

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04/04/2019

DATED : 16.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.9891 of 2012

M.Jaber Sathik

.. Petitioner

Versus

1. The Vice Chancellor
Anna University of Technology
Coimbatore,
Coimbatore District.

2. The Registrar
Anna University of Technology
Mettupalayam Road
Jothipuram (P.O.),
Coimbatore - 641 047.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records relating to the impugned order passed by the second respondent in his proceedings Ref.No. 007/AUCTBE/R/DR/2012, dated 06.01.2012 and quash the same as illegal.

For Petitioner :: Mr. S.Nambi Arooran
For Respondents :: Mr. M.Vijayakumar

ORDER

The writ petitioner was initially appointed as Executive Assistant on 30.09.2008 and joined in the said post on 13.10.2008 in the office of the Anna University of Technology, Mettupalayam Road, Jothipuram Post, Coimbatore.

2. In the affidavit filed in support of the Writ Petition, the writ petitioner claimed that he had become attracted to his colleague Ms.S. He claimed that her father threatened him. He further claimed that he had preferred a complaint against her parents for harassment on 14.09.2009.

However he was surprised to receive communciation to appear for enquiry scheduled to be held on 10.12.2010 at about 11.30 a.m. He appeared before the enquiry which was conducted on the basis of a complaint given by the said Ms.S. She also appeared before the enquiry. They both submitted their written explanation and answer to a questionnaire.

3. The petitioner was also arrested pursuant to a complaint given by Ms.S., to the police, on the basis of which a First Information Report was registered by Periyannayakkanpalayam Police Station, Coimbatore. He was also remanded to judicial custody. The second respondent, namely, the Registrar, Anna University of Technology, Coimbatore, placed him under suspension on 15.02.2010. He then filed W.P.No. 895 of 2011 challenging the order of suspension. In the meanwhile, show cause notice dated 13.01.2011 was also issued calling upon him to explain why appropriate disciplinary action should not be initiated for the criminal offence and particularly moral turpitude. He claimed that he had given an explanation on 17.01.2011. He then withdrew the writ petition with liberty to approach the appellate authority, namely, the Vice Chancellor, Anna University of Technology, Coimbatore, who is the first respondent.

4. Thereafter the second respondent by proceedings in reference No. 007/AUTcbe/R/DRI 2012 dated 06.01.2012 passed an order dismissing him from service. The writ petitioner claimed that the rights guaranteed under Article 311 of the Constitution of India had been violated and that a false complaint had given by Ms.S., at the instigation of her parents. He also stated that the enquiry conducted by the complaint committee was a colourable exercise of power. He further stated that he was not afforded an opportunity to cross examine Ms.S. It was also stated that the conclusion of the Complaints Committee was based only on the complaint given by Ms.S. It was stated that the Principles of Natural Justice had been violated. It was stated that the impugned order passed by the second respondent dismissing him from service should be set aside and quashed.

5. The second respondent had filed a counter affidavit. It had been stated that even earlier, in August 2009, Ms.S. working as Lecturer in the xxx Department had submitted a complaint stating that the petitioner was harassing her by making unnecessary phone calls and uttering unparliamentary words. She claimed that his conduct gave her both physical and mental torture. A formal enquiry was conducted. In the enquiry, the petitioner submitted an apology letter under taking that he would not repeat the misconduct. He was severely warned not to repeat the same.

6. It was specifically denied that he had given a

complaint dated 14.09.2009. On the other hand Ms.S. had given a further complaint on 07.12.2010 complaining that about the continuous harassment, she faced at the hands of the petitioner. Since the allegations were serious, it was forwarded to the Statutory Committee, which was formed in pursuance to the UGC guidelines. The Committee consisting of a Chairman and two committee members conducted an enquiry on 10.12.2010 and also submitted a report. They held that the complaint of Ms.S. was true.

7. Ms.S. had also preferred a criminal complaint against the petitioner before the Periyanaikanpalayam Police Station. The police, after preliminary enquiry, registered a complaint in Crime No. 1018 of 2010 under the provisions of the Tamil Nadu Provisions of Harassment of Women Act 2008. The petitioner was arrested on 14.12.2010. The University received a letter from the Inspector of Police informing about the arrest of the petitioner. Consequently, he was placed under suspension by proceedings dated 15.02.2010. Thereafter, the report of the Statutory Committee was considered along with the connected documents. In the report, it was held that the complaint had been proved and that the petitioner had directly made physical conduct and advances not only within the University Campus but also at public places against the wishes of the complainant. He had also made demands by repeated phone calls. He had humiliated her and had put her to the risk of health and safety problems. Consequently, by office proceedings dated 13.01.2011, a show cause notice was issued along with a copy of the report of the Committee and other documents. In the meanwhile, the appeal filed by the petitioner seeking to revoke the order of suspension was also rejected. The respondent specifically denied that the petitioner had given an explanation dated 17.01.2011. They claimed that he submitted an explanation only on 25.06.2011. The office had reminded him to give an explanation on 11.04.2011. Thereafter, with the due approval of the first respondent, it was decided to place the entire material before the Syndicate of the University. It was only at that point of time that he had given his explanation dated 25.06.2011. The said explanation along with the entire materials were placed before the Syndicate. They were considered during the meeting held on 15.12.2011. The Syndicate resolved to dismiss the petitioner from service. It was stated that he had been dismissed after following due procedure. It was also stated that the Statutory Committee had been constituted pursuant to the directions issued by the Hon'ble Supreme Court and that the committee followed due process. It was also stated that the petitioner was given full opportunity to put forward his case. It was stated that a considered decision had been taken to dismiss the petitioner from service. It was finally stated that the Writ Petition should be dismissed.

8. Heard arguments advanced by Mr.S.Nambi Arooran, for M/s. M.Ajmal Khan & Associates, learned counsel for the petitioner and Mr.M.Vijayakumar, learned counsel for the respondents.

9. The writ petitioner had been appointed as Executive Assistant on 13.09.2008 and had joined service on 13.10.2008 in the office of the second respondent, Anna University of Technology, Mettupalayam Road, Coimbatore.

10. It is the specific case of the respondents that Ms.S., Assistant Professor, xxx Department, had given an earlier complaint in August 2009 alleging that the petitioner was harassing her by making unnecessary phone calls and using unparliamentary words. Even at that point of time, she had also stated that he was causing both physical and mental torture. It is the claim of the respondents that a formal enquiry was conducted and an apology letter was given by the petitioner. He was severely warned at that point of time.

11. In that complaint, which was dated 17.08.2009, Ms.S., had submitted to the Vice Chancellor, Anna University, Coimbatore, that the writ petitioner M.Jaber Sadhik, Executive Assistant (Admin) was harassing her by making phone calls unnecessarily using unparliamentary words. She also stated that she was a native of xxx and therefore felt very insecure.

12. It is also seen from the records that Ms.S. had also lodged a police complaint against the petitioner and he had also been arrested in view of First Information Report being registered in Crime No. 1018 of 2010 under provisions of the Tamilnadu Prohibition of Harassment of Women Act 2008 on 14.12.2010. He was also remanded to judicial custody. Consequently, the respondents had placed him under suspension by proceedings dated 15.12.2010. In the said suspension order, it had been specifically stated that the petitioner was arrested and remanded to judicial custody in Crime No. 1018 of 2010 for offence under Section 4 of the Tamilnadu Prohibition of Harassment of Women Act, 2008. The petitioner gave a representation on 14.12.2010 complaining that when action had been taken on the complaint of Ms.S., no action had been taken on his representation. It is further seen that a committee had been formed with Dr.M.V.Subha, A.P., DODO, AUTCBE, as Chairperson and P.Ganesh Kumar, Lecturer/IT, AUTCBE and J.Preethi, Lecturer / circumstance, AUTCBE as Committee Members. They had submitted a report dated 10.12.2010. In the report, they have extracted the complaint given by Ms.S. against the writ petitioner and also the facts narrated in the written

statement of the writ petitioner. The said extract is quoted below for better appreciation:-

"From the complaint letter submitted by Ms.S. (name withheld) against Mr.Jaber Sadhik, the following details are mentioned:-

1. She has been mentally harassed for the last two years by Mr.Jaber Sadhik through phone calls, SMS and sending letters to her to the University with the name of her father as sender through courier.

2. Mr.Jaber Sadhik is trying to talk to her outside the campus even though no official contact is there pertaining to the University.

3. Ms.S. (name withheld) and her father Mr.S.Subramanian have lodged a complaint earlier on 17th August 2009 regarding a similar incident.

4. On September 2009, while she was going to her native place (Madurai) through bus, he again threatened her that he will marry her and told her to inform this to the then Vice-Chancellor. The incident is said to have occurred in the bus stand.

5. On 6th December 2010, Mr.Jaber Sadhik touched her head in front of the Priya hostel, Koundanpalayam, Coimbatore at 8.00 a.m., and tried to block her way and asked her to talk to him for few minutes.

After scrutinizing the documents, a questionnaire was prepared individually for Mr.Jaber Sadhik and Ms.S. (name withheld). Both were individually called for a preliminary enquiry on 10.12.2010 (Friday). They were questioned and asked to fill up the questionnaire.

Ms.S. (name withheld) has confirmed both in writing and orally the facts she has mentioned in her complaint letter.

Mr.Jaber Sadhik presented himself in front of the enquiry committee and gave oral and written explanation. From Mr.Jaber Sadhik's written statement, the following information was found:-

1. He has accepted that he knew Ms.S. (name withheld) and also given in writing that he has taken a liking towards her since she resembled his cousin (Ans to ques No.5). He has accepted that he has made phone calls and sent SMS to Ms.S. (name withheld) in the intention of getting her consent to marry him (Ans to Ques 5 & 6). Further he has denied sending her any letters in the name of her father through courier.

2. Mr.Jaber Sadhik in ques no. 8 denies talking to her outside the University at any time, however he in his own statement in question No. 10, accepts that he has spoken to Ms.S. (name withheld) in the bus stand at Singanallur and helped her to get a seat in a crowded bus. He has also given her his bag which Ms.S. (name withheld) has refused as she did not like him talking to her.

3. A copy of the complaint letter filed by Ms.S. (name withheld) and her father Mr.S.Subramani against Mr.Jaber Sadhik, submitted on 17.08.2009 was enclosed. Mr.Jaber Sadhik has accepted that he has appeared before the enquiry committee earlier conducted in the University and said that no action was taken against him. He in the Ans to Ques no. 10, states that the then Vice Chancellor i/e advised him not to go in the same bus in which Ms.S. (name withheld) is travelling and avoid any further conversation with her.

4. Mr.Jaber Sadhik in his own statement in question no. 10, accepts that he has seen Ms.S. (name withheld) in the bus stand at Singanallur during Sep 2009 and asked her if she is going to Madurai and has spoken to her. He has accepted that he helped her to get a seat in a crowded bus. He has accepted that he also tried to given

her his bag to her for which Ms.S. (name withheld) has refused as she did not like him talking to her. However, he denies threatening her that he will marry her on any account and the same may be informed to the then Vice Chancellor.

5. Mr.Jaber Sathik in his reply to Ques No.12 has accepted that he was present in front of the Priya Hostel, Koundampalayam on 06.08.2010 and tried to talk to Ms.S. (name withheld). He has accepted that he touched (scratched) the head of Ms.S. (name withheld) as she did not hear him calling her. He has accepted that he was present there at that time to talk to Ms.Suganya personally regarding his liking towards her and to find out what her final decision was."

Thereafter on going through the records, the committee made the following observations:-

1. In his statement Mr.Jaber Sathik has accepted that he has a liking towards Ms.S. (name withheld), however such a liking was never reciprocated by Ms.S. (name withheld).

2. He has tried through phone calls, SMS and tried to personally talk to Ms.S. (name withheld) to convince her into liking him. He has also asked his sister from Bahrain to convince Ms.S. (name withheld) into marrying him over telephone and this is also accepted by him in his statement.

3. He has attempted to talk to Ms.S. (name withheld) at public places which was totally not liked by her. Her earlier complaints to the University clearly show that she has no liking to this person and she has been completely disturbed by all the attempts made by Mr.Jaber Sathik in persuading to marry him.

4. He has touched her forehead and tried to talk to her in a public place which is highly an unwarranted act whatever

may be the reason. Trying to persuade a girl who has no interest in him and physically touching her in a public place is highly admonished by the committee.

Based on the above mentioned observations and by the written statement given by Mr.Jaber Sadhik and Ms.S. (name withheld), the act of Mr.Jaber Sadhik is admonished by the Committee and recommends necessary action to be taken as per the rules and regulations of the University. "

13. The second respondent then issued a show cause notice dated 13.01.2011 to the writ petitioner calling upon him to show cause why appropriate disciplinary proceedings should not be initiated for the proven misconduct. Along with the show cause notice, the following documents were enclosed:-

- "1. Complaint from Ms.S. (name withheld),
2. Acceptance letter from Mr.M.Jaber Sadhik dated 21.09.2009;
3. Complaint from Ms.S. (name withheld), Asst. Prof, S & H (Maths) dated 07.12.2010;
4. Enquiry Committee Report (including Mr.M.Jaber Sadhik's statement)"

14. It is thus seen that the petitioner was afforded full and fair opportunity to defend himself. His contentions were considered by the committee. Subsequently, he was also issued with a show cause notice asking for further explanation. Along with the show cause notice, documents, including his statement, the complaint and the earlier complaint and his letter were also enclosed. The petitioner therefore cannot claim ignorance or innocence and seek indulgence from this Court. Instead of giving a reply to the show cause notice, the petitioner filed W.P.No. 895 of 2011 challenging the order of suspension. This Writ Petition was dismissed as withdrawn with liberty to the petitioner to approach the appellate authority. The petitioner then filed an undated Appeal calling upon the first respondent to withdraw the order of suspension and reinstate him in service. This was replied by proceedings of the second respondent dated 11.04.2011 in which it had been reiterated that a complaint had been given against him by Ms.S. alleging several charges by sexual harassment and that the Complaints Committee had enquired into the same and had also held that the charges were proved. It was also stated that he

was given sufficient opportunity to defend himself. Thereafter, a show cause notice had been issued to him calling upon him to explain why disciplinary action should not been initiated. It was specifically stated that he had not replied to the show cause notice. It was also further stated that he had been arrested by the police and remanded to judicial custody and therefore, he had been placed under suspension in larger public interest.

15. It is further seen that the report of the Complaints Committee was placed before the Syndicate of the Anna University of Technology after due approval by the first respondent/Vice Chancellor. It was only at that stage that the petitioner submitted an explanation to the show cause notice dated 13.01.2011. The explanation dated 25.06.2011 and the report of the Committee and all connected documents were placed before the Syndicate and the Syndicate after due consideration, in its meeting held on 15.12.2011, resolved to dismiss the petitioner from service. This decision was conveyed to the petitioner by the second respondent by communication dated 06.01.2012.

16. This impugned order had been challenged by the petitioner mainly on the ground that he was not afforded opportunity and proper enquiry had not been conducted against him. I reject those contentions. The enquiry as envisaged when complaints of this nature are given had been conducted by the respondents. The respondents have formed the Complaints Committee in accordance with the UGC guidelines which guidelines have been issued pursuant to the directions of the Hon'ble Supreme Court in Vishaka & Others Vs. State of Rajasthan & Others reported in 1997 (6) SCC 241. The petitioner had also participated in the enquiry. He had given his answers to the questionnaire given to him. He had submitted his explanation. He had been heard by the Committee. He had been given full opportunity by the Committee. He had also been given a copy of the complaint against him. Therefore, the contention of the learned counsel for the writ petitioner that fair opportunity was not granted or that proper enquiry was not conducted are rejected.

17. The learned counsel for the writ petitioner raised a further contention stating that the criminal case pursuant to the complaint given by Suganya had ended in an acquittal and therefore, the impugned order should be set aside. This contention is also rejected by me.

18. A perusal of the Judgment in C.C.No. 122 of 2011 dated 03.11.2014 reveals that the order of acquittal had to be necessarily passed since Ms.S. had died. It had been informed during the course of arguments that she committed suicide.

Therefore, the order of acquittal by the criminal Court cannot be of any consequence and has no relevance so far as the disciplinary proceedings initiated by the respondents are concerned. It is trite to point out that in a criminal case, proof beyond reasonable doubt is expected, whereas in departmental proceedings, preponderance of probabilities alone are the weighing scales.

19. The competency of the Committee had not been challenged by the writ petitioner. The competency of the Chairpersons and Members of the Committee had not been challenged or questioned by the writ petitioner. There has been no allegation of bias or prejudice levelled against the Chairperson or the Members. The writ petitioner has not questioned the procedure followed during the enquiry. He had admitted to the charges. He had stated that he knew Ms.S. and had made advances to her. As a matter of fact, this Court should condemn the act of the respondents in simply warning the petitioner when an earlier complaint was given in August 2009. That has led to further complaint being given and ultimately to the unfortunate death of Ms.S. by committing suicide.

20. The further contention of the learned counsel for the writ petitioner that there has been violation of rights under Article 311 of the Constitution of India are also rejected by him. An enquiry had been conducted by a Committee formed as stipulated by UGC specifically to enquire into sexual advances made in work place. Significantly, the writ petitioner had also participated in the enquiry proceedings. The Constitution actually provides a guarantee of gender equality in and work with human dignity as provided in Articles 14, 15, 19(1)(g) and 21. The guidelines given in the said Judgment in Vishaka cited supra were actually promulgated by the Hon'ble Supreme Court and superseded by the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act 2013. The statement of objects and reasons of the said Act are as follows:-

"Statement of Objects and Reasons.-
Sexual harassment at a work place 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, case, 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 that work place.

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

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

5. The Supreme Court of India in the case of Vishaka & Ors. State of Rajasthan & Ors. [1997 (7) SCC 323], also reaffirmed that sexual harassment at

workplace is a form of discrimination against women and recognised that it violates the constitutional right to equality and provided guidelines to address this issue pending the enactment of a suitable legislation.

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

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

8. The Bill seeks to achieve the above objectives."

21. In the said Act, Section 2(a) defines "aggrieved woman" as (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. The said act also provides for constitution of an internal Complaints Committee under Section 4. When a complaint is given under Section 9 of Sexual Harassment, the Committee is given the power to enquire into the complaint under Section 11. During the process of enquiry, the Committee is vested with the powers of a Civil Court under the Code of Civil Procedure, 1908. Thereafter, a report has to be given under Section 13. Section 18 provides an Appeal to be filed against the order of the Committee.

22. The rules framed and published in the gazette dated 09.12.2013 also provides under Rule 7 the manner of enquiry into the complaint. The Rules provide the manner of taking action and Rule 9 specifically provides that they can also order termination from service. Rule 11 also gives the right to Appeal from the recommendations made by the Committee.

23. In the present case, the Complaints Committee was formed and they had conducted an enquiry on 10.12.2010. Independently, Ms.S. had also given a police complaint and Crime No. 1018 of 2010 had been registered by the Periyannayakkan Police Station against the writ petitioner under Section 4 of the Tamilnadu Prohibition of Harassment of Women Act 2008. He was also arrested and remanded to judicial custody. He was also placed under suspension. The Writ Petition filed by him challenging the order of suspension was withdrawn by him. He also participated in the enquiry conducted by the Statutory Committee. The complaint was found proved. Thereafter, with the approval of the Vice Chancellor, the first respondent, the relevant records were submitted to the Syndicate of the University. It was only at that stage, the petitioner gave an explanation to the show cause notice which had been issued to him along with the copy of the report and complaint and other documents. However, his explanation was also placed before the Syndicate. The Syndicate after due consideration had resolved to dismiss him from service on 15.12.2011.

24. I hold that the procedure followed is not vitiated by any rule or law. The petitioner had been given ample opportunity to firstly rectify himself and withdraw his companionship from Ms.S. He failed to do so. Secondly, he was also given an opportunity by warning him. He did not heed the warning. Thirdly, he was also granted full opportunity during the enquiry, but the complaint was found to be true. This had also led to further serious consequence with Ms.S. unfortunately committing suicide on 29.03.2014. The contentions raised by the learned counsel for the writ petitioner are rejected by me.

25. In view of the above reasons, I have no hesitation in holding that the Writ Petition should be dismissed. Accordingly, it is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vsg

To

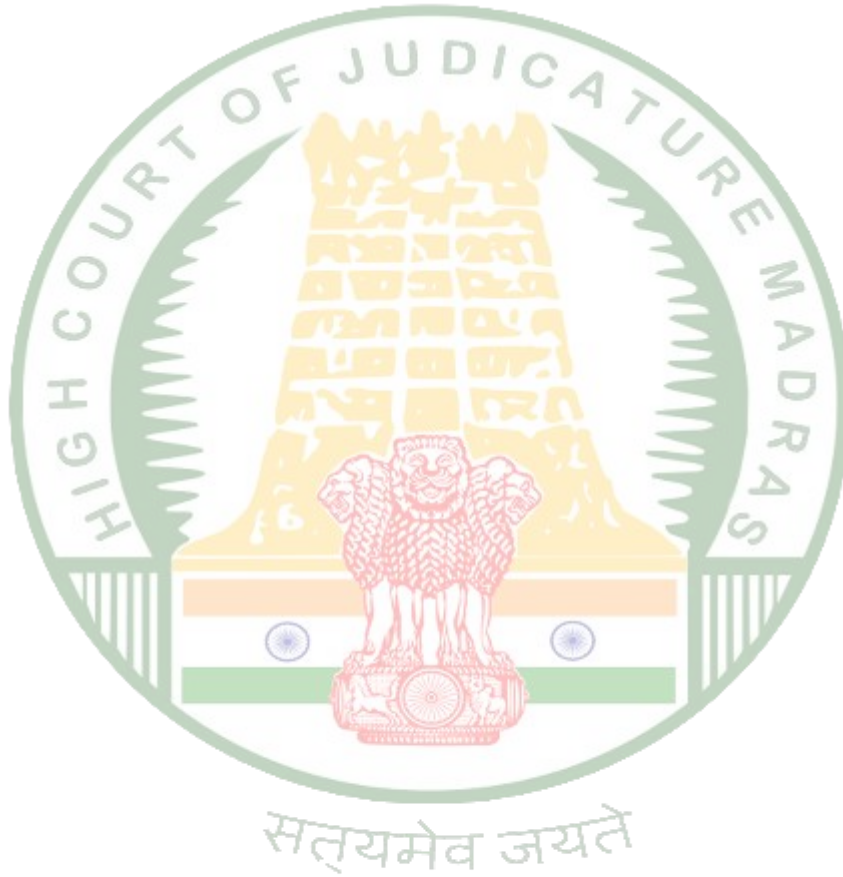
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W.P.No.9891 of 2012

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