



WEB COPY

W.P.No.4963 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.11.2023
Pronounced on	19.12.2023

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**W.P.No.4963 of 2020

M.Balasubramanian

... Petitioner

Vs.

1.The Commissioner,
Directorate of Technical Education,
Guindy, Chennai 600 025.

2. The Chairman, Governing Council,
E.I.T. Polytechnic College,
Kavindapadi -638455
Erode District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings in Ref.No.6230/C4/2019 dated 10.01.2020, issued by the 1st respondent, quash the same and direct the 2nd respondent to reinstate the petitioner in service with all attendant benefits.



WEB COPY



W.P.No.4963 of 2020

For Petitioner : Mr.B.Ravi

For Respondents : Mr.T.Chezhiyan,
Additional Govt. Pleader for R1
: Mr.N.Manokaran for R2

ORDER

This Writ Petition has been filed seeking issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings in Ref.No.6230/C4/2019 dated 10.01.2020, issued by the 1st respondent, quash the same and direct the 2nd respondent to reinstate the petitioner in service with all attendant benefits.

2. Heard, Mr.B.Ravi, learned Counsel for the petitioner and T.Chezhiyan, learned Additional Government Pleader for R1 and Mr.N.Manokaran for R2.

3. The petitioner who was employed in the 2nd respondent's college, was suspended in the year 2009. In view of certain complaints made against him, an enquiry officer has been appointed and the petitioner appeared before the enquiry officer. However, the petitioner was not given with a copy of the complaint. The Government had



W.P.No.4963 of 2020

WEB COPY

appointed a three member enquiry committee consisting of two legally qualified members and a trade union leader to enquire into the allegations against the petitioner and file a report. Six students appeared before the enquiry committee and gave a typed statement. The petitioner was not given an opportunity to cross examine them. The enquiry committee has submitted its report before the 2nd respondent on 14.03.2012 and 09.04.2012. The second respondent has called upon the petitioner to offer remarks on the findings of the enquiry committee and thereafter the petitioner was issued with a show cause on 06.06.2012. The petitioner also submitted his explanation. After a lapse of five and half years an order dated 21.12.2017 was passed to remove the petitioner from the Institution. The petitioner has filed an appeal before the first respondent. By an order dated 10.01.2020, with reference No.6213/2019, the 1st respondent dismissed the appeal of the petitioner. The appeal has been dismissed without considering the legality and incompetent nature of the disciplinary proceedings which are in violation of principle of natural justice. Hence the Writ Petition has been filed challenging the order passed in Appeal.



W.P.No.4963 of 2020

4. The petitioner has been given with the following charge:

“Ref. No. 6873 /EITPC /2011.

Dt. 25.03.2011

**PROCEEDINGS OF Thiru K.M. DHANDAPHANI, CHAIRMAN, EIT
POLYTECHNIC COLLEGE, KAVINDAPADI No.002 /EITPC /2011 / Dt.
25.03.2011.**

SUB: Thiru. M. Balasubramanian, Lecturer EIT Polytechnic College -
Charge Sheet Issued – Reg.

REF: The resolution of the Governing Council dated 24.03.11.

1.Mr.M. Balasubramanian is working as a Lecturer In Knitting Department in this Institute

2; This Charge Sheet Is issued as resolved by the Governing Council in its meeting held on 24.03.11. In pursuance of the complaints received from Tmt.V.Selvi, mother of V.Janani, Student of II year Diploma in Knitting Technology (DiKT) and the parents of the. Other students, the Preliminary Enquiry conducted by the Enquiry Committee and their report dated 21.12.2009, the Governing Council has resolved to issue this charge sheet.

3. The III year students of DKT, namely S. Nasira Begam, K.Divya and M. Poornima through their parents and the students themselves directly as listed in the Annexure "A", annexed with the charge sheet disclosed, have alleged that Mr.M. Balasubramanian indulged in the following acts. Mr. Balasubramanian, while handling the subject Spinning Technology Practical Classes for II year DKT, by misusing/misutilising and. taking advantage of his position as a lecturer, called the girl students alone to the staff room In the Laboratory for correction of observation note book and record note book. During that time M.Balasubramanian asked one or two girls to stand for nearly two hours by his side, close to his chair. While putting questions to them, during that time, keeping the observation note book open and when they gave incorrect/wrong answers, M.Balasubramanian used to pat, pinch in the hip and thigh of the girl students, placed his hands on the person of the girl student in their hip, thigh for few minutes, put his hands on the shoulders of the girl students, caught the hip, touched their person and while talking caught hold of the girl students by their hands, assaulted the students. like Janal, Improperly behaved with the girl students, asked the girl students to pick up the materials from the table drawer, placed his hands on the hand of the students after Instructing them to put their hand on the note book and point out the substance written by their fingers, pinched them for 5 minutes even



for wrong recording in the note book, pinched their hands for few minutes, pinched their cheeks and twisted the ear by catching it, Mr.M.Balasubramanian also asked the girl students to point out the answer in the observation note book by using their fingers by standing close to his chair and bending. M.Balasubramanian also used to grope on the person of the girl students and thereby embarrassed them. M.Balasubramanian also by patting on the shoulders, pinched and groped on the private parts of the girl students, asking them to pick up some articles from the drawer of the table and from the ground and whole so taking by the students, M.Balasubramanian tried to see the private parts of the girl students and embarrassed them, pinched on their hip, took advances by keeping his hands on their shoulders; pinched their hip when they point out the wrong part of the machinery due to difficulty in Identifying them and thereby he tortured the girl students. The girl students and their parents, as enlisted in the Annexure "A", lodged the complaints with the Principal.

4. Mr. Sundararajan, Assistant in the Laboratory and also many of the boy students also have witnessed the acts indulged in M.Balasubramanian. The boy students who have witnessed as listed in the Annexure "B", annexed with the charge sheet disclosed, have also submitted in writing the same to the Principal.

5.The girl students also alleged that due to the acts of M. Balasubramanian, the girl students got embarrassed, developed apprehension and also hesitated to lodge complaint due to the Ignominy to them, their future prospects in all aspects of their life and also resolved to discontinue their studies and depart from the college. The acts of M Balasubramanian caused mental agony and hardship to the girl students besides developing simmering discontent in them, not only against M.Balasubramanian but also against the institution as a whole. The aversion the students developed would ruin the studies and their future.

6. The acts of M.Balasubramanian by calling the girl students to the staff room in the Laboratory and indulging in the aforesaid acts with them constituted acts of sexual harassment, sexually harassing the girl students in the place of studies. Instead of teaching them In all approved manners, the acts of M.Balasubramanian, descending to this state and misbehaving with the girl students coming for learning, constituted grave acts of misdemeanor, misbehaviour, sexual harassment, immoral, totally indisciplined and unethical acts which not only agonized the girl students but also fetched disrepute to the Institution and the students as a whole.

7: The acts of M.Balasubramanian particularly sexual harassment is a grave act of misconduct warranting proper action against him. M. Balasubramanian is therefore given this charge sheet. The contents of the copy of the complaints from the girl



W.P.No.4963 of 2020

students/ their mothers/ their parents who are enlisted in the Annexure "A", annexed with the charge sheet form part and parcel of the charge sheet and M.Balasubramanian is instructed to read the contents of the complaints as part and parcel of this charge sheet.

8. The Governing Council has therefore resolved to Issue charge sheet to MiBalasubramanian for his aforesaid acts and calling for his explanation therefore.

9. The girl students/ the mothers/parents of the girl students who have lodged the complaints are enlisted in the Annexure "A". The copy of their complaints, numbering 21 are enclosed herewith for perusal by M. Balasubramanian:

10. The M.Balasubramanian is therefore hereby instructed to submit his explanation to this charge sheet to the Governing Council as to why appropriate disciplinary action be not taken against him with in fifteen days of the receipt of this charge sheet, falling which, it will be construed that he has no explanation to offer and the Governing council will decide further course of action. “

5. The above charges against the petitioner would reveal that it is about the sexual harassment caused against a few girl students. The above mentioned charges have been proved and he was given with punishment of removal from service.

6. Mr.B.Ravi, learned counsel for the petitioner submitted that the main ground on which the petitioner has challenged the impugned order of dismissal is that the disciplinary proceedings have been taken without competence and jurisdiction. Due to some internal dispute within the management there was no governing council between the period between



W.P.No.4963 of 2020

WEB COPY

from 2007 to 2012. The newly constituted governing council held its meeting on 20.12.2017 and considered the enquiry report and thereafter only the order of removal was issued. After 21.12.2007, there was no governing council approved by the 1st respondent. On 25.03.2011 when the petitioner was issued with a charge memo, there was no approved governing council. Since, there was no governing council existed during the relevant point of time, charge memo has been issued without jurisdiction and hence the charge memo itself is liable to be set aside.

6.1. Mr.B.Ravi, further submitted that the disciplinary proceedings have been taken without competence and jurisdiction. In view of the dispute among the members of the management, there was no governing council between the period from 2007 to 2012. The newly constituted governing council held a meeting on 20.12.2017 and the order of removal was issued. However, on 25.03.2011, when the petitioner was issued with a charge memo, there was no approved governing council. Since there was no governing council during the relevant period, the charge memo itself has been issued without jurisdiction. Further the



WEB COPY

enquiry committee has been constituted by an authority who did not have the power to initiate disciplinary proceedings. Hence, it is liable to be set-aside.

6.2. Mr.B.Ravi, learned counsel for the petitioner further submitted that it is the governing council which has to manage the affairs of the institution and it is the rightful authority who can impose penalty on his staff. During the relevant point of time when the disciplinary proceedings were initiated against the petitioner, there was a truncated governing council and any decision taken by the said imperfect council cannot be considered as lawful. The appointment of members of the enquiry committee itself is erroneous and done by persons who did not have any authority to hold the proceedings are illegal.

6.3. The enquiry committee also did not consider the evidence of the witnesses in a proper perspective and principles of natural justice has not been duly followed. The disciplinary proceedings is *malafide*, and it is based on the false complaints obtained from the innocent students with ulterior motive. The petitioner was not allowed to represent through an



W.P.No.4963 of 2020

WEB COPY

advocate. Only one student has given her evidence, even though it is alleged in the charge sheet that 6 students have given complaints about the sexual harassment alleged to have been caused by the petitioner. Just in order to remove the petitioner, the 1st respondent has used the allegations of the sexual harassment as a tool.

6.4. In respect of the above contentions the petitioner relied on the following judgements:

Sl. No	Citations submitted by the learned counsel for the petitioner	Reported in
1	P.Kasilingam Vs. Bharathiar University and ors.	1990 ILLJ 73 Mad
2	K.M.Valliapan Vs Joint Director of School Education (Higher Education)	2006 4 CTC 471
3	Aureliano Fernandes Vs State of Goa	AIR 2023 SC 2485
4	Dr.Gajendra Singh Vs.Union of India & Ors	2022 10 Scale 250

7. Mr.T.Chezhian, learned Additional Government Pleader for the first respondent submitted that the petitioner was in the habit of acting in an inappropriate manner with the girl students and giving them sexual harassment. The petitioner was given with enough opportunities to submit his explanation. However, he did not turn up to the enquiry committee on 11.08.2009 and 20.08.2009. Even when he attended the



W.P.No.4963 of 2020

WEB COPY

enquiry on 07.08.2009 and 18.08.2009, he disregarded the enquiry committee by calling it as an invalid committee. Since the petitioner did not turn up to offer any explanation to the enquiry committee, the enquiry committee was compelled to conclude the proceedings that the petitioner did not have anything to say and then the enquiry report was submitted. The enquiry committee report was submitted to the Principal of the 2nd respondent on 21.12.2009 and the same was informed to the petitioner as well. The petitioner had filed WP.No. 22145 of 2009 and the prayer to quash the enquiry proceedings dated 06.08.2009. By which, the petitioner was asked to appear before the enquiry committee on 07.08.2009. The said petition was dismissed on the ground that the petitioner was neither placed under suspension nor punished. As he was only suspended from taking classes pending enquiry the writ petition of the petitioner was dismissed as a misconceived one.

7.1. The petitioner was suspended in view of the decision taken by the governing council on 14.03.2011. Subsequently he was served with a charge sheet on 25.03.2011 and the petitioner had submitted his explanation on 16.05.2011 and in the said explanation, he did not state



W.P.No.4963 of 2020

WEB COPY

anything about the violation of procedure with regard to his suspension and the charge sheet. The explanation of the petitioner was considered by the governing council and it was found to be not satisfactory. Hence, as per the guidelines of the Hon'ble Supreme Court issued in [Vishaka & others v. State of Rajasthan & Ors., JT](#) [reported in 1997 (7) SC 392] an enquiry committee was constituted and they conducted the enquiry. The committee conducted an exhaustive enquiry and submitted its detailed report on 14.03.2012. The petitioner was given with an opportunity to offer his remarks on the findings of the enquiry committee. The governing council accepted the enquiry report and requested the Chairman to issue second show cause notice to the petitioner. Accordingly the chairman also gave notice to the petitioner dated 06.06.2012.

7.2. The Government Aided Polytechnic colleges will have governing council, approved by the Director of Technical Education. Due to some misunderstanding between the members of the council, the governing council of the 2nd respondent college was not approved by the Director of Technical Education after 21.12.2007. However the members



W.P.No.4963 of 2020

WEB COPY

of the governing council were managing the day to day activities of the institution.

7.3. Even though, the enquiry committee has submitted its report stating that the charges were proved, no punishment can be imposed due to the non approval for the governing council. The existing governing council had resolved the request of the 1st respondent to issue appropriate order of punishment. The 1st respondent happened to be the Appellate Authority as well, so he could not pass final order for the disciplinary proceedings. Hence, the 1st respondent has instructed the 2nd respondent to approach the High Court by way of filing a separate petition seeking direction for finalizing the disciplinary proceedings. The 1st respondent approved the governing council through his letter dated 23.05.2016. After getting the approval for the new governing council, it was thought fit to impose punishment and so it was approved by the council. The governing council considered all the documents and materials and arrived at a conclusion to punish the petitioner with removal of service.

7.4. The petitioner preferred an appeal before the 1st respondent and after thorough consideration, the appeal was also dismissed by



W.P.No.4963 of 2020

WEB COPY

upholding the correctness of the enquiry findings and the punishment of removal of service. Only after considering the seriousness of the complaints, the 2nd respondent constituted an enquiry committee to enquire the complaints. The enquiry was initiated and based on the materials the guilt of the petitioner was confirmed and the 1st respondent approved the governing council through his letter dated 23.05.2016. Only after the new governing council was constituted and approved in a meeting held on 20.12.2017, the report submitted by the enquiry committee was acted upon and thereafter the 2nd respondent had passed an order to remove the petitioner from service for the proved misconduct. The petitioner has not raised any valid grounds. The petitioner being a Lecturer took advantage of his position over the innocent girl students and gave all kind of sexual harassments, by keeping the students under the fear that he would reduce their internal marks. The inappropriate conduct of the petitioner is like '*fence eating the crops*'. So the punishment of dismissal is proportionate to the misconduct proved against the petitioner. The procedural formalities were thoroughly followed and the petitioner does not deserve any sympathy.



W.P.No.4963 of 2020

WEB COPY

7.5. In respect of the above contentions raised by the respondent, they relied on the following judgements:

Sl. No	Citations submitted by the learned counsel for the respondents	Reported in
1	Dr.VijayaKumaran C.P.V. Vs Central University of Kerala & Ors	2020 (12) SCC 426
2	Apparel Export Promotion Council Vs. A.K.Chopra	1991 (1) SCC 759
3	M.A.Ashraff Ali Vs.The Secetary to Government, B.C., M.B.C & ors	MANU/TN/3812/2009

8. The main thrust of the petitioner's contention is that at the time when the charge memo was issued to him, there was no approved governing council in the 2nd respondent's college. It is learnt from the submission of the 1st respondent that due to some litigation the governing council was not approved by the Director of Technical Education after 21.12.2007.

9. The petitioner is a faculty against whom the students have raised sexual allegations. Many students along with their mother came to the institution and complained about the sexual harassment caused by the petitioner. In the absence of approved governing council, the principal of the college had taken a right measure of suspending the petitioner from taking classes until the committee submits its report. The petitioner has



W.P.No.4963 of 2020

WEB COPY

filed the writ petition challenging the proceedings of the principal. It was concluded by the court that the petitioner was neither suspended nor punished and the proceedings to stop him from handling classes cannot be found to be illegal and arbitrary. The situation that has arisen in the case of ***K.M.Valliapan Vs. Joint Director of School Education (Higher Education) and Appellate Authority, Chennai*** [reported in **2006 (4) CTC 471**] is different in view of the above turn of event.

10. In the case cited by the petitioner, the power of the school committee was delegated to another sub committee and the said sub committee has taken the decision about the disciplinary proceedings. But in the instant case, there is no sub committee, though the existed governing council was waiting to get the approval from the 2nd respondent. Further, the petitioner was not placed under suspension when he challenged the proceedings of the principal before the High Court.

11. However, the petitioner was suspended later in view of the grave charges proved against him. Before he was given with the suspension order, the petitioner was given with full opportunity to make his submission before the enquiry committee appointed for the purpose



W.P.No.4963 of 2020

WEB COPY

of enquiring the complaints levelled against him. In fact, the petitioner did not choose to file any Appeal by challenging the order passed in the writ petition in WP.No.22145 of 2009.

12. In support of the contention made by the petitioner that the procedural of fairness of the enquiry should not be given a go by, even though the case of sexual harassment has to be handled with all care, the learned counsel for the petitioner cited the decision of the Hon'ble Supreme Court held in **Aureliano Fernandes Vs. State of Goa** [reported in **AIR 2023 SC 2485**]. In the said judgement it is observed as under:

“75. It is disquieting to note that there are serious lapses in the enforcement of the Act even after such a long passage of time. This glaring lacuna has been recently brought to the fore by a National daily newspaper that has conducted and published a survey of 30 national sports federations in the country and reported that 16 out of them have not constituted an ICC till date. Where the ICC have been found to be in place, they do not have the stipulated number of members or lack the mandatory external member. This is indeed a sorry state of affairs and reflects poorly on all the State functionaries, public authorities, private undertakings, organizations and institutions that are duty bound to implement the PoSH Act in letter and spirit. Being a victim of such a deplorable act not only dents the self- esteem of a woman, it also takes a toll on her emotional, mental and physical health. It is often seen that when women face sexual harassment at the workplace, they are reluctant to report such misconduct. Many of them even drop out from their job. One of the reasons for this reluctance to report is that there is an uncertainty about who to approach under the Act for redressal of their grievance. Another is the lack of confidence in the process



WEB COPY



W.P.No.4963 of 2020

and its outcome. This social malady needs urgent amelioration through robust and efficient implementation of the Act. To achieve this, it is imperative to educate the complainant victim about the import and working of the Act. They must be made aware of how a complaint can be registered, the procedure that would be adopted to process the complaint, the objective manner in which the ICC/LC/IC is expected to function under the Statute, the nature of consequences that the delinquent employee can be visited with if the complaint is found to be true, the result of lodging a false or a malicious complaint and the remedies that may be available to a complainant if dissatisfied with the Report of the ICC/LC/IC etc.

76. However salutary this enactment may be, it will never succeed in providing dignity and respect that women deserve at the workplace unless and until there is strict adherence to the enforcement regime and a proactive approach by all the State and non-State actors. If the working environment continues to remain hostile, insensitive and unresponsive to the needs of women employees, then the Act will remain an empty formality. If the authorities/managements/employers cannot assure them a safe and secure work place, they will fear stepping out of their homes to make a dignified living and exploit their talent and skills to the hilt. It is, therefore, time for the Union Government and the State Governments to take affirmative action and make sure that the altruistic object behind enacting the PoSH Act is achieved in real terms.”

13. The Hon'ble Supreme Court in the above case has expressed its concern that the object of the PoSH Act has to be achieved in its realistic terms. As regards the facts of the said case, there was some procedural lapses noticed during enquiry proceedings and that is the reason for the observation that fairness of the process should not be compromised. For



a better clarity the relevant paragraphs were extracted hereunder:

WEB COPY

“71. In fact, the glaring defects and the procedural lapses in the inquiry proceedings took place only thereafter, in the month of May, 2009, when 12 hearings, most of them back-to-back, were conducted by the Committee at a lightning speed. On the one hand, the Committee kept on forwarding to the appellant, depositions of some more complainants received later on and those of other witnesses and called upon him to furnish his reply and on the other hand, it directed him to come prepared to cross-examine the said complainants and witnesses as also record his further deposition, all in a span of one week. Even if the medical grounds taken by the appellant seemed suspect, the Committee ought to have given him reasonable time to prepare his defence, more so when his request for being represented through a lawyer had already been declined. It was all this undue anxiety that had led to short-circuiting the inquiry proceedings conducted by the Committee and damaging the very fairness of the process.

72. For the above reasons, the appellant cannot be faulted for questioning the process and its outcome. There is no doubt that matters of this nature are sensitive and have to be handled with care. The respondents had received as many as seventeen complaints from students levelling serious allegations of sexual harassment against the appellant. But that would not be a ground to give a complete go by to the procedural fairness of the inquiry required to be conducted, more so when the inquiry could lead to imposition of major penalty proceedings. When the legitimacy of the decision taken is dependent on the fairness of the process and the process adopted itself became questionable, then the decision arrived at cannot withstand judicial scrutiny and is wide open to interference. It is not without reason that it is said that a fair procedure alone can guarantee a fair outcome. In this case, the anxiety of the Committee of being fair to the victims of sexual harassment, has ended up causing them greater harm.”

14. But the above judgement is applicable to its own facts. As per



W.P.No.4963 of 2020

the facts involved in the said case, even while the enquiry was conducted, several complaints were being sent against the petitioner therein and the petitioner was asked to furnish his reply and to cross examine the complainants in a short span of one week.

15. In the case in hand, the petitioner was given with repeated opportunities to appear before the enquiry committee on 07.08.2009, 11.08.2009, 18.08.2009 and 28.08.2009. All these dates were given to the petitioner to submit his explanation. Before constituting the committee itself, the petitioner was given with a notice and for which the petitioner had also submitted his explanation. Unlike the case cited above, the petitioner was not asked to cross examine the witness at the time when the complaints were also continuously received. So the facts of the above case referred by the petitioner is entirely different from the situation that has arisen in the case in hand. Despite giving with several opportunities, the petitioner had clinged only on his assumption that the governing council was not approved and hence no action taken against him would be valid. Only with that idea, the petitioner appears to have ignored to make his appearance before the enquiry committee for all the hearings.



W.P.No.4963 of 2020

WEB COPY

Even on two hearings on 07.08.2009 and 18.08.2009 when he appeared, he did not choose to cross examine the witnesses, but he simply disregarded the committee by stating that the committee did not have any power to make any enquiry.

16. So far as the allegations of sexual harassment is concerned and that too when students in an educational institution are affected due to the perverted act of a teacher, it has to be dealt with all seriousness, sensitivity and speed. Even though the 2nd respondent did not give any approval to the governing council, it was very much in place and it could get the approval at a later point of time in the year 2016.

17. Considering the sensitivity of the matter, the enquiry committee was formed as per the Vishaka guidelines and the enquiry committee held enquiry by observing all the procedural formalities. Due to the lack of co-operation on the part of the petitioner for the enquiry, the governing council thought it fit to place the petitioner on suspension. Further, the enquiry committee came out with a report that the charges of sexual harassment against the petitioner were proved. Therefore, the



W.P.No.4963 of 2020

WEB COPY

governing council decided to take appropriate action based on the enquiry committee report.

18. Under such circumstances, the institution like the 2nd respondent cannot be expected to pay salary to the petitioner for each month, despite he was not allowed to take classes for the students. However, due to inevitable circumstances existed at the relevant point of time the petitioner was paid with salary and thereafter subsistence allowance, when the petitioner was placed under suspension. The petitioner was given with two notices, one before accepting the report of the enquiry committee and another after arriving at a prima facie conclusion that the petitioner should be punished. The second respondent is aware of the technical difficulties that might crop up if an order for removal of service is passed without hearing. The second respondent was continuously paying the subsistence allowance to the petitioner until 2017, when proper approval was granted by the first respondent to the second respondent's governing council.



W.P.No.4963 of 2020

WEB COPY

19. In fact, the 2nd respondent had requested the 1st respondent to pass orders of punishment. But the 1st respondent was also found it not possible because of the appellate power conferred on him. However the 1st respondent had advised the 2nd respondent to file a Writ Petition before the High Court in order to close the disciplinary proceedings by imposing punishment. After analysing the challenging situations in hand the second respondent college was patiently waiting until the approval was given to the governing council even in the year 2016. After the approval was obtained from the governing council the enquiry report was thoroughly analysed and along with representation of the petitioner and only thereafter, the order of punishment of removing him from service was passed.

20. The extraordinary situation of not having an approved governing council was tactfully managed by the 2nd respondent. Being an educational institution, the second respondent college cannot remain indifferent and turn a blind eye, when complaints of sexual harassment are received against a faculty from the students or their parents. As a first step, the petitioner was suspended from handling classes and thereafter,



W.P.No.4963 of 2020

WEB COPY

he was given with a notice to offer explanation on the complaints of sexual harassment levelled against him.

21. After receiving his reply and on consideration of the same, the enquiry committee comprising 3 members were appointed. The petitioner blatantly disregarded the committee and did not participate in any effective manner by availing the opportunity given to him for cross examination. Hence the petitioner cannot be allowed to harp upon the point that the governing council which took a decision to put him under suspension and appoint an enquiry committee did not have the approval from the 1st respondent. Such a contention can have a bearing only if there is any prejudice caused to the petitioner in the process of affording him a fair opportunity.

22. In fact, when the proceedings were issued against the petitioner not to handle the classes, it was challenged by him before this Court. However, this court considered the facts and circumstances and did not opt to find fault with the validity of the proceedings. On the contrary, the



W.P.No.4963 of 2020

WEB COPY

second respondent's action to suspend the petitioner from handling classes was found to be reasonable. In such case, I find no reason to accept the contention of the petitioner that he was prejudiced due to the decisions taken by the 1st respondent at each stage of the proceedings.

23. While appreciating the evidence available in a departmental enquiry, the High Court shall not exercise its powers of review as that of an Appellate Authority and substitute its own conclusion on the appreciation of evidence to have an impact on the guilt or innocence of the employee. The high court might take to facts in certain rare circumstances where something is too glaring and it has affected the root of the matter.

24. What can be examined is the fairness of procedure adopted in order to ensure a fair opportunity given to the petitioner to participate in the enquiry. In the instant case at each stage of the proceedings the petitioner was given with ample opportunity and in fact, the 2nd respondent was giving subsistence allowance to the petitioner even after



W.P.No.4963 of 2020

WEB COPY

the enquiry was over and the report with adverse findings against the petitioner was filed. As the process of getting approval for the governing council was pending, the first respondent was not able to pass orders of punishment and that difficult phase was tactfully managed by way of paying subsistence allowance to the petitioner.

25. Now coming to the proportionality of the punishment imposed for the proved charges of sexual harassment at a work place, the thing can speak for itself. In any institution, especially in an educational institution, such kind of behaviour can be tolerated in no way, shape or form. In fact such kind of activities will also attract criminal prosecution also. If Sexual harassment was caused to students who are minors, the draconian POCSO Act will get attracted. The said Act mandates reverse burden on the part of the accused to prove his innocence and it contemplates grave punishment.

26. Teacher-student relationship is based upon trust and confidence and those who have to bear the guiding light for students should not be



W.P.No.4963 of 2020

WEB COPY

trouble mongers. Student phase in a person's life is an important phase and it shouldn't be allowed to be a night mare for a few. If teachers are perpetrators, parents will hesitate to send their children, especially girl children to schools or colleges and that would directly encourage gender discrimination and impede women empowerment. Educational institutions are not supposed to be breeding grounds to render such disservice to the society. Those institutions from which women empowerment has to emanate should not be converted into a burial ground for empowerment, due to the thoughtless acts of a few. When the second respondent institution spotted such a fence eating the crop, it has taken a well considered and a fitting decision of driving it to the gate.

27. In this regard it is appropriate to refer the judgement of the Hon'ble Supreme Court in *Apparel Export Promotion Council Vs. A.K.Chopra* [reported in *1991 (1) SCC 759*] wherein the Apex Court has held as under:

“ . The High Court appears to have over-looked the settled position that in departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the



WEB COPY



W.P.No.4963 of 2020

Appellate Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though Judicial Review of administrative action must remain flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial Review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Haltom in Chief Constable of the North Wales Police v. Evans, (1982) 3 All ER 141, observed :

“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court.”



WEB COPY



W.P.No.4963 of 2020

17. Judicial Review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court while exercising the power of Judicial Review must remain conscious of the fact that if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority.

.....

.....

25. An analysis of the above definition, shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her.

26. There is no gainsaying that each incident of sexual harassment, at the place of work, results in violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty the two most precious Fundamental Rights guaranteed by the Constitution of India. As early as in 1993 at the ILO Seminar held at Manila, it was recognized that sexual harassment of woman at the work place was a form of gender discrimination against woman. In our opinion, the contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate. The message of international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) and the Beijing Declaration which directs all State parties to take



appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women is loud and clear. The International Covenant on Economic, Social and Cultural Rights contains several provisions particularly important for women. [Article 7](#) recognises her right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate working environment. These international instruments cast an obligation on the Indian State to gender sensitise its laws and the Courts are under an obligation to see that the message of the international instruments is not allowed to be drowned. This Court has in numerous cases emphasised that while discussing constitutional requirements, court and counsel must never forget the core principle embodied in the International Conventions and Instruments and as far as possible give effect to the principles contained in those international instruments. The Courts are under an obligation to give due regard to International Conventions and Norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law. [See with advantage [Prem Sankar v. Delhi Administration](#), AIR 1980 SC 1535; [Mackinnon Mackenzie and Co. v. Audrey D Costa](#), (1987) 2 SCC 469 JT 1987 (2) SC 34; [Sheela Barse v. Secretary, Childrens Aid Society](#), (1987) 3 SCC 50 at p.54; [Vishaka & others v. State of Rajasthan & Ors.](#), JT 1997 (7) SC 392; [Peoples Union for Civil Liberties v. Union of India & Anr.](#), JT 1997 (2) SC 311 and [D.K. Basu & Anr. v. State of West Bengal & Anr.](#), (1997) 1 SCC 416 at p.438].

27. In cases involving violation of human rights, the Courts must for ever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field. In the instant case, the High Court appears to have totally ignored the intent and content of the International Conventions and Norms while dealing with the case.

28. The observations made by the High Court to the effect that since the respondent did not actually molest Miss X but only tried to molest her and, therefore, his removal from service was not warranted rebel against realism and lose their sanctity and credibility. In the instant case, the behaviour of respondent did not cease to be outrageous for want of an actual assault or touch by the superior officer. In a case involving charge of sexual harassment or



WEB COPY



W.P.No.4963 of 2020

attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or dictionary meaning of the expression molestation. They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance. The High Court overlooked the ground realities and ignored the fact that the conduct of the respondent against his junior female employee, Miss X, was wholly against moral sanctions, decency and was offensive to her modesty. Reduction of punishment in a case like this is bound to have demoralizing effect on the women employees and is a retrograde step. There was no justification for the High Court to interfere with the punishment imposed by the departmental authorities. The act of the respondent was unbecoming of good conduct and behaviour expected from a superior officer and undoubtedly amounted to sexual harassment of Miss X and the punishment imposed by the appellant, was, thus, commensurate with the gravity of his objectionable behaviour and did not warrant any interference by the High Court in exercise of its power of judicial review. “

28. So petitioner does not deserve any sympathy in view of the seriousness of the charges proved against him. The punishment of removal for the proved charges of sexual harassment by a teacher against the students is well suiting and there is no disproportionality. The first respondent/ Appellate Authority has also re-analysed the facts, evidence



W.P.No.4963 of 2020

WEB COPY

and the fairness in which the enquiry was conducted and on consideration has chosen to confirm the punishment of removal by dismissing the appeal. Though the petitioner has alleged malicious intention no material is produced by him to substantiate the same. Hence I find no reason to interfere with the punishment or removal imposed upon the petitioner.

In the result, this Writ Petition is **dismissed**. No costs.

19.12.2023

Index : Yes/No
Internet : Yes/No
Speaking /Non-speaking
Neutral Citation : Yes/No
jrs

To

1. The Commissioner,
Directorate of Technical Education,
Guindy, Chennai 600 025.
2. The Chairman, Governing Council,
E.I.T. Polytechnic College,
Kavindapadi -638455
Erode District.



WEB COPY



W.P.No.4963 of 2020

R.N.MANJULA, J.

W.P.No.4963 of 2020

19.12.2023