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W.P.Nos.11507, 11511, 11514, 11516 and 11520 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 30.04.2024

Orders pronounced on : **11.06.2024**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.11507, 11511, 11514, 11516 and 11520 of 2024
and W.M.P.Nos.12615, 12618, 12620, 12622, 12621 and 12623 of 2024

P.Murugesan .. Petitioner
in W.P.No.11507 of 2024

A.Shanmuga Vadivel .. Petitioner
in W.P.No.11511 of 2024

D.Rudhrakumar .. Petitioner
in W.P.No.11514 of 2024

T.Sakthivel .. Petitioner
in W.P.No.11516 of 2024

P.Murugesan .. Petitioner
in W.P.No.11520 of 2024

Versus

1. Tamilnadu State Transport Corporation
(Coimbatore) Ltd.

Rep. by its Managing Director,

<https://www.mhc.tn.gov.in/judis>



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37, Mettupalayam Road,
Coimbatore – 641 043.

2. The General Manager,
Tamilnadu State Transport Corporation
(Coimbatore) Ltd., Tirupur Region,
Kangeyam Salai,
Tirupur – 641 604.
3. K.Swarnalatha,
General Manager of Erode Region and
Chairman of the Internal Complaint Committee,
Regional Office, Tirupur
Tamilnadu State Transport Corporation
(Coimbatore) Ltd.,
Tirupur Depot – 1,
Kangeyam Salai,
Tirupur – 641 604.
4. Ms.AAAAAA (*Name Redacted by Court*)
Junior Assistant,
Udumalaipettai Depot, Tirupur Region,
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Udumalaipettai - 642 126.

.. Respondents
(in all cases)

Prayer in W.P.No.11507 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, after calling for the records pertaining to the report dated 20.03.2024 (04.03.2024) given



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by the ICC / 3rd respondent and the memo dated 05.04.2024 issued by the 2nd respondent in Memo No.1/T15/292 C/Legal/TNSTC/Thi.Ma/2024, quash the same.

Prayer in W.P.No.11511 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, after calling for the records pertaining to the report dated 20.03.2024 (04.03.2024) given by the ICC / 3rd respondent and the memo dated 05.04.2024 issued by the 2nd respondent in Memo No.1/T15/292 B/Legal/TNSTC/Thi.Ma/2024, quash the same.

Prayer in W.P.No.11514 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, after calling for the records pertaining to the report dated 20.03.2024 (04.03.2024) given by the ICC / 3rd respondent and the memo dated 05.04.2024 issued by the 2nd respondent in Memo No.1/T15/292 D/Legal/TNSTC/Thi.Ma/2024, quash the same.

Prayer in W.P.No.11516 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, after calling



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for the records pertaining to the report dated 20.03.2024 (04.03.2024) given by the ICC / 3rd respondent and the memo dated 05.04.2024 issued by the 2nd respondent in Memo No.1/T15/292/Legal/TNSTC/Thi.Ma/2024, quash the same.

Prayer in W.P.No.11520 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, after calling for the records pertaining to the report dated 20.03.2024 (04.03.2024) given by the ICC / 3rd respondent and the memo dated 05.04.2024 issued by the 2nd respondent in Memo No.1/T15/292 A/Legal/TNSTC/Thi.Ma/2024, quash the same.

For Petitioner : Mr.V.Ajay Khose
(in all cases)

For Respondents : Mr.T.Chandrasekaran,
(in all cases) for RR-1 to 3

COMMON ORDER

All these five Writ Petitions are filed by the petitioners herein challenging the show-cause notice issued by the respondent Corporation and the Enquiry Report of the Internal Complaints Report. Since all the five



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petitioners are co-delinquents and their contentions are the same, these Writ Petitions are taken up and disposed of together by way of this common order.

2. The case of the petitioners is that they are all employed in Udumalaipettai Depot of the first respondent Corporation which operates about 110 buses. While so, there are some conflicts in matters of allotment of duty, breakdown of the buses etc., and the Assistant Engineer indulged in shouting, erroneous recording of reasons etc. While so, the Assistant Engineer, on one occasion, shouted at one *Palaniappan*, Conductor, C.25485 that break failure should not be recorded as a reason for not operating the bus. The Assistant Engineer instructed the Junior Assistant (the victim in this case) to score/strike out the recording and make an entry as if the bus was not operated due to the non-availability of passengers. Since the said action was contrary to facts, while going into the Assistant Engineer's room, one of the petitioners namely, *P.Murugesan*, switched on the mobile video,



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asked for the reasons and recorded whatever was going on. This was distorted and a complaint was made by the said victim, the Junior Assistant as if the petitioners' video recorded her.

3. On 28.05.2023, the victim complained before the jurisdictional Police stating that the petitioners were videographing her and despite her asking why they were recording, the petitioners still went ahead. The jurisdictional Police called the petitioners for an enquiry, wherein, the petitioners showed the videograph and explained that only to record what happened, the videograph was taken. When the petitioners forwarded a complaint through Whatsapp as well as in writing requesting action against the fourth respondent and the Assistant Engineer, without taking any action on the erring officials, a joint charge memo, containing seven charges, was issued on two of the petitioners namely, *P.Murugesan* and *T.Sakthivel* on 29.05.2023. The petitioners denied the charges and submitted a detailed explanation. When an Enquiry Officer was originally appointed to conduct



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an enquiry, suddenly, the Internal Complaints Committee was constituted and the matter was referred to the Internal Complaints Committee. While, originally, the charge memo was issued only in respect of two of the petitioners namely, *P.Murugesan* and *T.Sakthivel*, three other petitioners were also called upon to attend the enquiry before the Internal Complaints Committee. All five petitioners attended the enquiry before the Internal Complaints Committee.

4. It is the case of the petitioners that even though they appeared before the Committee, the action of the petitioners would not amount to sexual harassment and therefore, cannot be inquired by the Internal Complaints Committee. The Internal Complaints Committee was constituted on 19.07.2023. It cannot take cognizance of an alleged sexual harassment that took place on 11.01.2023 which is beyond the period of three months limitation and three months extendable period. In respect of the three other petitioners, there is not even an independent allegation of any



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harassment. Without providing any opportunity as per the terms of the certified Standing Orders, the Enquiry Report was submitted as if the petitioners were guilty of the misconduct. Therefore, the petitioners prayed for quashing the Enquiry Report as well as the second show-cause notice.

5. The Writ Petitions are resisted by the respondent Corporation by filing a common counter-affidavit. As per the counter-affidavit, the petitioners took the video in a sexually abusive manner despite the objection of the victim. The fourth respondent namely, the victim employee, appeared before the Internal Complaints Committee and gave her statement. Based on her statement, the matter was taken up by the Internal Complaints Committee and on various dates, the enquiry was conducted. The C.C.T.V footage was also produced. Notices were issued for the petitioners to appear before the Committee. The Committee also visited the Depot on 13.12.2023 and inspected the site. After recording the statements of the witnesses, the Committee concluded that two of the petitioners had taken the video of the



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fourth respondent in a sexually abusive manner and they had also uploaded the same on social media. Therefore, as per the due procedure, now the report has been submitted and further action has to be taken as per the directives in *Dr.Ajay S. Sekher Vs. The Internal Complaints Committee and Ors. (W.A.No.2242 of 2017, dated 10.02.2021)*.

6. Heard *Mr.V.Ajoy Khose*, learned Counsel for the petitioner and *Mr.T. Chandrasekaran*, learned Counsel for the respondent Nos.1 to 3.

7. *Mr.V.Ajoy Khose*, learned Counsel for the petitioner, taking this Court through the Enquiry Report, would submit that firstly, the very allegation, in this case, does not contain any sexually unwanted conduct and mere recording of a video of a woman working in a workplace will not amount to sexual harassment. Therefore, the entire report is without jurisdiction. Secondly, he would submit that the Committee has come to a final finding without even allowing the petitioners to cross-examine the



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witnesses. None of the materials which are relied upon by the Committee were furnished to the petitioners. In view thereof, this Writ Petition deserves to be allowed.

8. Per *contra*, *Mr.T. Chandrasekaran*, learned Counsel for respondent Nos.1 to 3, would submit that the petitioners appeared before the Internal Complaints Committee and gave their version. In a case of sexual harassment, the Committee has to deal with the same with due sensitivity and the enquiry was completed as per the procedure. If the video was taken only to complain about any action to the superiors, then, there was no necessity to upload the same on social media which caused harassment to the employee. Therefore, having taken a video, just because the victim is a woman employee and uploading the same on social media is only to harass her and the petitioners have committed misconduct and accordingly, the action has rightly been taken.



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9. I have considered the rival submissions made on either side and perused the material records of the case.

10. The nature of misconduct of sexual harassment at the workplace, its effect on a woman employee and the law relating to the conduct of enquiry by the Internal Complaints Committee have been considered by this Court in a Writ Petition in W.P.No.10707 of 2024. The following is relevant to be reproduced:

" 7.9. Thus, it can be seen that it is pari materia to the CCS and CCA rules and therefore, the above observations of the Hon'ble Supreme Court of India in **Aureliano Fernandes case** (cited supra) especially in paragraph No.51 extracted above would be applicable in all force. In view the above, the following would emerge:-

(i) Whenever sexual harassment is complained about by a woman in the workplace, the same has to be referred to the ICC;

(ii) When such a complaint is referred to the ICC concerning Government servants, the ICC should conduct an enquiry as per Rule 17 (b) of the Rules. The rules shall be complied with as far as practicable and therefore, such deviations that do not strike at the core of the principles of natural justice shall be permissible considering the sensitivity of the matter;

(iii) When the complaint of sexual harassment is lodged, which clearly discloses the allegation and the



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same is furnished to the delinquent employee at the commencement of the enquiry, then the requirement of framing of the specific charges at the threshold would only be a procedural or technical requirement and as such the absence of the same shall not vitiate the enquiry;

(iv) However, the principles of audi alterem partem which includes hearing the version of the delinquent employee and also furnishing him the version of the statement of the witnesses and providing an opportunity for cross-examination would be within the core principles of natural justice as the delinquent employee will be visited with serious ramifications depending upon the findings in the enquiry report;

(v) However, considering the sensitivity and balance of power equations, there can be elasticity in the manner of cross-examination and specific questions can be prepared by the delinquent employee or on his behalf and it can be put to the victim by a local commissioner or any other employee as may be nominated by the delinquent employee also if, in the opinion of the ICC, exposure of the victim further to the delinquent would not be possible if there is an imbalance of power or such procedure will amount to tertiary victimization;

(vi) Once the enquiry report is submitted, it would be open for the disciplinary authority to issue the second show cause notice and after considering the further explanation of the delinquent, punishment can be imposed on him.

(vii) The timelines for furnishing the copy of the complaint, completion of enquiry and taking further action are all meant to expedite prompt action and are not periods of limitation entitling the delinquent employee to question the proceedings itself.

(viii) The approach of the disciplinary authority, as well as the Courts in these matters, is to consider the entire issue with due sensitivity and empathy for the victims while ensuring fair and impartial action and inquiry



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against the delinquents and due compliance with the principles of natural justice, and in respect of Government servants due compliance of Article 311 of the Constitution of India to be ensured."

11. To consider the contentions raised in this case, it can be seen that firstly, the specific nature of the allegation has been put to the petitioners. Secondly, the enquiry which was conducted by the Internal Complaints Committee shall be deemed as if it is an enquiry which is conducted under the relevant service rules. However, as per the dictum of the Hon'ble Supreme Court of India in *Aureliano Fernandes Vs. State of Goa and Ors.*,¹ since the delinquent employee will face serious consequences if the charges are held to be proved, a fair and proper enquiry with due compliance of principles of natural justice, has to be conducted. In matters relating to the enquiry as to sexual harassment, the other procedures adopted by the Internal Complaints Committee namely, recording various statements and visiting the site, cannot be found fault with.

¹ [2024] 1 SCC 632



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12. The first question that arises for consideration is whether there was a fair opportunity for the petitioners to prove their case. The Hon'ble Supreme Court of India, in paragraph No.51 of the said judgment in ***Aureliano Fernandes*** (cited *supra*), held as follows:-

"51. As can be seen from the above, when the misconduct relates to a complaint of sexual harassment at the workplace, the Complaints Committee constituted by Respondent 2—University to examine such a complaint, dons the mantle of the inquiring authority and is expected to conduct an inquiry in accordance with the procedure prescribed in the rules, as far as may be practicable. The use of the expression “as far as is practicable” indicates a play in the joints available to the Complaints Committee to adopt a fair procedure that is feasible and elastic for conducting an inquiry in a sensitive matter like sexual harassment at the workplace, without compromising on the principles of natural justice. Needless to state that the fact situation in each case will vary and therefore no set standards or yardstick can be laid down for conducting the inquiry in complaints of this nature. However, having regard to the serious ramifications with which the delinquent employee may be visited at the end of the inquiry, any discordant note or unreasonable deviation from the settled procedures required to be followed, would however strike at the core of the principles of natural justice, notwithstanding the final outcome."

Therefore, even though some elasticity, concerning the conduct of

enquiry for misconduct of sexual harassment, is given to the Internal



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Complaints Committee as it has to deal with the issue with due sensitivity and considering the compliance of power etc., the basic tenets of principles of natural justice have to be followed.

13. Considering the facts and circumstances of the case, the petitioners herein knew at all material times as to what is the allegation against them. They allege that on a particular date, they took a video of the victim employee and despite her objection, uploaded/forwarded the same on social media causing its spread. The second question is whether the petitioners were allowed to put forth their version. The petitioners have also submitted their explanation. Further, when the statements are recorded from the witnesses, the due opportunity has to be given to the petitioners to cross-examine the witnesses. Such an opportunity is missing in this case. While every other act and proceedings of the Internal Complaint Committee in recording the statements, examining the site etc., would be valid, an opportunity has to be provided to the petitioners to cross-examine the



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witnesses including the victim. However, care has to be taken that cross-examination of the victim should be objective, necessary and relevant to the case of the petitioners and not amounting to secondary harassment. Similarly, the petitioners are entitled to cross-examine the other witnesses. They can examine any other witnesses on their side and further make oral/written submissions before the Internal Complaints Committee.

14. The second contention is on the merits of the video that there is no sexual harassment at all. The definition contained in Section 2(n) of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013* is not exhaustive, but, an inclusive definition. Suffice it to say that sexual harassment is a phenomenon arising out of discrimination against women. On the strength of that discrimination, just because the employee is a woman, any behaviour is made and any conduct is made, which is unwelcome conduct causing stress in the mind of the female employee, then, the same would amount to sexual harassment and it is not



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the actions that are expressly enumerated in Section 2(n) of the said *Act* alone would be sexual harassment. In this case, the contention is that the video was made only to record the happenings in the office and it was not intended in any manner to harass the victim just because she was a woman. Considering the nature of the allegation in this case, the Committee has to decide whether uploading of video amounts to sexual harassment or not. Since the matter is remitted back to the ICC for further opportunity to the petitioner, this Court refrains from giving any finding on merits as to whether the action of the petitioners amounted to sexual harassment or not. It would be open for the petitioners to raise all the objections including the objection as to limitation before the committee itself. It is for the Internal Complaints Committee to go into the video and the attendant conduct of the petitioners including the uploading of the video on social media etc., to conclude whether a particular act is sexual harassment or not.

15. In the result, these Writ Petitions are allowed on the following



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terms:-

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(i) The impugned memo, dated 05.04.2024 and the report of the Internal Complaints Committee, dated 20.03.2024 (04.03.2024) shall stand quashed;

(ii) The matter is remitted back to the Internal Complaints Committee;

(iii) All the earlier statements recorded and the materials collected by the Internal Complaints Committee shall stand valid;

(iv) The petitioners shall appear for further enquiry before the Internal Complaints Committee on 01.07.2024;

(v) The petitioners shall intimate the names of the witnesses whom they want to cross-examine. Upon such intimation, the Internal Complaints Committee shall summon those witnesses and without seeking further time, the petitioners shall cross-examine the witnesses;

(vi) As far as the victim is concerned, if the Internal Complaints Committee feels that the victim could not be exposed to the delinquents directly, it can consider screening the witnesses and the petitioners can



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question the victim from behind the screen;

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(vii) The petitioners can also examine any further witnesses if they choose to before the Internal Complaints Committee;

(viii) The petitioners shall also be given an opportunity thereafter to make such oral / written statement before the Internal Complaints Committee. Thereafter, the Internal Complaints Committee shall consider the evidence and furnish a fresh Enquiry Report to the Disciplinary Authority;

(ix) The Internal Complaints Committee shall complete such an exercise within 60 days from the appearance of the petitioners on 01.07.2024 i.e., on or before 31.08.2024. Thereafter, the respondent Corporation shall proceed further as if it is a report of the enquiry conducted as per the Standing Orders of the Corporation;

(x) If the Internal Complaints Committee submits a report holding that the misconduct is proved, then, due second show-cause notice shall be issued to the petitioners and after calling for an explanation, final orders be



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passed;

(xi) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

11.06.2024

Neutral Citation : yes
grs

To

1. The Managing Director,
Tamilnadu State Transport Corporation
(Coimbatore) Ltd.,
37, Mettupalayam Road,
Coimbatore – 641 043.

2. The General Manager,
Tamilnadu State Transport Corporation
(Coimbatore) Ltd., Tirupur Region,
Kangeyam Salai,
Tirupur – 641 604.

D.BHARATHA CHAKRAVARTHY, J.



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