



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	30.03.2022
DELIVERED ON	20.04.2022

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CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD) .No.428 of 2020

Manonmanium Sundaranar University
Represented by its Registrar, Abishekapatti
Tirunelveli 627 012 ...Appellant/1st Respondent

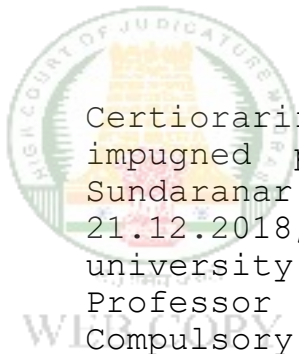
vs.

- 1.Dr.P.Govindaraju
Professor (Now on compulsory retirement)
Department of Communication
Manonmanium Sundaranar University
Tirunelveli ...1st Respondent/Writ Petitioner
- 2.The Internal Complaints Committee
Represented 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 627 102
- 4.Mrs.R.Shridevi
No.10, Vinayagar Kovil Street
Sakthi Nagar, Upplipalayam Post
Coimbatore 015 ...Respondents 2 to 4/Respondents 2 to 4

Prayer: Writ Appeal filed under clause 15 of the Letters Patent, to set aside the order made in W.P(MD).No.979 of 2019 dated 24.01.2020 on the file of this Hon'ble Court.

Prayer in WP(MD) . 979 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of
<https://hcservices.ecourts.gov.in/hcservices/>



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 Appellant : Mr.M.Ajmal Khan
Senior Counsel
For M/s.Ajmal Associates

For R1 : Mr.Isaac Mohanlal
Senior Counsel
for M/s.Isaac Chamber

For R4 : Mrs.Chamundi Bose

JUDGMENT

(Made by **R.VIJAYAKUMAR, J.**)

The present Writ Appeal has been filed by the first respondent in the writ petition.

2.The present Writ Appeal has been filed challenging an order passed by the learned Single Judge quashing the order of compulsory retirement passed by the first respondent University.

3.Factual Background:

3(i). The writ petitioner was working as a professor in the Department of Communication in the first respondent University. The fourth respondent was a Research Scholar guided by the writ petitioner. On 16.10.2018, the University received a letter from the Students' Association along with a compact disk requesting the University authorities to initiate action against the writ petitioner for sexually harassing the fourth respondent. A committee comprising of three Senior Professors enquired the writ petitioner and recommended the University Authority to take suitable action against the writ petitioner based on the University Act and Statute. The writ petitioner was placed under suspension on 22.10.2018 in contemplation of the departmental enquiry into the grave charges of sexual harassment.

3(ii). As per Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, an Internal Complaints Committee was constituted to conduct an enquiry on the alleged misconduct of the writ petitioner. The said Committee recorded a statement from the victim on 16.11.2018. The writ petitioner was directed to appear before the Committee on 17.11.2018. The said Committee recorded the statement of the writ petitioner on 17.11.2018. Based upon the statements recorded on



16.11.2018 and 17.11.2018, the Internal Complaints Committee submitted its report to the University holding that the act of delinquent professor amounts to sexual harassment and misconduct and the committee recommended for imposition of appropriate punishment under applicable Service Rules.

3(iii). Based upon the said report of the Internal Complaints Committee, Syndicate passed a resolution on 20.12.2018 imposing compulsory retirement on the writ petitioner which is the highest punishment available as per Service Rules. This order of compulsory retirement was communicated by proceedings of the Registrar dated 21.12.2018. The said order was challenged in W.P(MD).No.979 of 2019.

4. Findings of the learned Single Judge:

4(i) The enquiry has not been initiated by the Internal Complaints Committee based upon any complaint given by the victim. On the other hand, the enquiry has been initiated based upon some anonymous letter received by the Vice Chancellor of the University.

4(ii). The victim has withdrawn her complaint dated 17.10.2018 when she had appeared for enquiry before the Committee on 17.11.2018.

4(iii). The delinquent has not been furnished with a copy of the alleged complaint made by the victim and he was not provided with an opportunity to submit his explanation and hence, there is violation of principles of natural justice.

4(iv). The victim was not examined in the presence of delinquent and hence, the delinquent was not given any opportunity to rebut the statement of the victims.

4(v). As per Section 11 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the enquiry should be conducted as per Service Rules applicable to the delinquent. In the present case, as per Service Rules applicable to the delinquent, the delinquent should have been issued with a charge memo before initiation of any enquiry. After the enquiry is completed, the delinquent should be furnished with a copy of the enquiry report and afford him an opportunity to submit his explanation. However, in the present case, the petitioner was not served with a charge memo or furnished with a copy of the enquiry report calling for explanation.

4(vi). As per Section-9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 14 of 2013, the complaint should be lodged within a period of three months from the date of the alleged harassment. In the present case, the harassment is said to have happened in January 2018 and the complaint has been lodged on 17.10.2018. Hence, the complaint is clearly barred by limitation.

5. Based upon the said findings, the learned Single Judge held that the enquiry initiated against the writ petitioner is without jurisdiction and the findings of the Internal Complaints Committee and the impugned order of compulsory retirement is invalid and



illegal and is liable to be set aside. The respondent University was directed to reinstate the petitioner with all attendant benefits including the arrears of salary. The said order of the learned Single Judge is under challenge in the present Writ Appeal.

6. Contention of the learned Senior Counsel appearing for the Appellant:

6(i). The learned Senior Counsel appearing for the appellant/University contended that the issue of limitation of three months would arise only in a case where the complaint has been lodged by the victim and not in a case where *suo-motu* proceedings are initiated by the University authorities on the basis of the complaint from a third party.

6(ii). The learned Senior Counsel has relied upon **2021 SCC Online SC 1173** and contended that the proceedings under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 14 of 2013 cannot be invalidated on hyper technical interpretation of applicable Service Rules. He further contended that the Service Rules and Statutory Regulations governing the prevention of sexual harassment at workplace should be interpreted in such a manner that metes out the procedural and substantive justice to all the parties.

6(iii). The learned Senior Counsel also relied upon another judgment of the Hon'ble Division Bench of our High Court reported in **(2008) 5 MLJ 261** to contend that it is not necessary to examine the victim in the presence of the delinquent.

6(iv). The learned Senior Counsel also relied upon a judgment of the Hon'ble Supreme Court reported in **(2009) 13 SCC Page 102** to contend that where enquiry report was not made available to the delinquent employee it would not ipso facto vitiate the disciplinary proceedings as it would depend upon the facts and circumstances of the case and the delinquent employee has to establish that real prejudice has been caused to him by not furnishing the enquiry report to him. He further contended that in the present case, the writ petitioner has not pleaded any prejudice due to the non-supply of the enquiry report and hence, the learned Single Judge was not right in holding that the entire proceedings and the punishment were vitiated due to non-supply of enquiry report.

6(v). The learned Senior Counsel further contended that at the time of enquiry by the Internal Complaints Committee, the delinquent has admitted his misconduct. According to the learned Senior Counsel, the answer given by the delinquent for the 7th query raised by the enquiry committee will clearly reveal that the delinquent has admitted his misconduct, but only contended that it was not a sexual harassment. He further contended that the compact disk containing audio conversation between the delinquent and the victim was played to the delinquent during the enquiry proceedings. The delinquent after hearing the said audio conversation has admitted that the voice found in the CD resembles his voice and the female voice is that of the victim. Relying upon the statement made by the



delinquent, the learned Senior Counsel contended that when the delinquent has himself admitted the misconduct, the question of violation of principles of natural justice would not arise.

6(vi). The learned Senior Counsel appearing for the appellants relied upon the judgment of the Hon'ble Supreme Court reported in **(2009) 11 SCC 222** to contend that the Compliance of principles of natural justice is necessary only where the misconduct is denied or when any term or condition of employment is proposed to be altered to the employee's disadvantage without his consent. However, in the present case, the misconduct has been admitted by the delinquent and hence, all the contentions with regard to the violation of the principles of natural justice cannot be said to vitiate either the enquiry or the punishment imposed upon the delinquent by the University authorities. The learned Senior counsel further contended that the delinquent being a guide of the victim, victim has been sexually exploited by the delinquent. Considering the nature of relationship between the guide and the research scholar, the conduct and behaviour of the delinquent is highly immoral.

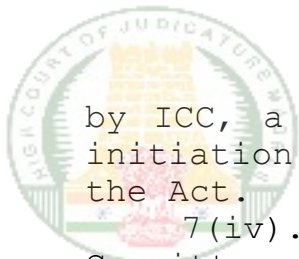
6(vii). The learned Senior Counsel further contended that the hyper technical approach of relying upon each and every provision of the Central Act 14 of 2013 only result in nullifying any action as against the delinquent which would encourage sexual harassment at work place. He further contended that the enquiry as against the delinquent has been conducted as per Central Act 14 of 2013 and as per the statute that is applicable to the appellant University. The order of the learned Single Judge taking a hyper technical approach to each one of the provision of Central Act 14 of 2013 is not legally sustainable in the facts and circumstances of the case and he prayed for allowing the Writ Appeal.

7.Contention of the learned Senior Counsel appearing for the delinquent:

7(i). The learned Senior Counsel appearing for the delinquent professor contended that none of the statutory provisions as contemplated under Act 14 of 2013 have been followed by the Internal Complaints Committee or by the University authorities either at the time of initiation of the proceedings or at the time of imposition of the impugned punishment on the delinquent.

7(ii). The learned Senior Counsel further contended that as per Section 9 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 14 of 2013, any aggrieved woman shall make a complaint in writing to the Internal Committee. According to him, no such complaint was lodged by the alleged victim before the Internal Complaints committee .

7(iii). The learned Senior Counsel further contended that the Internal Complaints Committee held its first meeting on 16.10.2018, in which, the victim has given her statement. However, the alleged complaint of the victim is dated 17.10.2018. Hence, it is evident that the Internal Complaints Committee was not constituted based upon the complaint given by the victim, but only during the enquiry



by ICC, a complaint has been received by the ICC. Hence, the very initiation of proceedings is clearly in violation of Section 9 of the Act.

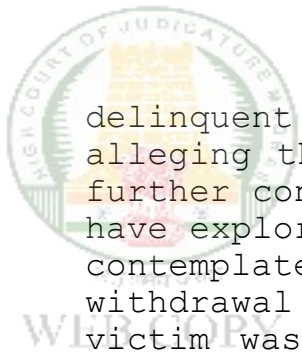
7(iv). He further contended that the Internal Complaints Committee has to conduct enquiry in accordance with the provisions of Service Rules applicable to the delinquent as contemplated under Section 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 14 of 2013.

7(v). According to the learned Senior Counsel appearing for the first respondent, as per Section 3(6) of the University Statute, the misconduct of the delinquent employee should be reduced to the form of a charge memo and it should be served upon him and only thereafter, an enquiry can be conducted. On completion of the enquiry, explanation should be called for from the delinquent employee and only thereafter, the punishment can be imposed. But in the present case, no charge memo was served upon the delinquent at any point of time either before constitution of Internal Complaints Committee or after constitution of Internal Complaints Committee.

7(vi). He further contended that after completion of enquiry by ICC, the report shall be made available to the delinquent employee as contemplated under Section 13 of Act 14 of 2013. However, in the present case, neither enquiry report was furnished to the delinquent nor any explanation was called for from the delinquent by disciplinary authority. The learned Senior Counsel further contended that a copy of the complaint alleged to have been given by the victim ought to have been furnished to the delinquent and opportunity should have been granted to the delinquent to file his reply within a period of 10 days as contemplated under Rule 7 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013. But in the present case, a copy of the complaint alleged to have been given to the petitioner was not at all furnished to him while he was directed to appear before the ICC on 13.11.2018.

7(vii). The learned Senior Counsel appearing for the first respondent further contended that the audio conversation in a compact disk has been relied upon by the ICC to arrive at a finding that the alleged misconduct of the delinquent has been proved. Though a request was made by the delinquent for a copy of the compact disk, the same was not provided to him before attending the enquiry. Even before the enquiry committee, the delinquent has requested a copy of the CD to be provided to him to know the details. However, the same was not complied with. The learned Senior Counsel further contended that a reading of the statement of the delinquent as recorded by the ICC would clearly indicate that the delinquent has specifically denied the charge of sexual harassment. When the charge of sexual harassment was denied by the delinquent, the natural course that should follow is that the delinquent should have been subjected to the enquiry as contemplated under Service Rules by issuing a charge memo and conducting a detail enquiry.

7(viii). The learned Senior Counsel further contended that <https://hcc.mca.gov.in/hccservices/> is said to have given a complaint as against the



delinquent on 17.10.2018, she has withdrawn the said complaint alleging that she was forced to give a complaint on 17.10.2018. He further contended that before initiating any enquiry, the ICC should have explored the possibility of conciliation between the parties as contemplated under Section 10 of the Central Act 14 of 2013. The withdrawal of the complaint by the victim clearly indicate that the victim was forced to lodge a complaint as against the delinquent after initiation of enquiry by ICC.

7(ix). The learned Senior Counsel further pointed out the following lacuna while conducting enquiry by the Internal Complaints Committee.

(a). A copy of the complaint of the victim was not furnished to the delinquent.

(b). No charge memo was issued to him.

(c). Despite a request, a copy of the compact disk was not provided to him

(d). A copy of the enquiry report was not furnished to him

(e). No explanation was sought for from the delinquent before imposition of punishment.

7(x). The learned Senior Counsel further contended that as contemplated under Section 9 of the Act, the complaint can be preferred by the victim only within a period of three months from the date of incident and in a case of series incidents, within a period of three months from the date of last incident. According to him, the incidents are said to have taken place in January 2018 and the alleged complaint has been lodged in October 2018. Hence, the complaint is clearly barred by limitation as contemplated under Section 9 of the Act.

7(xi). The learned Senior Counsel further contended that the learned Single Judge has considered each one of the provisions of the Act 14 of 2013 and has arrived at a finding that the very initiation of the proceedings as against the petitioner are without jurisdiction and the enquiry has not been conducted in a manner as provided under Act 14 of 2013 or as per the statute applicable to the University. He further contended that the learned Single Judge has also arrived at a finding that at all stages of enquiry, the principles of natural justice have been violated and only based upon the said findings, the learned Single Judge has set aside the punishment imposed by the University authorities and restored the delinquent to his original status. Hence, he prayed for dismissal of the Writ Appeal.

7 (xii). The learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court reported in **(2013) 1 SCC 297** to impress upon the Court that any enquiry conducted by ICC should 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. Hence, he contended that the judgment of the Hon'ble Supreme Court read along with Section 11 of Act 14 of 2013 makes it clear that the enquiry proceedings should strictly adhere the Service Rules as applicable to the delinquent.



7(xiii). The learned Senior Counsel further relied upon the judgement of the Hon'ble Supreme Court reported in **(2015) 7 SCC 690** that mere participation in the enquiry conducted by ICC would not confer jurisdiction upon the ICC when there is no complaint by the victim as contemplated under Section 9 of the Act 14 of 2013.

Discussion:

8. We have carefully considered the submissions made on either side.

9. The delinquent who was a professor in the appellant University faced a charge of sexual harassment of his research scholar. The University authorities have received a compact disk said to contain some audio conversation between the delinquent and the victim and based upon the same, a preliminary enquiry was conducted by three senior professors of the the University. The said Committee recommended the University authority to take suitable action as against the delinquent.

10. On 16.11.2018, the Internal Complaints Committee has conducted a meeting and recorded the statement of the victim. Thereafter, the meeting was adjourned to 17.11.2018 in order to enquire the delinquent. The audio CD was played to the delinquent and his statement was recorded on 17.11.2018. It is seen from the records that though the delinquent has sought a copy of the CD, he was not furnished with the same. He answered query No.7 which is as follows:

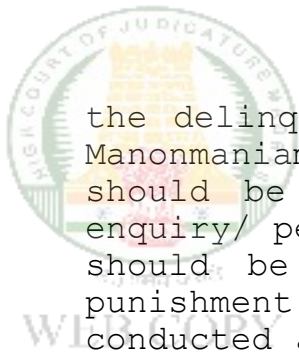
"7. Ms. 'X' claims the telephonic conversation as sexual harassment. What do you say for this?

I did not initiate but only responded her. Hence, there is no question of sexual harassment. "

11. Based upon the said answer, the Internal Complaints Committee has arrived at a finding that the delinquent is guilty of misconduct of sexual harassment and submitted a report on 17.11.2018. Based upon the report of the ICC, the syndicate passed a resolution on 20.12.2018 imposing punishment of compulsory retirement upon the delinquent and the same was communicated to the delinquent on 21.12.2018.

12. Admittedly, a copy of the said complaint has not been furnished to the delinquent as contemplated under Rule 7 of Sexual Harassment of Women At Workplace (Prevention, Prohibition and Redressal) Rules, 2013 and affording an opportunity to the delinquent to submit his reply.

13. The enquiry of the Internal Complaints Committee should be that of an enquiry conducted by the department as contemplated under Service Rule applicable to the delinquent. Section 11 of the Central Act 14 of 2013 clearly point out that an enquiry should be in accordance with the provisions of the Service Rules applicable to



the delinquent. Admittedly, in the present case, as per statute of Manonmaniam Sundaranar University, Tirunelveli, the delinquent should be furnished with a charge memo and there should be an enquiry/ personal hearing. On completion of the enquiry, explanation should be called for from the delinquent before imposition of punishment. However, in the present case, the enquiry has not been conducted as contemplated under Section 11 of the Central Act 14 of 2013.

14.As per Service Rules applicable to delinquent, the enquiry report should be furnished to him and explanation should be called for. Section 13 of Central Act 14 of 2013 also contemplates that the enquiry report should be made available to the victim as well as the delinquent. However, in the present case, neither a copy of the report was furnished nor an explanation was called for from the delinquent. Hence, there is a clear violation of Section 13 of the Act.

15. The alleged misconduct on the part of the delinquent is said to have taken place in the month of January 2018. The complaint lodged by the victim is dated 17.10.2018. As contemplated under Section 9 of the Central Act 14 of 2013, the complaint should be lodged within a period of three months from the date of the incidents and in a case of series of incidents within a period of three months from the date of last incident. Though such a complaint can be received after a period of three months, as per second proviso to Section 9 of the Act, no finding has been recorded by the ICC for entertaining the complaint beyond a period of three months. Admittedly, there is no indication in the complaint dated 17.10.2018 about the date of last incident. There is no finding by the ICC about the date of last incident. Hence, it is clear that the incident is said to have taken place only in the month of January 2018 and the complaint is said to have been lodged after 9 months. It is evident that the complaint is clearly beyond three months and the same should not have been entertained by the University authorities.

16.Section 9 of the Central Act 14 of 2013 contemplates a written complaint on the part of the victim and based upon the said written complaint, an Internal Complaints Committee should be constituted to enquire in the allegation found in the complaint. In the present case, The Internal Complaints Committee has already been constituted and they met on 17.10.2018 at 11.00 a.m and only thereafter, a complaint is said to have been lodged by the victim on 17.10.2018. Hence, it is clear that only after the constitution of ICC, a complaint is said to have been lodged by the victim. In other words, the ICC has been constituted even without a written complaint from the victim. Hence, the very initiation of the proceedings is legally unsustainable.

17.The Hon'ble Supreme Court in a judgment reported in **(2020)**

<https://hcservices.ecourts.gov.in/hcservices/>



12 SCC 426 in Paragraph Nos.12 and 13 has held as follows:

"12.Upon receipt of complaints from aggrieved women (girl students of the University) about the sexual harassment at workplace (in this case, University campus), it was obligatory on the Administration to refer such complaints to the Internal Committee or the Local Committee, within the stipulated time period as predicated in Section 9 of the sexual harassment of women at workplace (prevention ,prohibition,and Redressal) Act , 2013(for short "the 2013 Act").Upon receipt of such complaint , an inquiry is required to be undertaken by the Internal Committee or the Local Committee in conformity with the stipulations in section 11 of the 2013 Act. The procedure for conducting such inquiry has also been amplified in the 2015 Regulations. Thus understood , it necessarily follows that the inquiry is a formal inquiry required to be undertaken in terms of the 2015 Regulations. The allegations to be inquired into by such committee being of '' sexual harassment'' defined in section 2(n) read with section 3 of the 2013 Act and being a serious matter bordering on criminality, it would certainly not be advisable to confer the benefit on such employee by merely passing a simple order of termination. Such complaints ought to be taken to its logical end by not only initiating departmental or regular inquiry as per the service rules, but also followed by the other actions as per law. In such cases, a regular inquiry or departmental action as per service rules is also indispensable as so to enable the employee concerned to vindicate his position and establish his innocence. We say no more.

13.A priori, we have no hesitation in concluding that the impugned termination order dated 30.11.2017 is illegal being ex facie stigmatic as it has been issued without subjecting the appellant to a regular inquiry as per the service rules. On this conclusion, the appellant would stand reinstated, but whether he should be granted back wages and other benefits including placing him under suspension and proceeding against him by way of departmental or regular inquiry as per the service rules is, in our opinion, a matter to be taken forward by the authority concerned in accordance with law."

18.A reading of the above said judgment of the Hon'ble Supreme Court makes it clear that merely based upon the enquiry report of the ICC, a stigmatic order of compulsory retirement could not be passed by the University authorities. Independently, a departmental/regular enquiry as per the service rules have to be conducted. The Hon'ble Supreme Court has further held that a regular enquiry or departmental action as per the service rules is also indispensable so as to enable the employee to indicate his position and establish his innocence. In the present case, the Syndicate has passed a resolution to place the delinquent on compulsory retirement



solely on the basis of report of ICC Committee. The order communicating the said resolution also solely relied upon the enquiry report of the ICC Committee for placing the delinquent on compulsory retirement from service. No independent departmental enquiry has been conducted as per service rules applicable to the appellant University in order to prove the alleged misconduct of the delinquent. Hence, the order placing on compulsory retirement is clearly in violation of the judgment of the Hon'ble Supreme Court referred to supra.

Conclusion:

19.The mandatory statutory provisions of Central Act 14 of 2013 namely Sections 9,11, 13 and rule 7 have been violated as discussed above. No independent departmental proceedings have been conducted, but the report of the ICC alone has been the sole basis of the order of compulsory retirement which is in clear violation of the judgment of the Hon'ble Supreme Court reported in **(2020) 12 SCC 426**.

20. In view of the above said discussions, we do not find any illegality or irregularity in the order of the learned Single Judge in setting aside the order of compulsory retirement and hence, we confirm the order of the learned Single Judge. The Writ Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

msa

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-20039[F] dated 21/04/2022)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-20177[F] dated 21/04/2022)

W.A (MD) .No.428 of 2020
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RD(26.04.2022) 11P 3C