



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:

27.11.2019

Delivered on:

24.01.2020

WEB COPY

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.979 of 2019

and

W.M.P. (MD) No.815 & 816 of 2019

Dr.P.Govindaraju

... Petitioner

Vs

- 1.The Manonmaniam Sundaranar University,
Rep. by its Registrar, Abishekapatti
Tirunelveli - 627 012.
- 2.The Internal Complaints Committee,
Rep. by its Presiding Officer,
Manonmaniam Sundaranar University,
Abishekapatti, Tirunelveli - 627 012.
- 3.Dr.Beaulah Shekhar
Presiding Officer,
Internal Complaints Committee,
Manonmaniam Sundaranar University,
Abishekapatti, Tirunelveli - 627 012.
- 4.Mrs.R.Sridevi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 1st respondent Manonmaniam Sundaranar University in No. MSU / R / ESTT / T / COMMUNICATION / 2018 dated 21.12.2018, quash the same, and further direct the 1st respondent University to reinstate the petitioner forthwith into his service as Professor in the Department of Communication w.e.f., the date of Compulsory Retirement viz., 21.12.2018 with all attendant benefits including arrears of salary.

For Petitioner : Mr.Isaac Mohan Lal
Senior Counsel for M/s.ISAAC CHAMBERS

For R1 : Mr.Ajmalkhan Sr.c.
For M/s.AJMAL ASSOCIATES,



For R2 & R3

: Mr.N.Dilipkumar

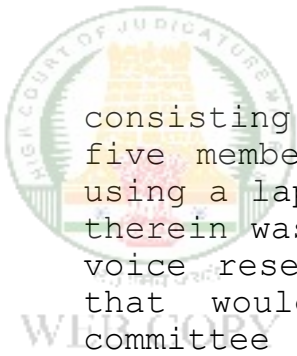
For R4

: Mr.Chamundi Bose

O R D E R

This writ petition has been filed for issuance of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 1st respondent Manonmaniam Sundaranar University in No. MSU / R / ESTT / T / COMMUNICATION / 2018 dated 21.12.2018, quash the same, and further direct the 1st respondent University to reinstate the petitioner forthwith into his service as Professor in the Department of Communication w.e.f., the date of Compulsory Retirement viz., 21.12.2018 with all attendant benefits including arrears of salary.

2. The learned counsel for the petitioner contended that the petitioner, after 19 years and 6 months of unblemished services in various institutions in India and abroad under various capacities, joined the services of 1st respondent University on 10.03.2004 as Professor in the Department of Communication. The petitioner is possessing B.Sc, M.A., M.Phil and Ph.D degrees. Apart from his academic posts, the petitioner held various administrative positions in the 1st respondent University namely Registrar incharge from 28.08.2012 to 28.03.2013, Member of University Syndicate from 04.04.2014 to 27.04.2014 and Member, Convenor Committee from 23.07.2015 to 15.02.2016. He was the Head of Department of Communications from 10.03.2004 till 20.03.2017. He is one of the approved guide for Ph.D Scholars. 14 Scholars have completed Ph.D and 8 Scholars are doing their Ph.D Research under his guideship. According to the learned counsel for the petitioner he was asked to meet the Vice Chancellor and he met the Vice Chancellor on 17.10.2018 around 5 p.m. on that day. The petitioner was informed that the Vice Chancellor has received some anonymous complaints and a Compact Disc (CD) containing some recorded conversation between the petitioner and one of the Research Scholar. The petitioner answered in affirmative to the question asked by the Vice Chancellor whether the petitioner conversed to his scholars over phone and informed the Vice Chancellor that his scholars used to contact him over phone. After such question, the Vice Chancellor asked the petitioner to leave. While so, to the shock of the petitioner, he received an order from the 1st respondent bearing Memo No. MSU / R / ESTT / T / COMMUNICATION / 2018 dated 21.12.2018, suspending the petitioner from service w.e.f. 22.10.2018 in contemplation of enquiry for the alleged charges of sexual harassment of a research student. The suspension was widely published in dailies on 27.10.2018 for the reasons best known to the 1st respondent. The 1st respondent issued a letter dated 13.11.2018 calling upon the petitioner to appear before the Internal Complaints Committee (ICC) on 17.11.2018 at 10.00 a.m. in the University Board Room, the 2nd respondent herein and the petitioner appeared before the committee



consisting of the 3rd respondent as Presiding Officer and another five members. After playing one of the CDs out of 9 audio plays using a laptop, the Committee asked the petitioner whether the voice therein was that of the petitioner. The petitioner answered that the voice resembles his voice. The file did not contain any material that would constitute sexual harassment. The 2nd respondent committee asked the petitioner eight questions and the petitioner answered all the questions and denied the allegations of sexual harassment.

3. While so, the petitioner received a letter dated 16.11.2018, notarized on 19.11.2018 from the 4th respondent addressed to the Vice Chancellor stating that she had not given any complaint against the petitioner voluntarily but the 3rd respondent forced and threatened and coerced the 4th respondent to give a complaint against the petitioner. After the enquiry which was conducted in violation of principles of natural justice, the 1st respondent issued the impugned proceedings dated 21.12.2018 placing the petitioner on compulsory retirement for the alleged sexual harassment on the basis of the report said to have been submitted by the 2nd respondent Committee. Challenging the said order of compulsory retirement, the petitioner has come out with the present writ petition.

4. The learned Senior Counsel for the petitioner contended that -

(i) The initiation of enquiry into the allegation of sexual harassment is illegal as there is no complaint of sexual harassment by any aggrieved women ;

(ii) There is no complaint by any aggrieved women as defined by Section 2 (a) (i) of the Sexual Harassment to Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 ;

(iii) There is no sexual harassment as defined in Section 2 (n) of the Act, made out against the petitioner ;

(iv) The alleged complaint against the petitioner was not lodged within three months from the date of incident or within a period of three months from the date of last incident as contemplated under Section 9 of the Act ;

(v) The alleged complaint is time barred and the 2nd respondent is not having jurisdiction to initiate any enquiry against the petitioner in as much as there is no aggrieved women and no complaint of sexual harassment was lodged in writing by any aggrieved women ;

(vi) The enquiry was initiated based on one line note of an anonymous person is illegal and the name of the official who received the CD was not mentioned ;



(vii) The 4th respondent who was alleged to have been harassed by the petitioner has submitted an affidavit that there was no such complaint and the Presiding Officer of Internal Complaints Committee (ICC), 3rd respondent herein, forcibly obtained a pre-dated complaint from her ;

(viii) The respondents did not conduct the enquiry as contemplated under Section 11 the Act and Rule 7;

(ix) As per Rule 7 of the Sexual Harassment to Women at workplace (Prevention, Prohibition and Redressal) Rules, 2013, Manner of inquiry into the complaint -

(1) at the time of filing the complaint, the complainant shall submit to the Committee, six copies of the complaint along with supporting documents and the names and address of the witnesses.

(2) On receipt of the complaint, the Committee must send one of the copies to the respondent, petitioner herein, within a period of seven working days.

(3) The respondent / petitioner herein must submit his reply to the complaint along with his list of documents and names and address of witnesses, within a period of not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1)

(4) Subsequently, the Complaints Committee / 2nd respondent herein shall make enquiry into the complaint in accordance with the principles of natural justice.

(5) During enquiry there must be three members including the Presiding Officer or Chair Person.

(x) As per Section 11 of the Act, the Committee shall conduct the enquiry as per the provisions of Service Rules applicable to the respondents / petitioner herein.

6. The learned Senior Counsel for the petitioner contended that none of the conditions mentioned in Rule 7 and Section 11 of the Act were complied with. The 2nd respondent failed to furnish the copy of the complaint to the petitioner herein inspite of specific representation made by the petitioner to the Principal Secretary to the Government and seeking revocation of suspension. No explanation was sought for before initiating the enquiry. The enquiry was not conducted following the principles of natural justice and was not conducted as per the Service Rules, as contemplated under Section 11 of the Act.



7. The learned Senior Counsel for the petitioner referred to Sub-clause (3) of sub clause (6) of Statute 13 of the Manonmaniam Sundaranar University Statutes (hereinafter referred to as "the Statutes") as well as Section 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), Act, 2013 wherein the procedures to be followed before imposing minor or major penalties has been contemplated therein. The learned Senior Counsel further contended that the petitioner should be given an opportunity to explain his position before imposing major penalties and the petitioner must be provided a charge memo containing his defaults alleged to have been committed by him and after the enquiry, the petitioner should be examined and then only, any punishment can be imposed. As per Section 13 (1) of the Act, the 1st respondent must serve the copy of the enquiry report of the Committee to the petitioner within a period of ten days of completion of enquiry. The 1st respondent, without furnishing a copy of the report of the Committee, has passed the impugned order placing the petitioner under compulsory retirement.

8. The 3rd respondent is biased against the petitioner as the petitioner while working as Reader incharge of the 1st respondent University, ordered recovery of excess payment of Rs.5,00,000/- from the 3rd respondent and he brought to the notice of authorities that as per UGC Norms, only when a person completes six years of service as a Reader can be promoted as Professor and the 3rd respondent cannot be promoted as Professor on three years of service as Reader. The allegations made by the petitioner against the 3rd respondent in para 25 to 28 of the affidavit was not denied by the 3rd respondent in the counter affidavit filed by her. When the said allegations are not denied, it is presumed to be true. The petitioner is put to prejudice by not furnishing the enquiry report and giving an opportunity to hear, before passing the impugned order. Availability of alternative remedy is not a bar for the petitioner to approach this Court under Article 226 of the Constitution of India where there is failure of principles of nature justice.

9. The learned Senior Counsel for the petitioner contended that all the Committee members are Juniors to the petitioner which is contradiction to Section 4 (2) (a) of the Act. The Committee did not contain member from a Non-Government Organisation (NGO) as per Section 4 (2) (c) of the Act. The constitution of 2nd respondent Committee is illegal which vitiates the entire proceedings.

10. The learned Senior Counsel further contended that the 2nd respondent Committee did not take steps to settle the matter between the aggrieved women and the petitioner by conciliation before initiating enquiry under Section 11 of the Act. Section 10 of the Act provides for conciliation before initiating the enquiry. The 2nd respondent failed to comply with the provisions of Section 10 of the



Act. The conciliation mentioned in Section 10 of the Act becomes important in view of the fact that the 4th respondent sent a sworn affidavit duly notarized withdrawing the complaint given by her against the petitioner.

11. The learned Senior Counsel appearing for the petitioner, in support of his contention, relied on the following judgments -

(i) 2007 (10) SCC 88 (M.P.State Agro Industries Development Corpn. Ltd. and another v. Jahan Khan

12. Before parting with the case, we may also deal with the submission of learned counsel for the appellants that a remedy by way of an appeal being available to the respondent, the High Court ought not to have entertained his petition filed under Articles 226/227 of the Constitution. There is no gainsaying that in a given case, the High Court may not entertain a writ petition under Article 226 of the Constitution on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar. (See: Whirpool Corporation Vs. Registrar of Trade Marks , Harbanslal Sahnia & Anr. Vs. Indian Oil Corporation Ltd. & Ors. , State of H.P. Vs. Gujarat Ambuja Cement Ltd. and Sanjana M. Wig Vs. Hindustan Petroleum Corporation Ltd.).

13. In the instant case, though it is true that the penalty order impugned in the writ petition was appealable in terms of the aforementioned Regulations but having coming to the conclusion that the order was per se illegal being violative of the principles of natural justice, it cannot be said that the High Court fell into an error in entertaining the writ petition filed by the respondent.

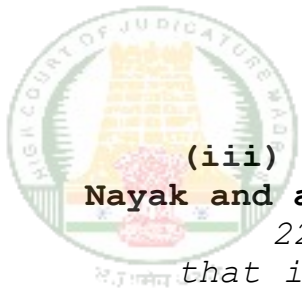


(ii) 2013 (1) SCC 297 (Medha Kotwal Lele and others v. Union of India and others)

6. In one of these matters, Medha Kotwal Lele, this Court has passed certain orders from time to time. Notices were issued to all the State Governments. The States have filed their responses. On 26.4.2004, after hearing the learned Attorney General and learned counsel for the States, this Court directed as follows : Complaints Committee as envisaged by the Supreme Court in its judgment in Vishakas case will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 (hereinafter called CCS Rules) and the report of the complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the rules. This Court further directed in the order dated 26.4.2004 that similar amendment shall be carried out in the Industrial Employment (Standing Orders) Rules. As regards educational institutions and other establishments, the Court observed that further directions would be issued subsequently.

44.1 The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (By whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

45. We are of the view that if there is any non-compliance or non-adherence to the Vishaka guidelines, orders of this Court following Vishaka and the above directions, it will be open to the aggrieved persons to approach the respective High Courts. The High Court of such State would be in a better position to effectively consider the grievances raised in that regard.



(iii) 1984 (2) SCC 500 (A.R.Antulay v. Ramdas Srinivas Nayak and another)

22. Once the contention on behalf of the appellant that investigation under Sec. 5A is a condition precedent to the initiation of proceedings before a special Judge and therefore cognizance of an offence cannot be taken except upon a police report, does not commend to us and has no foundation in law, it is unnecessary to refer to the long line of decisions commencing from Taylor v Taylor, (1) Nazir Ahmad v. King Emperor (2) and ending with Chettiam Veetttil Ahmad and Anr. v. Taluk Land Board and Ors., (3) laying down hitherto uncontroverted legal principle that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all Other methods of performance are necessarily forbidden.

(iv) 1995 (2) SCC 689 (Babua Ram and others v. State of U.P. and another)

22. Now we consider the external aid to get at the crux of the question. When the language is not only plain but admits of but one meaning, the task of interpretation can hardly be said to arise. Such language best declares, without more, the intention of the legislature and is decisive on it. Therefore, when the language is clear and capable of only one meaning, anything enacted by the legislature, must be enforced, even though it be absurd or result in startling consequences. The endeavour, therefore, must be to collect the meaning of the statute from the expressions used therein rather than from any notions which may be entertained by the court as to what is just or expedient. When two interpretations are possible, the task of the court would be to find which one or the other interpretation would promote the object of the statute, serves its purpose, preserve its smooth working and prefer the one which subserves or promotes the object to the other which introduces inconvenience or uncertainty in the working of its system.

23. The purpose of interpretation is, therefore, to ascertain the intentions of the legislature and to make it effective. If the statute is ambiguous or its meaning is uncertain, interpretation is resorted to for ascertaining what the legislature meant by the words in the statute, although they do not express the legislative interest clearly and perfectly. In other



words, if the statute is plain, certain and free from ambiguity, a bare reading of it suffices and its interpretation can never arise, In discovering the legislative intent, courts are not exercising legislative power but apply the rules of common sense applying certain legal principles.

12. The 1st respondent filed counter affidavit and denied all the averments made by the petitioner in the affidavit.

12 (a) The learned Senior Counsel for the 1st respondent contended that Vice Chancellor of the 1st respondent University and various departments received a Compact Disc (CD) along with a note to take action against the petitioner for his sexual harassment of one of the Research Scholars. When the petitioner was enquired by the Vice Chancellor, he admitted that the conversation between him and one of the Research Scholar as recorded in the CD. In view of the said admission, a preliminary enquiry was conducted and finding a prima facie case against the petitioner, recommended action to be taken against the petitioner. Before the 2nd respondent Committee, the 4th respondent has specifically stated that the petitioner had spoken sexually coloured things to her and she had requested him not to speak such things to her. Due to fear, she had not disclosed the same to anybody and to complete her Ph.D, she tolerated the behaviour of the petitioner.

12 (b). The 4th respondent also gave a petition on 17.10.2018 to the Vice Chancellor to change her Ph.D guide from the petitioner to some other Professor so that she can complete her Ph.D peacefully. The petitioner is also subjected himself to the enquiry. The 4th respondent also stated that few other students were also subjected to harassment at the hands of the petitioner. The allegation that the audio recording relates to the period in January 2018 and the enquiry was initiated in November 2018 is not within three months from the date of incident and therefore the enquiry is not in accordance with under Section 9 of the Act of 2013 is false. There are more than 240 recordings of sexual harassment from January 2018 and it was a continuous harassment. Section 9 deals with a complaint given by victim in respect of sexual harassment. While, in the present case, the inappropriate behaviour of the petitioner came to light after the exposure and the victim did not make a formal complaint fearing her safety. In such circumstances, Section 9 of the Act does not apply to the facts of the present case. The allegation that the 4th respondent did not make a complaint voluntarily but she was threatened by the 3rd respondent and one T.R.Rajasekar is not correct. The conciliation proceedings contemplated under Section 10 of the Act between the 4th respondent and the petitioner is not mandatory pre-condition before the enquiry and it is only an enabling provision, if requested by the aggrieved women to settle the issue through conciliation. The

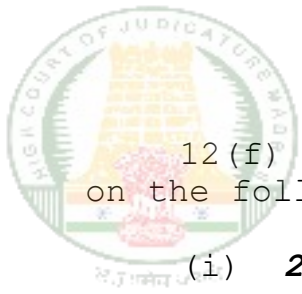


4th respondent was scared of her future and she had not made any request for conciliation.

12 (c) The learned Senior Counsel for the 1st respondent denied the allegation that the Constituion of the Committee was illegal as all the Committee members are juniors to the petitioner and no member representing a Non-Government Organisation (NGO) is included in the Committee. One Mrs.R.Christina Jeya Nithila, was an NGO member in the Committee and she has participated in the proceedings and agreed to the findings. The Act 2013 does not require that the Committee member should be senior to the delinquent. The Committee was constituted strictly in accordance with Section 4 of the Act 2013. The petitioner was given full opportunity in compliance of principles of nature justice in the enquiry. The petitinoer was given opportunity to hear the CD recordings as well as to persue all the documents. The petitioner has admitted that the voice in the CD is that of his voice and the female voice is that of the 4th respondent. The materials placed before the Committee disclosed that the petitioner is guilty of having committed the misconduct of sexual harassment and has not exhibited a behaviour warranted of a Professor having regard to the fiduciary relationship between a teacher and a ward.

12(d) The learned Senior Counsel for the 1st respondent further submitted that contention of the petitioner that the 4th respondent complainant herself has withdrawn the complaint and the committee ought not to have proceeded the enquiry is contrary to the facts. The 4th respondent gave complaint to the Vice Chancellor on 17.10.2018 and she appeared before the Committee on 17.11.2018 and deposed that the petitioner sexually harassed her. Once the 4th respondent has appeared before the Committee and gave a statement, the complainant/4th respondent cannot withdraw the complaint after committee had already submitted their report. A reading of the letter dated 19.11.2018 reveals no person will accept the withdrawal by the 4th respondent. This Court, in W.P.No.27088 of 2017 in the case of **"AE & E Chennai Works (P) Ltd. Vs. The Presiding Officer"** by order dated 06.09.2019 had rejected a similar plea and held that after preferring a compliant and deposing before the Committee, the complainant cannot be allowed to withdraw her compliant and such withdrawal shall not in any way affect the action to be taken against the delinquent.

12(e) The learned Senior Counsel for the 1st respondent submitted that unless the petitioner has pleaded and proved that he was prejudiced by non-furnishing the enquiry report, enquiry and findings will not be vitiated by non-furnishing the enquiry report. The petitioner has not stated in the affidavit that he was prejudiced by non-furnishing a copy of the report of the Committee and in the arguments, the said plea cannot be raised as there is no pleadings to that effect.



12(f) The learned Senior Counsel for the 1st respondent relied on the following judgments -

- (i) **2001 (6) SCC 392 [U.P Vs. Harendra Arora and another]**

12. Thus, from the case of ECIL, it would be plain that in cases covered by the constitutional mandate, i.e., Article 311(2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. If for infraction of a constitutional provision an order would not be invalid unless prejudice is shown, we fail to understand how requirement in the statutory rules of furnishing copy of enquiry report would stand on a higher footing by laying down that question of prejudice is not material therein.

13. The matter may be examined from another view point. There may be cases where there are infractions of statutory provisions, rules and regulations. Can it be said that every such infraction would make the consequent action void and/or invalid? The statute may contain certain substantive provisions, e.g., who is the competent authority to impose a particular punishment on a particular employee. Such provision must be strictly complied with as in these cases the theory of substantial compliance may not be available. For example, where a rule specifically provides that the delinquent officer shall be given an opportunity to produce evidence in support of his case after the close of the evidence of the other side and if no such opportunity is given, it would not be possible to say that the inquiry was not vitiated. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touchstone of prejudice. The test would be, whether the delinquent officer had or did not have a fair hearing. In the case of *Russel vs. Duke of Norfolk & Ors.*, 1949 (1) All E.R. 109, it was laid down by the Court of Appeal that the principle of natural justice cannot be reduced to any hard and fast formulae and the same cannot be put in a straitjacket as its applicability



depends upon the context and the facts and circumstances of each case.

(ii) Order dated 06.09.2019 made in W.P.No.27088 of 2017.

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 a 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.

(iii) 1996 (6) SCC 415 [S.K.Singh v. Central Bank of India and others]

3. The only controversy raised in the High Court was that as he was not supplied with the copy of the enquiry report, the order of dismissal was bad in law. The learned Single Judge as well as the Division Bench of the High Court have considered the effect of the judgment of the Constitution Bench of this Court in Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar and Ors. [(1993 4 SCC 727)]. The learned single Judge as well as the Division Bench of the High Court had asked the petitioner as to what prejudice the petitioner had suffered for non-supply thereof. Since there was no adequate explanation offered by the petitioner, the High Court came to the conclusion, that though the copy of the report was not supplied, on the facts, as no prejudice was proved, it was not a case warranting interference.

4. It is contended by Sri Khanduja, learned counsel for the petitioner that since Court has laid down the law



that supply of copy of the enquiry report is a pre-condition for a competent officer to take a disciplinary action, the appropriate course would have been to send back the case to the disciplinary authority. For this course, normally there is no quarrel, as this Court had settled the law that a copy of the report needs to be supplied to the delinquent employee to enable him to make representation against the proposed action or punishment and, thereafter, the authority is required to consider that explanation offered by the punishment. In this case, though copy of the report was not supplied, he was asked by the learned Single Judge as well as by the Division Bench as to what prejudice he suffered on account of non-supply of the report; but he was not able to satisfy the learned Judges as to the prejudice caused to him on account of non-supply of the enquiry report. On the facts, we find that there is no illegality in the decision taken by the High Court.

12 (g) The learned Senior Counsel for the 1st respondent further submitted that the allegation of malafide against the 3rd respondent is false and the same is specifically denied by the 3rd respondent in her counter affidavit. Further, the finding of the Committee is a collective one and is not by the 3rd respondent alone which included a member from NGO. The learned Senior Counsel for the 1st respondent contended that the contention of the petitioner that Committee constituted under Section 4 of the Act is not proper as chair person is junior to the petitioner is contrary to Section 4 of the Act. Section 4 of the Act contemplates that chair person must be a woman employed at a senior level at work place from among the employees. The 3rd respondent is a senior staff of the 1st respondent and seniority contemplated under Section 4 of the Act is seniority in work place and not senior to delinquent and relied on the judgment of the Hon'ble Rajasthan High Court in the case of **"Shital Prasad Sharma Vs. State of Rajasthan"** reported in **2019 (1) RLW 110 (Raj.)** wherein it has been held as follows -

68. In the instant case, this court finds that the Chairperson of the Committee was a senior level Officer and no illegality can be attached to her appointment as Presiding Officer. It is also important to note that the said Committee was constituted in the year 2014 for a term of three years, as per the requirement of Section 4(3) of the Act of 2013. The said Committee has looked into different complaints received against the employees of the department from time to time and the Committee was not constituted only for the purpose of investigating the complaint lodged against the petitioner alone. The blame of the petitioner that a



junior Officer in rank, has conducted enquiry against him has no substance.

70. If the submission of Mr.Lodha is to be accepted, the composition and constitution of Internal Complaints Committee will always be dependent on the rank of the person against whom such complaint is to be examined. The purpose of constituting Internal Complaints Committee as per the requirement of Section 4 of the Act of 2013 has been to appoint a Committee for a tenure of three years to look into the complaints received against the employees from time to time committing the act of sexual misconduct. Once a Committee is constituted as per Section 4 of the Act of 2013, there cannot be change of Presiding Officer as per rank of official against whom charge of sexual harassment is framed.

12 (h) The learned Senior Counsel for the 1st respondent further contended that the writ petition filed by the petitioner is not maintainable. The petitioner has alternative remedy under Statute 13 (2) of Service Rules of 1st respondent and punishment imposed by syndicate is appealable to Chancellor within three months from the date of receipt of copy of the order. Further, the petitioner has not challenged the resolution of syndicate dated 20.12.2018 but has challenged the consequential order of communicating the resolution of the syndicate. The writ petition without exhausting the alternate remedy has to be dismissed as not maintainable.

12 (i) In support of his contention, the learned Senior Counsel for the 1st respondent relied on the judgment of the Hon'ble Apex Court in **Commissioner of Income Tax Vs. Chhabil Dass Agarwal** reported in **2014 (1) SCC 603** wherein it has been held as follows -

11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without

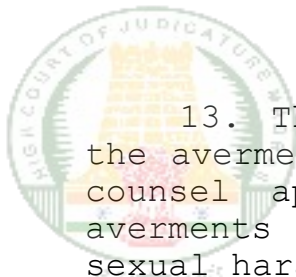


availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See: State of U.P. vs. Mohammad Nooh, AIR 1958 SC 86; Titaghur Paper Mills Co. Ltd. vs. State of Orissa, (1983) 2 SCC 433; Harbanslal Sahnia vs. Indian Oil Corpn. Ltd., (2003) 2 SCC 107; State of H.P. vs. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499).

12. The Constitution Benches of this Court in K.S. Rashid and Sons vs. Income Tax Investigation Commission, AIR 1954 SC 207; Sangram Singh vs. Election Tribunal, Kotah, AIR 1955 SC 425; Union of India vs. T.R. Varma, AIR 1957 SC 882; State of U.P. vs. Mohd. Nooh, AIR 1958 SC 86 and K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

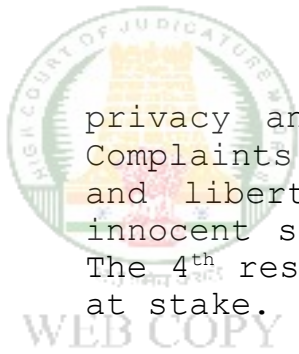
15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

and prayed for dismissal of the writ petition.



13. The 3rd respondent filed counter affidavit and denied all the averments made by the petitioner in the affidavit. The learned counsel appearing for the respondents 2 and 3 reiterated the averments made in the counter affidavit and submitted that the sexual harassment by the petitioner relates to January '2018 and the harassment extended for a long period and therefore the enquiry initiated in November '2018 is in accordance with Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. There is no violation of Section 9 of the Act. In the enquiry, the petitioner himself has admitted that he sexually harassed the 4th respondent and expressed his regret. The allegations made by the 4th respondent that 3rd respondent caused psychological disturbance and had not informed her of various options available under the Act are denied. Similarly, the allegations that she had not preferred complaint by herself but due to threat made by the 3rd respondent and Dr.T.R.Rajasekar is not correct. She made complaint voluntarily and requested action to be taken against the petitioner. The allegations made by the petitioner that 4th respondent was instructed by 3rd respondent to give a pre-dated complaint against the petitioner is baseless. The various allegations made by the petitioner in paragraph 13 of the affidavit is baseless and is not correct. The learned counsel further contended that the allegations that 3rd respondent is biased against the petitioner as he staled the promotion of 3rd respondent, is not correct. On the otherhand, the petitioner helped the 3rd respondent to get promotion.

14. The 4th respondent filed counter affidavit denying the averments made by the petitioner in the affidavit. The learned counsel appearing for the 4th respondent reiterated the averments made in the counter affidavit and contended that the 4th respondent was enquired based on an anonymous complaint which was made without her consent. The 3rd respondent behaved aggressively which caused psychological disturbances to the 4th respondent. The 3rd respondent coerced and threatened the 4th respondent to give a complaint against the petitioner. The 2nd respondent Committee asked various questions about the past of the 4th respondent, which are irrelevant. The 4th respondent was used as a tool to trap the petitioner. According to the learned counsel for the 4th respondent, as per instruction of her father, the 4th respondent has given a letter dated 16.11.2018 which was converted by Notary Public and was notarized on 19.11.2018 and the same was sent to the Vice Chancellor by registered post. As per the norms, for the Ph.D programme who registered before 01.07.2016, the minimum period is five years for the completion of the degree. The 4th respondent registered for Ph.D in April 2016. The 1st respondent appointed one Dr.B.Radha, Assistant Professor, Department of Communication as convenor for submitting the thesis and the 4th respondent was directed to submit thesis within three months. Since Dr.B.Radha is a convenor, the 4th respondent was left helplessly without any guidance. The 1st respondent has exposed the issue through media, in violation of the 4th respondent's right to



privacy and seriously undermines the legitimacy of the Internal Complaints Committee which is supposed to be protecting the rights and liberty of the sexually harassed, rather than harassing an innocent student by not even informing the 4th respondent's rights. The 4th respondent is being made as the scape goat and her future is at stake.

15. The learned Senior Counsel appearing for the petitioner, in reply, submitted that when the law requires certain things to be done in a particular manner and when the intention of legislature is clear and unambiguous, the law has to be followed. In support of his contention, the learned Senior Counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in **Babua Ram's case**, cited supra wherein it has been held that -

"When the language is clear and capable of only one meaning, anything enacted by the legislature, must be enforced, even though it is absurd or results in startling consequences."

The learned Senior Counsel further referred to judgment of the Hon'ble Apex Court in **A.R.Antulay's case**, cited supra wherein it has been held that -

"It is uncontroverted legal principle that where a statute requires to do certain thing in certain way, the thing must be done in that way or not at all."

16. The learned Senior Counsel for the petitioner further contended that availability of alternative remedy is not a total bar for the maintainability of the writ petition. In certain cases, even if there is an alternative remedy, the Court, under Article 226 of Constitution of India can entertain the writ petition and grant relief to the aggrieved person, especially when there is a failure of natural justice and the proceedings is wholly without jurisdiction. The learned Senior Counsel, in support of his contention, relied on the judgment of Hon'ble Supreme Court reported in **(2007) 10 SCC 88** cited supra wherein it has been held that -

"Alternative Remedy does not operate as a bar to exercise of a Writ Court's Jurisdiction of judicial review in cases (i) seeking enforcement of fundamental right, (ii) where there is failure of natural justice, and (iii) where the impugned orders or proceedings is wholly without jurisdiction or the vires of an Act is challenged."

17. Relying on the above said judgment, the learned Senior Counsel contended that the entire proceeding initiated is without jurisdiction as the same is barred by limitation and proceeding was conducted contrary to Act and Rules and prayed for allowing the

Writ Petition



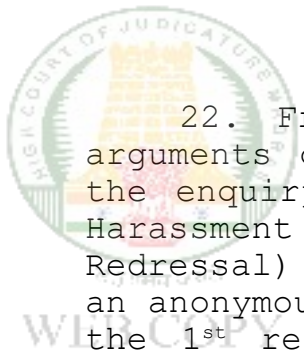
18. Heard the learned Senior Counsel appearing for the petitioner, the learned Senior Counsel appearing for the 1st respondent as well as learned counsel appearing for the respondent 2 & 3 and learned counsel appearing for the 4th respondent.

Maintainability of Writ Petition

19. As far as the contention of the learned counsel for the 1st respondent that the writ petition is not maintainable in view of the alternative remedy of the appeals before the Chancellor is available to the petitioner is concerned, the same is without merits. It is well settled that when alternative remedy is available, the Court, under Article 226 of the Constitution of India generally should not entertain the writ petition. At the same time, it is to be noted that the said bar is not an absolute bar based on rule of law. It is only a self-imposed restriction by the Court. In exceptional cases, even if an alternate effective remedy is available, the Court can entertain the writ petition for judicial review. In the judgment relied on by the learned counsel for the 1st respondent also, the Hon'ble Apex Court has held that the Courts can entertain the writ petition, even when there is an alternative remedy when the petitioner is seeking enforcement of fundamental rights where there is violation of natural justice and where the impugned order or proceedings, is wholly without jurisdiction. In the present case, as stated above, the 2nd respondent has not conducted the enquiry following the principles of natural justice and the 1st respondent has not followed the principles of nature justice and procedures as contemplated under Statute 13 Sub clause (6) of Clause (3) of the Service Rules of the 1st respondent University. Further, the enquiry was initiated contrary to Sections 2(a) (1) and (9) of the Act and 2nd respondent, without jurisdiction conducted the enquiry.

20. The contention of the learned counsel for the respondents that the writ petition is not maintainable for not challenging the resolution of syndicate is concerned, from the impugned order, it is seen that the 1st respondent, referring to entire proceedings has passed the punishment of compulsory retirement. It is not correct that the 1st respondent, by the impugned order has communicated only the resolution of syndicate. From the impugned order, it is seen that except referring to the resolution of syndicate, the 1st respondent has not enclosed the resolution. The impugned order is a speaking order imposing punishment. Therefore, this writ petition is maintainable.

21. For the above reason, I hold that the writ petition filed by the petitioner is maintainable and now I proceed to decided the issue on merits.



22. From the materials available on record as well as the arguments of the learned counsel for the parties, it is seen that the enquiry against the petitioner under the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was initiated by the 1st respondent based on an anonymous note accommodated with Compact Disc (CD). According to the 1st respondent, the CD was sent to the Vice Chancellor and members of various departments. According to the respondents 1 to 3, in the CD, it is seen that the petitioner had made sexual remarks to the 4th respondent which amounted to sexual harassment at work place. The sexual remarks alleged to have been made by the petitioner to the 4th respondent. As per Sections 2 (a) (i) of the Act, aggrieved woman is one, who had been subjected to any act of sexual harassment by the petitioner herein, in relation to a work place. As per Section 9 (1) of the Act, aggrieved woman may make, in writing, a complaint of sexual harassment at work place to Internal Committee if so constituted, or the Local Committee, as the case may be. The said complaint must be made within a period of three months from the date of incident or within a period of three months from the date of last incident. As per Section 9 (2) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, if the aggrieved woman is unable to make a complaint for the reasons mentioned therein, her legal heirs or such other person, as prescribed, may make the complaint. Both the above mentioned Sections are extracted hereunder for better appreciation :-

Section 2(a) (i) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

2. Definitions - In this Act, unless the context otherwise requires -

(a) "aggrieved woman" means -

(i) in relation to 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;

Section 9(1) & 9(2) of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

9. Complaint of sexual harassment - (1) any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date



of incident and in case of a series of incidents, within a period of three months from the date of last incident;

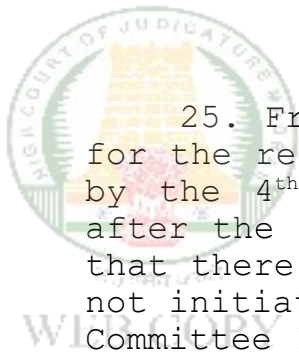
Provided that where such complaint cannot be made in writing the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing;

Provided further that the Internal committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period."

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

23. A reading of the above sections makes it clear that the complaint must be made by an aggrieved woman in writing, as per Section 9(1) of the Act. If the aggrieved woman is incapacitated, her legal heirs or other such persons, as may be prescribed, shall make a complaint, as per Section 9(2) of the Act. In the present case, admittedly, the 4th respondent, whom according to the 1st respondent is the aggrieved woman, has not made any complaint, as per Section 9(1) or by any person authorised under Section 9(2) of the Act. On the other hand, the enquiry is initiated based on an anonymous note received by the Vice Chancellor of 1st respondent. After enquiring the petitioner by the Vice Chancellor, the matter was referred to three members Committee who recommended action against the petitioner. On the recommendation of the said Committee, the complaint was referred to the 2nd respondent. Till that time, there was no complaint by the 4th respondent. Only when the 4th respondent was called to appear before the Committee on 17.10.2018, a written complaint was given by her addressed to the Vice Chancellor.

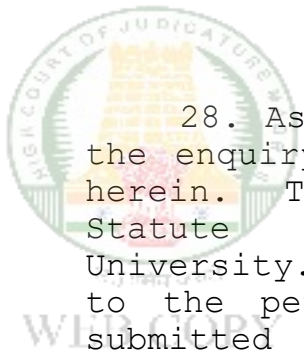
24. According to the 4th respondent when she appeared before the 2nd respondent on 16.11.2018, she was coerced and threatened by the 3rd respondent and forced to give a complaint on 17.10.2018 addressed to the Vice Chancellor. She has immediately withdrawn her complaint, by letter dated 16.11.2018, which was notarized on 19.11.2018. By her letter dated 22.11.2018, she has explained how the typographical error of the date has occurred in the affidavit which was notarised on 19.11.2018.



25. From the contention of the learned Senior Counsel appearing for the respondents 1 and 3, it is clear that a complaint was given by the 4th respondent on 17.10.2018 addressed to Vice Chancellor after the enquiry against the petitioner was initiated. This shows that there is violation of Section 9 (1) of the Act, as enquiry was not initiated based on the complaint given by aggrieved woman to the Committee but based on the anonymous note and CD received by the Vice Chancellor on 16.10.2018. Further, it is pertinent to note that 4th respondent, in the counter affidavit as well as in the letter dated 16.11.2018, notarised on 19.11.2018 retracted her complaint and has stated that she was forced to give a complaint dated 17.10.2018 by coercion and threat by the 3rd respondent, when she appeared for enquiry before the second respondent Committee on 17.11.2018. Therefore, enquiry initiated against the petitioner is contrary to the provisions of the Act. The order dated 06.09.2019 in W.P.No.27088 of 2017 relied on by the learned Senior Counsel for the 1st respondent is not applicable to the facts of the present case.

26. As per Section 11 of the Act, on receipt of complaint, the Committee must conduct an enquiry with the provisions of Service Rules applicable to delinquent. Before commencing the enquiry, the Committee must follow Rule 7 of the Statute. As per Rule 7(1), of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (*hereinafter referred to as "Rules"*) aggrieved woman must file six copies of the complaint before the Complaints Committee along with supporting documents and name and address of the witnesses. As per Section 7 (2) of the Rules, on receipt of the complaint, one copy must be served on the petitioner, within a period of seven working days. As per Section 7(3) of the Rules, the petitioner must file reply to the complaint along with list of documents and name and address of the witnesses, within a period not exceeding ten working days, from the date of receipt of documents, specified under Sub Rule 7(1). On receipt of the reply, the Complaints Committee shall make enquiry into the complaint in accordance with principles of natural justice. In the present case, none of the provisions referred to above were followed by the Complaints Committee. No complaint was given to the Committee but only a petition was given to the Vice Chancellor, that too, after enquiry has been initiated.

27. From the materials on record, it is seen that the copy of the complaint was not furnished to the petitioner and he was not given any opportunity to submit his explanation. Further, the petitioner as well as the 4th respondent were enquired by the Committee separately, not in the presence of each other and the petitioner was not given any opportunity to rebut the statements of the 4th respondent, recorded by the Committee on 17.11.2018. Considering the above materials, the contention of the learned Senior Counsel appearing for the petitioner that the principles of natural justice was violated is acceptable.

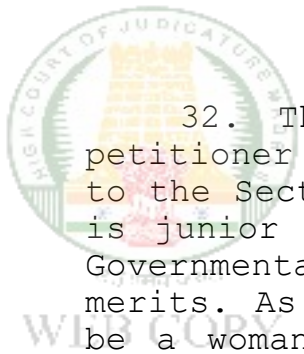


28. As per Section 11 of Act, the 2nd respondent has to conduct the enquiry as per the Service Rules applicable to the petitioner herein. The Service Rules applicable to the petitioner is as per Statute 13 Sub-Clause (3), Clause (6) of the 1st respondent University. As per the said Rule, the complaint must be furnished to the petitioner by way of charge memo and after explanation submitted by the petitioner, an enquiry can be conducted. The enquiry report must be furnished to the petitioner and after giving an opportunity to the petitioner to submit his explanation only, the punishment may be recorded in writing and served on the petitioner. The respondents 1 to 3 have failed to follow the statutory procedures contemplated in Section 11 of the Act.

29. According to the learned Senior Counsel appearing for the petitioner, non-furnishing of the enquiry report of the Committee has caused prejudice to the petitioner. On the other hand, it is the contention of the learned Senior Counsel for the 1st respondent that the petitioner has not pleaded that non-furnishing of enquiry report has prejudiced the petitioner and without such pleadings, the learned Senior Counsel for the petitioner cannot argue the question of prejudice for not furnishing the enquiry report. The judgments relied on by the learned Senior Counsel for the 1st respondent are applicable to the submissions made by the learned Senior Counsel for the 1st respondent as in the said judgment, it has been categorically held that non-furnishing of enquiry report will not automatically vitiate the proceedings unless delinquent employee has pleaded and proved that non-furnishing of enquiry report has caused prejudice to him.

30. At the same time, Sub clause (3) of Clause (6) of 1st respondent's Statute 13 has to be taken note of. As per the said Statute, on completion of enquiry or oral hearing of charges, delinquent employee must be given an opportunity to submit his explanation. Only after considering the enquiry report and explanation of the petitioner, the punishment shall be recorded and served on the petitioner. In the present case, without calling for any explanation from the petitioner, the report was placed before the syndicate and punishment of compulsory retirement has been ordered. The said procedure followed by the 1st respondent is in violation of principles of natural justice and therefore, the impugned order of the 1st respondent is liable to be set aside.

31. As far as the bias alleged against the 3rd respondent is concerned, except making allegations of bias by referring two incidents, the petitioner has not substantiated the said claim. The 3rd respondent, in the counter affidavit has specifically denied the said allegations and stated that the petitioner has helped her in service matter and also helped her in getting promotion. In view of the same, the bias alleged against the 3rd respondent is not proved.



32. The contentions of the learned Senior Counsel for the petitioner that constitution of 2nd respondent Committee is contrary to the Section 4 of the Act as 3rd respondent who is the chairperson is junior to the petitioner and there is no member from the Non-Governmental Organization (NGO) in the Committee, are without merits. As per Section 4 (2) (a) of the Act, the chairperson shall be a woman employed at a senior level at work place from among employees. It is not disputed that the 3rd respondent is holding a senior level post in the 1st respondent university. The Act contemplates appointing a senior level employee and not a senior to delinquent employee. The contention of the learned Senior Counsel for the 1st respondent that one R.Sindhiya Raj Nithila was representative of Non-Governmental Organization (NGO) and she participated in the enquiry and part of the enquiry report is not denied by the petitioner.

33. As far as the contention of the learned Senior Counsel for the petitioner that the Committee failed to initiate conciliation proceedings before starting the enquiry is not contemplated in Section 11 of the Act. A conciliation can be ordered only when the aggrieved woman makes a request for steps to be taken to settle the matter between her and the delinquent. In the present case, the 4th respondent who is alleged to be an aggrieved woman has not made any request for conciliation.

34. As far as Section 9 of the Act, a complaint in writing must be lodged by the aggrieved woman within three months from the date of incident and in case of series of incidents, within a period of three months from the last incident. As per second proviso to Section 9 (1) of the Act, the Committee can extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period. In the present case, admittedly alleged sexual harassment started from January 2018. According to the respondents 1 to 3, the harassment is a continuous one consisting of 240 conversations. The respondents 1 to 3 have not stated when was the last incident of sexual harassment. They have not stated when the complaint was received on 16.10.2018, last incident of sexual harassment alleged was within three months or six months prior to the date of receipt of complaint.

35. When the petitioner has taken a specific plea that alleged incidents were between 10.01.2018 to 25.01.2018, the complaint of the 4th respondent alleged to have been obtained on 16.11.2018 predated on 17.10.2018 is barred by limitation, the respondents 1 to 3 ought to have given date of last incident and proved that the complaint was within the time limit, as prescribed in Section 9 of the Act. The 1st respondent did not specifically deny that last incident of sexual harassment was on 25.01.2018, as alleged by the petitioner. The 1st respondent has not stated in paragraph 6 of the



harassment except stating that there are more than 240 recordings and that it was continuous harassment.

36. When the 1st respondent has not denied the contention of the petitioner that last incident of alleged sexual harassment was on 25.01.2018, it amounts to 1st respondent admitting the said contention of the petitioner. The contention of the 1st respondent in the counter affidavit that limitation as contemplated in Section 9 of the Act will apply only when the victim gives complaint and in the present case, inappropriate behaviour of the petitioner came to light after exposure, the question of limitation does not arise, is contrary to Section 9 (1) of the Act. The stand taken by the 1st respondent in the counter affidavit as well as the arguments of learned Senior Counsel for the 1st respondent without furnishing the date of last alleged incident of sexual harassment shows that enquiry initiated by the respondents 1 and 2 is not within the time limit prescribed in Section 9(1) of the Act. From the averments in the counter affidavit filed by the 1st respondent, it is clear that the complaint was not given by the aggrieved woman, as contemplated in Section 9 (1) of the Act.

37. For the above reason, the enquiry initiated against the petitioner is without jurisdiction and findings of the 2nd respondent Committee and the impugned order are invalid and illegal and is liable to be set aside.

38. For the above reasons, the Writ Petition is allowed quashing the impugned order passed by the 1st respondent Manonmaniam Sundaranar University in No. MSU / R / ESTT / T / COMMUNICATION / 2018 dated 21.12.2018. The 1st respondent University is directed to reinstate the petitioner into his service as Professor in the Department of Communication w.e.f., the date of Compulsory Retirement viz., 21.12.2018 with all attendant benefits including arrears of salary. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

mtl/vkr/rgr

To

1.The Registrar, Abishekapatti
Manonmaniam Sundaranar University,

<https://hcservices.hcscourts.gov.in/hcservices/> 627 012.



2.The Presiding Officer,
Internal Complaints Committee,
Manonmaniam Sundaranar University,
Abishekapatti, Tirunelveli - 627 012.

3.Dr.Beaulah Shekhar
Presiding Officer,
Internal Complaints Committee,
Manonmaniam Sundaranar University,
Abishekapatti, Tirunelveli - 627 012.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-2843[F] dated
24/01/2020)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-3060[F] dated
27/01/2020)

+1 CC to Mr.N.DILIP KUMAR, Advocate (SR-3269[F] dated 27/01/2020)

**Order made in
W.P. (MD) No.979 of 2019
24.01.2020**

MK (07.02.2020) 26P 7C