of a government servant by behaving in a manner derogatory to the prestige of the judiciary and guilty of misconduct under Rule 3 of A.P. Civil Services (Conduct) Rules, 1964. Charge (2): That you, Mrs. A, while working as Steno-typist, Subordinate Judge's Court, Narasapur, West

and used to express angry and threaten her for running away from you. Thus you misbehaved with a Subordinate employee, who was working under you, which act of yours if proved or established would amount to grave misconduct, unbecoming of a judicial officer within the meaning of rule-3 (c) (e) of Andhra Pradesh Civil Service (Conduct) Rules, 1964. <u>Charge No. 3:</u> That you Sri K.Basava Raju, formerly Subordinate Judge, Narsapur, West Godavari District, now reinstated into service by virtue of G.O.Ms.No.158, Home (Courts.C) Department, dt.03-10-2008 and waiting for order of your posting as Senior Civil Judge, while working as Subordinate Judge, Narsapur, had sexual intercourse with Mrs. A, newly recruited Stenographer and posted to work in your court, against her will in the toilet of the chamber of Sub Court, Narsapur and later threatened her, that if she raises any cries, you would propagate that she has taken you to the toilet and she herself offered you to have sexual intercourse with her, thus you blackmailed your subordinate staff i.e., Mrs. A, Stenographer of Sub Court, Narsapur, which act of yours, if proved or established would amount to grave misconduct, unbecoming of a judicial officer within the meaning of rule 3 and 3 (c) of Andhra Pradesh Civil Service (Conduct) Rules, 1964. <u>Charge No.4:</u> That you Sri K. Basava Raju, formerly Subordinate Judge, Narsapur, West Godavari District, now reinstated into service by virtue of G.O.Ms.No.158, Home (Courts.C) Department, dt.03-10-2008 and waiting for order of your posting as Senior Civil Judge, while working as Subordinate Judge, Narsapur, continued the illicit relationship/intimacy with Mrs. A, Stenographer of the Court, while you were working as Sub Judge, Narsapur and also after your transfer as Principal Senior Civil Judge, Visakhapatnam, by visiting Narsapur and Bhimavaram, frequently and has sexual intercourse with her and developed illicit intimacy with her, luring her, her mother and brother, that you will marry her, after your promotion as Additional District Judge and subsequently you informed about your unwillingness to marry her, inspite of the illicit relationship/	Godavari District knowing that Sri K.Basava Raju, formerly Subordinate Judge, Narsapur, was already married and having two children and living with his wife, prevailed upon him to marry you during the subsistence of his marriage and thereby attempted to contract marriage with a married person which contravenes Rules 3 and 25 of A.P. Civil Services (Conduct) Rules, 1964 and thus you are liable for penalty under Rule 9 of A.P. Civil Services (CCA) Rules, 1991. <u>Charge (3):</u> That you, Mrs. A, while working as Steno-typist, at Subordinate Judge’s Court, Narsapur, West Godavari District tried to bring force on Sri K.Basava Raju, formerly Subordinate Judge, Narsapur, to marry you during the subsistence of his marriage by consuming sleeping pills, which contravenes Rules 3 of A.P. Civil Services (Conduct) Rules, 1964, thus you are liable for penalty under Rule 9 of A.P. Civil Services (CCA) Rules, 1991.”
---	---

intimacy continued with her for a long time, deceived her, which acts of yours, if proved or established would amount to grave misconduct, unbecoming of a Judicial Officer within the meaning of rule 3 & 3 (c) (a) of Andhra Pradesh Civil Service (Conduct) Rules,1964. <u>Charge No.5:</u> That you Sri K.Basava Raju, formerly Subordinate Judge, Narsapur, West Godavari District, now reinstated into service by virtue of G.O.Ms.No.158, Home (Courts.C) Department, dt.03-10-2008 and waiting for order of your posting as Senior Civil Judge, while working as Subordinate Judge, Narsapur, continued your illicit intimacy/relationship with Mrs. A, Stenographer of Sub Court, Narsapur, in spite of your transfer to Visakhapatnam and used to make correspondence with the said stenographer, Mrs. A, by writing letters to her dated.20-06-1995, 26-07-1995, 19-08-1995, 22-08-1995, 11-09-1995, 07-10-1995, 23-11-1995, 14-12-1995, 27-12-1995, 11-05-1995 and 23-02-1996 and tried to be in touch with her through your correspondence. Thus you exceeded your limits and continued the illicit relationship with your subordinate staff, which a judicial officer ought not have developed or continued, which act of yours, if proved or established would amount to grave misconduct, unbecoming of a Judicial Officer within the meaning of rule 3 of Andhra Pradesh Civil Service (Conduct) Rules, 1964. <u>Charge No.6:</u> That you Sri K. Basava Raju, formerly Subordinate Judge, Narsapur, West Godavari District, now reinstated into service by virtue of G.O.Ms.No.158, Home (Courts.C) Department, dt.03-10-2008 and waiting for order of your posting as Senior Civil Judge, while working as Subordinate Judge, Narsapur, initially has sexual intercourse with Mrs. A, Stenographer of the Court, thereafter got yielded her to your lust and had intercourse with her several times at Narsapur and also in the RTC Guest House and private lodge at Rajahmundry and subsequently deceived and discarded her, when she approached you at your official residence in the District Court premises at Visakhapatnam on 22-04-1996, moving the marriage proposal with you, but you and your wife	
---	---

scolded and necked out Mrs. A , in the presence of Sri L. Kedarachary, the then I Senior Civil Judge, Visakhapatnam, due to which stenographer, Mrs. A , made an attempt to commit suicide by swallowing 20 sleeping pills in front of your official residence in District Court premises, Visakhapatnam, preparing a suicide note, addressed to the Hon'ble Chief Justice, High Court of Andhra Pradesh, Hyderabad, and hospitalized. Thus, you deceived her luring her that you will marry but subsequently discarded her, which act of your, if proved or established would amount to grave misconduct, unbecoming of a judicial officer within the meaning of rule 3 & 3 (c) of Andhra Pradesh Civil Service (Conduct) Rules, 1964.	
--	--

43. It will be a contradiction in terms, to hold the Judicial Officer guilty of adopting coercive tactics to make his Steno-typist succumb to his pressure and thereafter to charge the steno-typist of complicity. It is quite unfortunate that after describing the writ petitioner as a victim, the judgment of this Court in the Criminal Appeal has placed her on par with the perpetrator.

44. As pointed out by the Madras High Court in **M. Kavya v. The Chairman, University Grants Commission**⁶, to which one of us (VRSJ) was a party, respect for the dignity of women is one of the pillars of the foundation of the Convention on the Elimination of All Forms of Discrimination against Women. Article 5 of the said Convention enjoins upon States Parties to take appropriate measures to modify the social and cultural patterns of contact of men and women, with a view to achieving the elimination of prejudices and

⁶ 2014 SCJ Online (Mad) 2670

customary and all other practices, which are based upon stereotyped roles for men and women.

45. Paragraphs 47 to 51 of the judgment of the Madras High Court in **M. Kavya v. The Chairman, University Grants Commission** may be usefully extracted as follows:

“47. In 1999, a Hand Book of Justice for Victims was prepared by the United Nations Office for Drug Control and Crime Prevention. It was prepared by a group of experts from more than 40 countries. It was actually in pursuance of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which was adopted by the General Assembly of the United Nations 29.11.1985.

48. Chapter I of the Hand Book deals with "Impact of Victimisation". This Chapter covers (1) the physical and financial impact of victimisation; (2) psychological injury and social cost; and (3) secondary victimisation from the Criminal Justice System and Society.

49. Sub-Chapter (c) of Chapter I of the Hand Book points out that secondary victimisation refers to the victimisation that occurs not as a direct result of the criminal act, but through the response of institutions and individuals to the victim. In one of the paragraphs, it is stated as follows:-

"The attitude of individuals is important. Some people with whom the victim has contact (example: family, friends and colleagues) may wish to distance themselves from the distress of the crime by blaming the victim for what has occurred. They may view the victim's behaviour as having contributed to or even cause the victimisation".

By brushing aside the complaints of the petitioners as an outcome of a group clash and rivalry and by branding the petitioners as indulging in political activities, the respondents have belittled the very nature of the complaints. This response on the part of the university and their attempt to blame the victims, is what is pointed out by the U.N. in the aforementioned Hand Book as secondary victimisation.

50. After the case of Nirbhaya, the Government of India constituted a committee headed by former Chief Justice of India J.S.Verma. On the invitation of Verma Committee, Professor Sandra Fredman FBA QC (hon), with the assistance of members of Oxford Pro Bono Publico, prepared a report titled "Submissions on the Reform of India's Sexual Violence Laws". One of the recommendations contained therein is to provide "Survivor Support Services", which includes the avoidance of secondary victimisation by the criminal justice system and society.

51. In the aforesaid report, secondary victimisation is indicated as a victimisation that occurs not as a direct result of a criminal act but through the inadequate response of institutions and individuals to the victims. Such victimisation can range from experiences of isolation and confusion due to lack of support and information, while navigating the criminal justice system, to the shaming and ostracising of survivors and their families."

46. As was pointed out by the Madras High Court in **M. Kavya**, institutions are supposed to provide "Survivor Support Services". The least that is expected of the

institutions is not to victimise the survivors, even if support services are not provided.

47. As pointed out by the Supreme Court in **State of Punjab v. Gurmit Singh**⁷, victims of sexual harassment cannot be made to undergo a test of fire about their past conduct. It was observed by the Supreme Court in the said decision that even if the prosecutrix, in a given case, has been promiscuous in her sexual behaviour earlier, she cannot be made a prey for any one and everyone. Therefore, the observations made in the judgment of this Court in the Criminal Appeal filed by the Judicial Officer, about the consent of the petitioner, cannot form the basis for the disciplinary proceedings against the petitioner. As pointed out by the Supreme Court in **Gurmit Singh**, a woman subjected to sexual assault is not to be treated as an accomplice, but a victim.

48. In view of the above, the very initiation of the disciplinary proceedings against the petitioner, is completely misconceived. The reluctance on the part of the administration, after the issue of the charge memo in the year 2009, to proceed with the enquiry till the year 2017, is understandable and justified. But the reluctance ought to have got converted into a bold step in aborting the proceedings.

⁷ 1996 (1) SCJ 566

49. In view of the above, W.P.No.34418 of 2017 is allowed and the charge memo dated 15-05-2009 issued against the petitioner is quashed. As a consequence, the grievances of the petitioner raised in the other two writ petitions do not survive for adjudication. Hence, W.P.Nos. 44927 of 2017 and 2537 of 2018 are closed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V.RAMASUBRAMANIAN, J

J.UMA DEVI, J

Date: 25-10-2018

Ak/ksn

Note:

- 1) L.R. Copy to be marked
- 2) While uploading the judgment in the website, the name of the petitioner must be hidden and indicated the name with Mrs. A.

B.O./Ksn

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI**



**Writ Petition Nos.34418 and 44927 of 2017 and 2537 of
2018**
(Common Order)

25th October, 2018.

(Ksn)