



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2020

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.7922 of 2015
and MP (MD) No.1 of 2015

M.Sabesh Manikandan

... Petitioner

-Vs-

- 1.The Director of Collegiate Education,
E.V.K. Sampath Building,
College Road, Nungambakkam,
Chennai-06.
- 2.The Joint Director of Collegiate Education,
Madurai Region, Vaithiyanadhayyar Street,
Shenoy Nagar, Madurai-20.
- 3.The College Committee,
Represented by its President,
Ayya Nadar Janaki Ammal College,
Sivakasi-626 124, Virudhunagar District.
- 4.The Correspondent,
Ayya Nadar Janaki Ammal College,
Sivakasi-626 124, Virudhunagar District.
- 5.The Convener,
The Enquiry Committee/Sub-Committee,
Ayya Nadar Janaki Ammal College,
Sivakasi-626 124
Virudhunagar District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned enquiry notice, dated 04.05.2015 on the file of the respondent No.5 and quash the same as illegal and consequently to direct the respondents 3 to 5 to permit the petitioner to have the assistance of a retired professor during the departmental enquiry based on the Charge Memo in Ref.No.326/5/2014, dated 07.10.2014.

For Petitioner

:

Mr.G.Karthick

For Mr.T.Lajapathi Roy



For Respondents

:

Mr.D.Muruganandham
Additional Government Pleader
(for R1 and R2)

Mr.M.Senthilkumar
(For R3, R4 and R5)

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ORDER

The enquiry notice, dated 04.05.2015, is sought to be quashed in the present writ petition and further direction is sought for to direct the respondents 3 to 5 to permit the petitioner to have the assistance of a retired professor during the departmental enquiry initiated through charge memo, dated 07.10.2014. The writ petitioner is working as a Professor as of now and on account of certain allegations, the charge memo was issued in proceedings, dated 07.10.2014. The charges against the writ petitioner are extracted hereunder:-

"With reference to the complaints, note memos, replies and concerned papers referred above, following charges are levelled against Dr.M.Sabesh Manikandan:

1.Awarded marks with high variation on the assignments conducted on 11.02.2014, for no valid reason that exposed that he failed to evaluate properly applying mind on the answers, but arbitrarily and discriminately between students.

2.While M/s.V.Maheswaran, M.Mariselvam, R.Parameswaran & R.Rajaguru, the 4 students attended and submitted assignments conducted on 11.03.2014, failed to evaluate the answers and marked absent, contrary to the fact detriment to the interest of the students.

3.Evaluated the test papers without parameters and awarded marks haphazardly causing concern on the students' career and their future, by the by, causing disrespect and untrustworthiness on him among students.

4.Conducted classes inaudible, uninformative and not benefiting students.

5.In view of his non-impressive poor class performance, the students could not study the subject that resulted in poor scoring in the tests.

6.Shown discrimination between male and female students in every respect and behaved in a manner appealing the female students that caused embarrassment to the female students and concern amidst male students.

7.Pressurized the students to buy a Book "International Economics" (Author: W.Charles Sawyer and Richard E.Sprinkle) worth Rs.395/-, marked absence for



not purchasing students, when the book was unconnected to the subject 'Foreign Trade'

8. Kept the students under tender hook, with threat to cut internal marks, thereby managed to suppress all his misdeeds and misbehaviour from the knowledge of higher management.

9. Compelled Mr.M.Mareeswaran a II year M.A. Economics student, to do a project **"ATTITUDE TOWARDS PREMARITAL SEX AMONG COLLEGE STUDENTS OF SIVAKASI BLOCK"** that has no correlation to the main subject.

10. Finalized the questionnaire for the above project with unbearable and vulgar questions that are highly outraging the modesty of both male and female students, put everybody under severe embarrassment set at stake the basic culture and decency of Indian Society, that leads to impress that he is unfit to be a teaching faculty or guide in a college.

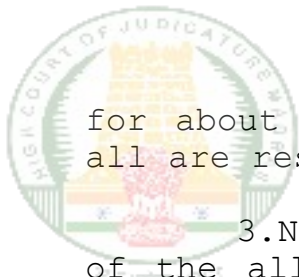
11. Caused blemish and disrepute among the students and others to the image and fame of the college.

12. Not prepared to regret his faults but justify them by far stretching that is highly unexpected from a decent/prudent teaching faculty of a college.

13. His above commissions and omissions caused concern on the confidence that normally reposed on a teaching faculty by its management.

14. By his imbalanced and disorderly behaviour, undermined the campus morale and discipline of the college and set a bad precedent that is highly unbecoming for a Teaching faculty of the College."

2. A perusal of the charge memo reveals that the allegations are serious and some of the allegations are relating to the sexual harassment and therefore, the procedures contemplated under the Sexual Harassment Act is to be followed in order to continue the departmental disciplinary proceedings. With reference to the sexual harassment in work places, the committee has to be constituted in accordance with Section 4 of the Sexual Harassment Act 2013. The committee has to conduct an enquiry and the procedures as contemplated under the Act as well as the guidelines issued in the **Vishaka case** has also to be followed strictly by the authority competent. It is not as if, the departmental enquiry can be conducted without reference to the Sexual Harassment Act. Thus, mere enquiry by an Enquiry Officer appointed by the disciplinary authorities insufficient and a Competent Committee under Section 4 of the Act has to be constituted for the purpose of conducting enquiry. It is most unfortunate, that the notice has been challenged in the writ petition and the said notice is challenged by filing the present writ petition in the year 2015 and it is pending



for about 5 years and under these circumstances, the persons, who all are responsible are taking undue advantage of the delay.

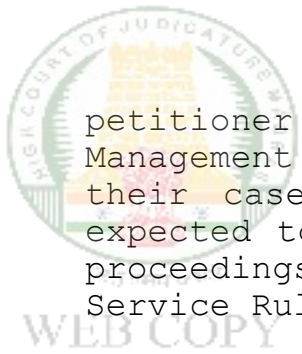
3.No leniency or misplaced sympathy can be shown in respect of the allegation of sexual harassment in work places. All such cases are to be dealt with in accordance with law by following the procedures and by affording opportunity to the aggrieved persons as well as to the delinquent officials.

4.Sexual harassment in work places are to be considered as a heinous crime. Such offences are to be completely eradicated in a civilised society. A civilised society has to behave in a decent manner and respect each other mutually and any such kind of allegations are to be dealt with iron hand. There cannot be any misplaced sympathy in such kind of allegations. The safety and security of the woman employees in the work places are to be protected by the employers concerned. The Hon'ble Supreme Court even in **Vishaka case** issued guidelines to create sensitiveness in such issues. Despite the fact that many years lapsed and the Sexual Harassment Act was enacted in the year 2013. Till today, many such cases are reported and such an unfortunate situation is to be changed by creating more awareness and sensitiveness amongst the employees, who all are working in various organisations, institutions and Government bodies.

5.Gender discrimination is primitive and such age-old practises can never be encouraged or appreciated. Woman in this great Nation are equally performing duties and responsibilities on par with their counter parts male. The Constitutional principles require eradication of gender discrimination. Recent years woman are appointed as War Plane Pilots and in all such sensitive areas wherever the male members are appointed. Recently, the Hon'ble Supreme Court of India directed the Indian Army to grant promotion to the woman in the higher cadre. The judgment is implemented by the Ministry of Defence, Government of India. This being the woman empowerment being developed in our great Nation., sexual harassment in the work places is painful and a heinous offence. It is to be eradicated at once by all concerned and more specifically, stringent disciplinary measures are to be implemented to avoid all such kind of allegations in the work places.

6.As far as the present writ petition is concerned, the writ petitioner has challenged only the enquiry notice on the ground that he is not permitted to have a defence assistant, who is a retired professor of a College.

7.Undoubtedly, the delinquent officials can engage a defence assistance to defend his cases before the Enquiry Officer. Such a right cannot be denied by the authorities concerned. Thus, the decision taken in this regard to reject the request of the



petitioner is improper and the Presiding Officer on the side of the Management also may have an assistance for effective presentation of their case before the Enquiry Officer. The Enquiry Officer is expected to act as a neutral person and deal with the disciplinary proceedings by following the procedures contemplated under the Service Rules.

8.Right of defence through an assistant is a valuable right and it is necessary in the present case, in view of the fact that the examination of witnesses are at required. However, the writ petitioner is not able to get the assistance of a Lawyer. Lawyer cannot be appointed as a defence assistant and only if the Judicial Officers are appointed as a Enquiry Officer, then alone, the Lawyers can be permitted to defend the case before the Enquiry Officer. In the present case, the Enquiry Officer is also a departmental person and therefore, the writ petitioner is not entitled to engage a Lawyer for his defense. But, he can engage a retired professor for the purpose of assisting him to defend his case.

9.As far as the present allegations in the charge memo are concerned, the same require an action under the provisions of the Sexual Harassment Act 2013 and with reference to other allegations, the enquiry is to be conducted. Thus, the respondents are bound to initiate appropriate action both under the Sexual Harassment Act and by following the procedures of departmental disciplinary proceedings. However, the writ petitioner is entitled to have the defence assistance of a retired professor and the said right cannot be denied. Accordingly, the impugned notice issued by the fifth respondent is quashed and the respondents are directed to permit the writ petitioner to have a defence assistant from a retired employee to defend his case before the Enquiry Officer and the Presenting Officer of the department is also at liberty to engage a defence assistant of their choice. But Lawyers should not be permitted to defend any of the charges during the course of enquiry. Apart from the above, the respondents are permitted to continue the proceedings by following the procedures contemplated under the Sexual Harassment Act and by appointing Complaint Committee with reference to Section 4 of the Sexual Harassment Act 2013.

10.In view of the fact that there is an enormous delay in concluding the proceedings, the respondents are directed to proceed with the enquiry and by affording opportunity to the parties concerned and complete the proceedings and pass final orders in the departmental disciplinary proceedings within a period of five months from the date of receipt of a copy of this order. It is made clear that the petitioner has to fully co-operate for the completion of the disciplinary proceedings. In the event of non-cooperation or prolongation on the part of the writ petitioner, the same is to be recorded in the enquiry proceedings and in such an event, the time limit granted could not provide any ground for the writ petitioner to seek quashing of the charges.



11. With these directions, the writ petition stands allowed.
No cost. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

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Virudhunagar District.

+1 CC to M/s.GP (SR-20537[F] dated 19/10/2020)

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-20589[F] dated 20/10/2020)

W.P. (MD) .No.7922 of 2015
16.10.2020

CK (CO)

AP (06/11/2020) 6P 8C