

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27088 of 2017

and

W.M.P.No.28913 of 2017

and

W.M.P.Nos.9161 & 9162 of 2018

M/s.AE & E Chennai Works (P) Ltd.,
No.18/2A, Seneer Kuppam,
Bye Pass Road, Poonamallee,
Chennai - 600 056.

New Address:M/s.Doosan Works(P) Limited,
(Now known as M/s.Doosan Power Systems
India Pvt Ltd.,)

No.18/2A, Seneerkuppam,
Bye pass Road, Poonmallee,
Chennai - 600 056

Represented by its Senior Manager, H.R.I.R
vs

..Petitioner

1.The Presiding Officer,
II Additional Labour Court, Chennai.

2.Mr.D.Kannan

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records connected with I.D.No.664 of 2010 on the file of the 1st Respondent i.e., the Presiding Officer, II Additional Labour Court, Chennai and to quash the Award dated 15.09.2017 made therein and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstance of the case and thereby render justice and thereby render justice.

For Petitioner : Mr.Sanjay Mohan
For M/s.S.Ramasubramaniam & Associates

For Respondents : R1 - Labour Court
R2 - Mr.S.Kumarasamy

O R D E R

The Award dated 15.09.2017 passed in I.D.No.664 of 2010 on the file of the 1st respondent is sought to be quashed in the present writ petition.

2. The writ petitioner is a Company registered under the Companies Act, 1956 and engaged in the business of Boiler Fabrication and has a factory at Poonamalle, Chennai. The 2nd respondent joined the services of the writ petitioner Company on 01.01.2007. Subsequently, after two years of service, the benefit of regularization was granted to the 2nd respondent. The 2nd respondent was working as a Senior Welder in a Supervisory Cadre and a Team of personnel consisting 12 welders and 5 trainees were working under the 2nd respondent. The 2nd respondent is a Team leader and was in charge of the work assigned to them. Large number of women employees were part of workforce in the factory administered by the writ petitioner Company.

3. The writ petitioner Company had received a complaint on 23.04.2010 from Ms.D.Nathiya, who was one of the team member alleging Sexual Harassment upon her by the 2nd respondent. Considering the seriousness of the complaint lodged by the women employee, the writ petitioner Company had constituted a preliminary Enquiry committee, comprising 4 top level executives including 1 women member. The said committee had conducted enquiry with the 2nd respondent and other co-employees. On 29.04.2010, in the midst of the enquiry, the 2nd respondent had shouted at the Committee members and left the Company abruptly on his own volition. The Committee filed their findings on 30.04.2010, wherein they found that the 2nd respondent was found guilty.

4. Based on the findings of the Enquiry Committee, a charge sheet was issued on 13.05.2010 for the allegation of Sexual Harassment and for unauthorised absence from duty for more than 10 days without prior permission. The 2nd respondent submitted his reply on 20.05.2010. Being not satisfied with the explanation, the petitioner Company had taken a decision to hold a domestic enquiry and an Enquiry officer was appointed, who in turn, issued the notice of enquiry dated 31.05.2010, calling upon the 2nd respondent to appear before the Enquiry officer on 11.06.2010. However, the 2nd respondent did not participate in the enquiry proceedings. One more opportunity was given to him and accordingly, the enquiry proceeding was adjourned to 18.06.2010. Again on 18.06.2010, the 2nd respondent remained absent and therefore, he was set exparte and the Management was directed to let in evidence to substantiate the charges levelled against the 2nd respondent. The domestic enquiry was proceeded with and the witnesses on the side of the Management were

examined. a) Mr.R.Sarangapani, Assistant Vice President, b) Ms.Nathiya, Trainee Welder, the Complainant, c) Ms.Poongodi, Stores Assistant, d) Mr.K.Senthamizhan, Time Officer, e) Ms.Mary Sylvia, Secretary E.D's office, f) Ms.A.Nancy, Trainee Welder were examined as witnesses and Exhibits M-1 to M-14 were filed and marked.

5. After completion of the examination of witnesses and marking of the documents, the complainant sent a letter dated 20.05.2010 addressed to the Management and also to the 2nd respondent and in the said letter, the complainant said that she is withdrawing the allegation against the 2nd respondent. However, the said letter was contrary to the deposition made before the Enquiry officer during examination of witnesses. On 18.06.2010, she explained as to why she was withdrawing the complaint dated 23.04.2010 namely Exhibit M-2 before the Labour Court. The complainant has pointed out that she did not want her matrimonial prospects to be jeopardized in any manner and also on the request of the family members, she had decided to withdrawn her complaint dated 23.04.2010. Though she had withdrawn the allegations against the 2nd respondent vide her letter dated 20.05.2010. The complainant had appeared before the Enquiry officer on 18.06.2010 and once again, reiterated the allegations and explained the circumstances, under which, she had written the letter dated 20.05.2010, withdrawing her complaint against the 2nd respondent. All these aspects were considered and the Enquiry officer submitted a report and found that the charges against the 2nd respondent regarding Sexual Harassment are proved. Meanwhile, the 2nd respondent had raised a dispute before the Labour Conciliation Officer II, Chennai with a false allegation that the 2nd respondent was orally terminated on 29.04.2010 and subsequently, the Conciliation Officer had submitted his failure report.

6. Based on the enquiry report, the writ petitioner Company issued a Second Show Cause Notice on 29.06.2010, enclosing the copy of the enquiry report and the 2nd respondent had not chosen to submit his objections or explanations. Accordingly, the writ petitioner Company issued the final order in the disciplinary proceedings on 18.10.2010, imposing the penalty of termination from services.

7. The dispute was referred to the Labour Court for adjudication and the 2nd respondent examined himself as a witness and marked Exhibits W-1 to W-36 and the Management examined Mr.K.Loganathan, its Manager as a witness and marked Exhibits M-1 to M-24. However, the complainant, who had issued complaint dated 23.04.2010 (Exhibit M-1 before the Labour Court), did not enter the witness box to allege that she had been forced by the Management to issue the complaint on the 2nd respondent. After

adjudication, the 1st respondent has passed the impugned Award dated 15.09.2017 in I.D.No.664 of 2010 for reinstatement with continuity of service and full back wages and other attendant benefits. Challenging the said Award, the present writ petition is filed.

8. The learned counsel appearing on behalf of the writ petitioner Company reiterated that undoubtedly, allegations against the 2nd respondent are grave misconduct. Such a misconduct can never be tolerated or a lenient view can be taken as far as the writ petitioner Company is concerned in view of the fact that large number of women employees are working in the petitioner Company. It is the duty of the Management to protect the interests of the women employees working in the factory. A preliminary enquiry was conducted and only after ascertaining the facts and circumstances, the writ petitioner Company had taken a decision to issue charge sheet and accordingly, the procedures contemplated are followed in order to provide opportunity to the 2nd respondent delinquent. The Enquiry proceedings were conducted in accordance with the established procedures and by following the Principles of Natural Justice. Even, the letter of withdrawal furnished by the complainant also was considered by the Enquiry officer as well as by the disciplinary authority though the complainant at one point of time, sent a letter for the withdrawal of the complaint, she had deposed before the Enquiry officer in clear terms, that the allegation of Sexual Harassment is a truth. When the complainant herself appeared before the Enquiry officer and during the examination, she deposed the facts that has to be considered for the purpose of establishing the misconduct against the delinquent officials and under these circumstances, the disciplinary authority as well as the Enquiry officer came to the conclusion that the withdrawal letter was sent by the complainant by coercion or by force. Even otherwise also, the misconduct occurred inside the factory premises and therefore, it is for the writ petitioner Company to conduct an enquiry, ascertained the truth and institute appropriate proceedings against all concerned. It is not as if, the complainant can submit a withdrawal letter after revealing the truth regarding the Sexual Harassment before the Enquiry Committee as well as before the Enquiry officer. Such letters are to be construed as a forcible one and under these circumstances, the disciplinary authority had come to the conclusion that the allegations of Sexual Harassment against 2nd respondent was proved beyond doubt.

9. The learned counsel appearing on behalf of the 2nd respondent vehemently opposed the contentions raised on behalf of the writ petitioner Company by stating that the enquiry was not conducted appropriately. This apart, the complainant herself had withdrawn the complaint and she had sent letters on

20.05.2010(W-11), 12.07.2010(W-19), 30.08.2010(W-21), 06.11.2010(W-28) and the letter given by one Mr.D.Ramakrishnan on 03.09.2011(W-31).

10. The learned counsel for the 2nd respondent submitted a judgment of Hon'ble Supreme Court in the case of Rajeshwar Mahto Vs. Alok Kumar Gupta, reported in 2018 4 SCC 341 and relevant paragraphs 18 and 19 are extracted hereunder:

"18. In the light of the aforementioned principle of law laid down by this Court, one cannot now dispute the legal proposition emerging therefrom that notwithstanding allowing of the appeal filed by the Corporation by this Court by order dated 31-10-2000 [Birla Corpn. Ltd. v. Rajeshwar Mahato, (2001) 10 SCC 611 : 2002 SCC (L&S) 1011] , so far as order dated 4-5-1999 [Birla Corpn. Ltd. v. Rajeshwar Mahato, Civil Appeal No. 4482 of 1998, order dated 4-5-1999 (SC)] passed in the aforesaid appeal is concerned, it remains legal and valid and being independent in nature, the same has to be given effect to in favour of the applicant employee, if not found complied with by the employer Corporation.

19. In other words, even if the employer eventually succeeds in its appeal against his employee, in which such order was passed during the pendency of employer's appeal, the employer continues to remain under legal obligation to comply with such order passed by the Court under Section 17-B of the Act in favour of the employee. To put it in short, an order passed under Section 17-B of Act does not merge with the final order passed in the appeal and being an independent order, it remains alive for enforcement."

11. Relying on the said judgment, the learned counsel for the 2nd respondent contended that the 2nd respondent is to be paid last drawn wages under Section 17(b) of the Industrial Disputes Act [hereinafter referred to as "ID Act"]. However, when the matter was taken up for final hearing and the learned counsel for the writ petitioner also argued the matter elaborately and the learned counsel for the 2nd respondent also argued the matter in entirety, this Court is of the considered opinion that the judgment of the Hon'ble Supreme Court regarding the complaint of 17(b) of ID Act, need not be considered.

12. The learned counsel for the 2nd respondent contended that the complainant herself had withdrawn the complaint and on plain reading of the letters cited above, it is crystal clear that the complainant herself had not interested in pursuing the complaint originally submitted. When the 2nd respondent categorically urged the writ petitioner Management for the

closure of the departmental disciplinary proceedings, they have not acceded to the request made by the 2nd respondent and proceeded exparte. By reading the copy of the letters sent by the complainant, the learned counsel for the 2nd respondent reiterated and re-emphasised that the letters were sent voluntarily by the complainant herself and the perusal of the letter will reveal that she was not interested in pursuing the matter.

13. This Court had considered all those letters.

14. On a perusal of the letters and the reason for which a decision for withdrawal of the complaint, reveals that there was some pressure and confusion in the mind of the complainant. Even in complaint dated 20.05.2010, the complainant has stated that the 2nd respondent used to mingle with the complainant as his sister. In the letter dated 12.07.2010, the complainant has said that the petitioner Company has not sanctioned the salary increase and they are isolating the complainant and such an action by the writ petitioner Company, creating mental agony and therefore, she has sent another letter, stating that she has given a false complaint and requested to pardon her. All the letters sent by the complainant reveals that the complainant was in a state of confused mind and written such letters, which all are ambiguous and there is no clarity. In one letter, she says that the complainant had given an oral complaint and she has withdrawn and in another letter, she says that she was completely broken and requested to grant pardon.

15. Under those circumstances, this Court is of the considered view that such letters frequently sent on several occasions after deposing before the Enquiry officer cannot be construed as a letter of withdrawal, so as to exonerate the delinquent officer from such charges of Sexual Harassment.

16. On a perusal of these letters, this Court is not convinced that the withdrawal of the original complaint made by the complainant was genuine and on certain forced circumstances and on account of the fact that her future married life is also involved, she had sent all such letters and in such circumstances, if the Hon'ble High Court grant exoneration of the offenders of Sexual Harassment, the same will send a wrong message to the society at large as well as the women employees working in such large establishments will lose their faith in the legal system as well as discipline to be maintained in work places. Even certain confusions or certain letters sent by the complainant subsequently and after deposing the truth before the Enquiry officer, this Court is of the opinion that those letters cannot be relied upon for the purpose of exonerating the delinquent employees. It is not as if an women employee can give

a complaint, depose before the Enquiry officer and signed the deposition and thereafter, sent few letters for withdrawal of the complaint or seeking pardon for giving such complaints. If such behaviour and such course of actions at the instance of the delinquent officials are accepted, then large number of such Sexual Harassment in work places will end in exoneration and the same would send a wrong message to the society, more specifically, to the female employees working in various establishments across the country on par with the men in various establishments.

17. The learned counsel for the writ petitioner also relied on the judgment of the Hon'ble Supreme Court in the case of Vishaka and others Vs. State of Rajasthan and others, reported in (1997) 6 SCC 241 [hereinafter referred to as "Vishaka Judgment"] reiterated that the procedures were scrupulously followed. The enquiry was conducted, the complainant deposed before the Enquiry committee. Further, she had deposed before the domestic Enquiry officer.

18. This being the factum, the subsequent letters lost its significance and as far as the writ petitioner Company is concerned, the misconducts against the 2nd respondent was established and therefore, the Award passed by the Labour Court is perverse and in violation of the legal principles settled by the Hon'ble Supreme Court of India in "Vishaka Judgment", more specifically, in the matter of Sexual Harassment against women.

The arguments advanced by the respective learned counsels, appearing for the parties to the lis on hand, are considered by this Court carefully.

19. Violence against women is perhaps 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.

20. The concept of equality of status and the resolutions adopted by "We the people of India" in the preamble of the Constitution shall be achieved only when all citizen equally respect everybody without any discrimination on gender basis. Equal protection of laws is the constitutional mandate.

21. Importantly, the fundamental duties enunciated under Article 51-A, Clause (e) states that "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional to sectional diversities; to renounce practices derogatory to the dignity of women". It is the fundamental duty of every citizen of this Great Nation, to renounce the practices derogatory to

the dignity of women.

22. When such being the fundamental duty of a citizen, this Court is of an opinion that the responsibility of the higher Police Officials stands in a higher footing. The responsible Police Officials are the law implementing authorities of the law of the land. When the Police Force is responsible and accountable for maintenance of Law and Order, prevention of crimes, offences against women and all other antisocial activities in this Great Nation, the fundamental duties of a citizen, who is holding the higher post of a Police Official is to be construed as mandate under the Constitution.

23. An ordinary citizen of this Great Nation may plead ignorance of laws, which itself is impermissible. However, the Higher Police Officials in the present case, serving in the rank of Inspector General of Police as well as the Superintendent of Police can never be allowed to plead ignorance of laws or ignorance of responsibility and accountability to be shown by virtue of their status as higher level Police Officials.

24. When the fundamental duties itself enumerates that to renounce the practices derogatory to the dignity of the women, Police Officials are certainly bound by that principles and this apart, sexual harassments are offences under various Statutes.

25. "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."

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

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

28. While gender violence is as old as humanity it is only in the past two decades that it has been publically recognized, systematically structured and legislated against to a significant degree. In 1990's such violence was finally

admitted on international level with recognition of human rights issue. Internationally, the World Conference on Human Rights (1993) at Vienna, which was one of the main turning points in women's right declared that human rights of women and of the girl child are inalienable, integral and indivisible part of universal human rights. The Vienna Declaration specifically condemned gender based violence and all forms of sexual harassment and exploitation. The Conference concluded that:

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

29. Sexual Harassment at the work place is an extremely sensitive issue. For most it is taboo, due to the limitations of traditional gender hierarchies.

30. 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.

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

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

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

5. The Supreme Court of India in the case of Vishaka & Ors. V. State of Rajasthan & Ors. [1997 (7) SCC 323], also reaffirmed that sexual harassment at workplace is a form of discrimination against women and recognised that it violates the

constitutional right to equality and provided guidelines to address this issue pending the enactment of a suitable legislation.

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

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

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

33. 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."

34. 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.

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

36. Section 4 reads as follows:-

"4. Constitution of Internal Complaints Committee - (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee".

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committee shall consist of the following members to be nominated by the employer, namely:-

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees: Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to sub-section (1):

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

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst 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 convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest, and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this clause."

37. 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".

38. 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.

39. The Supreme Court of India in the case of Vishaka and Others Vs. State of Rajasthan & Ors. [1997 (7) SCC 323], also reaffirmed that sexual harassment at workplace is a form of discrimination against women and recognised that it violates the constitutional right to equality and provided guidelines to address this issue pending the enactment of a suitable legislation. While dealing with various aspects of the matter, the Hon'ble Supreme Court held as follows:-

Page No. 247 Paragraph No.6:

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

Article 15:

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth -

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

(2) * * *

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

Article 42:

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

Article 51-A:-

"51-A. Fundamental duties: It shall be the duty of every citizen of India. (a) to abide by the Constitution and respect its 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 xxxxx xxxx

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

xxx xxxxx xxxxx

Article 24:

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

Page No. 252 to 254 Paragraph No.17:

17. The GUIDELINES and NORMS prescribed herein are as under:-

HAVING REGARD to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993, TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time, It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the Employer or other responsible persons in work places and other institutions: It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition: For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as: a) physical contact and advances; b) a demand or request for sexual favours; c) sexually coloured remarks; d) showing pornography; e) any other unwelcome physical verbal or non-verbal conduct of sexual nature. Where any of these acts is committed in

circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive Steps: All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps: (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways. (b) The Rules/ Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender. (c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946. (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal Proceedings: Where such conduct amounts to a specific offence under the Indian Penal Code or under any other

law the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary Action: Where such conduct amounts to mis-conduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint Mechanism: Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaints Committee: The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality. The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any under pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The Complaints Committee must make an annual report to the government department concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Workers' Initiative: Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be

affirmatively discussed in Employer-Employee Meetings.

9. Awareness: Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in suitable manner.

10. Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993."

40. Thus, all the aspects in this regard are unambiguously provided under 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 ensure 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.

41. In view of the fact that the misconduct against the 2nd respondent was established before the Enquiry officer beyond doubt and the allegations of Sexual Harassment against women in work places cannot be viewed leniently. All such misconducts in work places in the present day circumstances are to be viewed seriously and all suitable actions are to be initiated against the offenders in this regard. However, the complaint in respect of the present writ petition was made before the enactment of Sexual Harassment Act and therefore, the case was dealt with by the Management by following the guidelines issued by the Hon'ble Supreme Court of India in "Vishaka Judgment".

42. Thus, this Court has no hesitation in coming to the conclusion that all such allegations of Sexual Harassment in the present day circumstances are to be viewed seriously and all suitable actions both under the criminal law as well as under the Sexual Harassment Act are to be initiated against the persons, who have involved in such offences or misconducts.

43. Under these circumstances, the findings of the Labour Court undoubtedly is perverse and contrary to the proved charges against the 2nd respondent regarding Sexual Harassment. This apart, the Award of the Labour Court is communicating a wrong message to the society at large, more specifically, in current day circumstances.

44. This being the factum, this Court has no hesitation in coming to the conclusion that the Award of the Labour Court is infirm and legally unsustainable. Consequently, the Award dated 15.09.2017 passed in I.D.No.664 of 2010 on the file of the 1st respondent is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To

1.The Presiding Officer,
II Additional Labour Court, Chennai.

+1cc to Mr.M/s.S.Ramasubramaniam & Associates, Advocate
SR.No.77328

W.P.No.27088 of 2017

MG(CO)
GMY(27/09/2019)