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W.A.No.12 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.A.No.12 of 2022

Mary Rajasekran

.. Appellant

VS

1.University of Madras,
Rep. by its Registrar, Chennai – 600 005.

2.Loyola College,
Rep. by its Secretary,
Nungambakkam, Chennai – 600 034.

3.The Rector,
Loyola College, Nungambakkam, Chennai – 600 034.

4.The Provincial Society of Jesus,
Madurai Jesuit Province,
Beschi Campus, Karur Road, Dindigul – 624 001.

5.Rev.Fr.Xavier Alphonse SJ
Former Director,
Loyola College Alumni Association Co-ordinator,
Higher Education,
St.Joseph's College,Tiruchirapalli.

.. Respondents

Prayer : Appeal filed under Section 15 of the Letters Patent against order dated 25.08.2021 made in W.P.No.10364 of 2016.

For Appellant : Mr.T.Sri Krishna Bhagavat

For Respondents : Mr.Godson Swaminathan
for M/s.Issac Chambers
for R2 to R5
Mr.A.S.Vijayaraghavan for R1



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JUDGMENT
(Delivered by Dr. ANITA SUMANTH.,J)

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The present writ appeal is filed by the writ petitioner in W.P.No.10364 of 2016, hereinafter referred to as either writ petitioner or appellant. Her prayer in the writ petition was for a mandamus directing the Loyala College (College / R2 in writ petition) to permit her to rejoin and continue her duties as Secretary to Rector of the College / R3, with full backwages and benefits & direct the college to initiate enquiry against R5 in the writ petition based on her complaint under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, (POSH Act) as well as compensation.

2. The Rector & the Vice-President of the College had filed W.P.No.1298 of 2021, being aggrieved by an order passed by the Tamil Nadu State Commission for Women (Commission), that had been approached by the appellant also seeking reinstatement and compensation.

3. The writ petitions were heard conjointly and a common order passed on 25.08.2021 allowing W.P.No.1298 of 2021 (filed by the Rector of the College) and dismissing the appellant's writ petition, W.P.No.10364 of 2016.

4. We have heard Mr.T.Sri Krishna Bhagavat, for the appellant, Mr.A.S.Vijayaraghavan, for the University of Madras/R1 and Mr.Godson Swaminathan, for the college as well as R5.



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5. The case of the appellant is as follows. The appellant was appointed as an Administrator of the college on 01.07.2000. The genesis of her grievances was an event organised in the college by the alumni association, of which both the appellant as well as her son were part. According to the appellant, there was diversion of the donations received from various sponsors by R5. Even prior thereto, the appellant has alleged that there had been diversion of funds by R5, who was misappropriating amounts from the college funds. She had also made allegations in regard to his conduct and behaviour even going to the extent stating that he was attempting to create a rift within her own family members.

6. Be that as it may, the crux of the submissions of the writ petitioner before the writ court centred around on two facts, firstly, that she had been terminated unfairly and seeking various benefits on this account, and secondly, that there ought to have been a reference of her complaint of sexual harassment to the appropriate committee constituted under the POSH Act.

7. The University / R1 has no role to play in this matter and is hence not even a necessary party.

8. It had been the defence of the other contesting parties i.e., College and R5 that the allegations put forth by the appellant were wholly unfounded. They had denied that she had been a permanent staff of the college and had averred that she had been paid all the amounts that had been due to her, in time.



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9. The appellant had approached the Commission seeking relief, and the Commission, vide order dated 23.12.2020, found merit in the appellant's contentions, granting her all the relief sought for. The writ court has in the order impugned before us found that, the order passed by the Commission was wholly arbitrary insofar as there had been no proper enquiry conducted by the Commission, it was only the Chairperson who had visited the college to conduct an enquiry and the other members of the Commission had not been part of the process and there had been no material whatsoever for the Commission to have passed order dated 23.12.2020 in the appellant's favour.

10. The writ petition filed by the Rector & Vice-President of the College in W.P.No.1298 of 2021 had come to be allowed as against which no writ appeal has been filed by the appellant. Thus, as far as the demands of the appellant in regard to her employment, her status within the college and the benefits, if any, that she was entitled to, are concerned, order of the writ court dated 25.08.2021 has attained finality and we have nothing more to say in that regard as the appellant has accepted that order in full.

11. With this, the pleas of the appellant in her writ petition relating to payments of backwages and other benefits also fail. As regards the plea for reinstatement and continuance of her role as Secretary is concerned, they have no relevance at this point in time as the appellant today is stated to be aged 65 years. Hence all that survives is the plea of the



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appellant for a mandamus for reference of her complaint of sexual harassment to the Internal Complaints Committee (ICC) under the POSH Act.

12. We have heard the rival contentions on this score and have also carefully perused the order of the writ court in this regard. In order to decide the question of whether a reference ought to be made to the ICC, it is a pre-requisite that there be a compliant in the first place.

13. The writ court has rendered categoric findings to the effect that the correspondences relied upon by the appellant do not, in fact, reflect any complaint or cause for complaint at all. Much emphasis was raised before the writ court and before us on a particular complaint, where the words '*sexual harassment*' figure. It has been the opinion of the writ court that this would hardly suffice to warrant reference to the ICC as there was no supporting particulars / details of the alleged sexual harassment or any other justification to warrant a reference of the complaint to the ICC. We are now to called upon to test this conclusion.

14. The first correspondence that have been relied upon by the appellant via email dated 18.09.2013 is extracted below:-

"Dear Fr.Xavier Alphonse,

Your constant threat that I will be removed from Loyola and harassment by creating problem within the family and in the office has led to uncontrolled diabetes and mental disturbance, stress and fracture around left shoulder.

1. I initiated Kaloori paathai with the intention of raising funds for the school of commerce and economics. The programme was well designed and I suggested to approach SUN TV for telecast. It was not approved by you and on the the contrary you abused Fr.Casmir Raj and me



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stating that we were the cause for the failure of the Loyola Alumni World Congress. I had been repeatedly telling you that we had already approached SUN TV and they were willing to give us one crore but you ignored everything and isolated me from conducting the programme and made it as your Family function thereby incurring a heavy loss to the college.. Though the event was good there was unhappiness among the Alumni members. When the feedback was given to you, you did not take it in the right spirit instead you only aggravated the situation and disrupted the existing harmony.

2. You had told us that Fr.Casmir Raj was the cause for Aban not coming forward to give donation to the school of commerce because Fr.Casmir Raj had taken Mr.Regis Abraham to Mr.Shyam Kothari's office and we all believed you. But I was shocked to know that it was not the reason and that Mr.Regis Abraham had himself requested Fr.Casmir to take him to Mr.Shyam Kothari's office. He had given Rs.20 lakhs for the good will of the college and Fr.Casmiraj.

3. Fr.Secretary appointed me and 50% of my salary is being paid by the Secretary and 50% by the Alumni office. I am bound to work for Fr.Secretary if he assigns any work and not only that it is my duty to give him due respect as the Secretary of the College. Your allegation that I am wasting my time spending with Fr.Secretary is not true. And I make it clear that I work for the college and not for any individual. Every time you harass me stating that Fr.Albert William is against me and he wants you to give it in writing to him a complaint so that he can terminate my service. On further enquiry it is not true. You instigate me to disrespect higher officials of the college. Fr.Albert has not told anything against you but you only keep talking about him always not only to me but also to my son. You get angry with me because I took Fr Albert to Karti Chidambaram to get 175% exemption.

4. Fr. I have realized one thing. You will go to any extent to cover up your mistake. One example is getting a letter from the LOHO members. Fr I don't understand how you get a letter against against the one who works sincerely for you. How do you expect me to work. I know everything that is happening in the office, you will transfer funds from the alumni account to Nagapatnam trust and get a letter against me from the members. No man can serve two masters at a time. You cannot collect funds for the college and the trust at the same time.

5. The biggest blunder you are making is turning my son against me. You talk to him about Fr Rector, Fr Albert, Fr.Casimir, fr. Christie. You have given a projection that you are the only saint and all the others are devils. You have given a projection to my son that the entire management is against me and that you are the only



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person defending me. Recently when I spoke to Fr Rector I did not speak bad about my son, daughter and husband but you have told my son that Fr Rector has told you that I spoke against my son, daughter and husband.

6. Mr. Balamurugan the present Secretary is helping you in all the untoward activities. As a secretary he should focus in the unity of the association but he is dividing the association into two groups LOHO and the Chennai members. You are favouring him. He has spread the message among the members that you have instructed them not to talk to me. Secondly, he has spread among the members that my son is talking against me.

7. Fr. I am going to speak to Mr.Xavier Britto being a family man, I am sure he will understand the feelings of a mother.

I am not able to bear with your incessant and constant harassment which has affected my body and mind irreparably.

*Yours sincerely,
Mary Rajasekaran"*

15. This e-mail is addressed to R5. It does not refer to sexual harassment anywhere. The gravamen on which the e-mail proceeds is the threat posed by R5 in regard to the termination of the position of the appellant in the college. The appellant makes allegations of diversion of funds and the entirety of the e-mail leads one to the categorical conclusion that there are differences of opinion between the appellant and R5 in regard to conduct of the alumni event and the fund collections made. She also refers to the involvement of her family viz., son, daughter and husband in the disputes between herself and the college and is aggrieved by the same. The important take away from e-mail dated 18.09.2013 is that no allegation has been made or no indication had been given in regard to improper behaviour of R5 towards the appellant.



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16. The second communication referred to is letter dated 14.06.2014 addressed by the appellant to, among other people, the then Commissioner of Police. The letter reads as follows:-

"Respected Sir,

I am Mrs. Mary Rajasekaran, working as a secretary to Fr. Rector Loyola College, Chennai since January 2014. Prior to this I was in the alumni office working with Fr. Casimirraj and Xavier Alphonse, Director, Loyola alumni Association. I am sharing this with you with great confidence that you will act with prudence and wisdom and also as an information. I also came to understand that you are a straight forward person.

Sir, I am associated with Loyola College since 2000 when I joined LIBA and worked as a Secretary to Fr. Casimirraj, I have worked in Stella Maris College for more than 10 years, and I also worked in Apollo Hospital during which time I had an opportunity to work for the then CM Mr. MGR and Madam Jayalalitha.

Sir, I am the mother of Mr. Joseph Kennedy an alumni of Loyola and who has contributed very much to the college. Today a complaint is given against him in Coimbatore through your influence.

Sir, you know about the credentials of Fr. Casimirraj, I don't have to tell you, I do not know how much you know about Xavier Alphonse, if you look back, in 1995 he was the Principal of Loyola College, he was there for 2 years and removed because of swindling money to the tune of crores, manipulation and many other complaints. He was also kept for a day in a police station at Kodaikanal for misbehaving with a lady. This is the credential of Xavier Alphonse.

In 2010 when Fr. Casimirraj conducted the world alumni congress, Fr. Casimirraj brought me back to Loyola College from HCL to work for him for the congress. You know that the congress was a great success. Sir, I have worked in several places and wherever I worked I have earned a good name. I really consider the days worked with Fr. Casimirraj were the golden days, for the simple reason, he is a man of excellence, simplicity, integrity, honesty and highly intellectual.

Xavier Alphonse succeeded Fr. Casimirraj, initially I had no problem with him, but slowly he started giving me trouble,



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he wanted to use the funds to his advantage, which I opposed. He started threatening me and harassing me. Through Balamurugan, he got a letter from Mr. Suresh Athithan in LOHO letter head against me. With this letter, he started harassing me, my family members. He was harassing me mentally, emotionally and sexually. I fell very sick because of the stress. I did not give a police complain, though many instigated me to do so, because I felt that the institution name should not be tarnished. Moreover, the management understood the severity of the situation and came to my rescue and helped me to overcome my stress.

At this juncture, I sent a very polished mail to the Rector, Principal and the Secretary of the college. PFA the mail sent by me to the management. Immediately they took away the power of signing checks from Xavier Alphonse. This triggered him further. Sir, if he wants to take action against me, he can do it with the help of the management, why should he involve the alumni members who have nothing to do with me, unless and otherwise I get into a rift with them. Off late I am getting threatening calls that I should not work in the rector's office, and if I continue to do so my life is in trouble. I have my own doubts, that this is also arranged by Suresh Athithan. I have brought to the notice of the management about the anonymous calls and they have asked me to ignore it.

Sir, may I request you to kindly understand the situation as an alumni of a prestigious college and relieve my son and his friend who is also an alumni from this case.

*Yours sincerely
Mary Rajasekaran"*

17. It is in this communication that the appellant states '*he was harassing me mentally, emotionally and sexually*'. The basis of this letter is the understanding of the appellant that a police complaint had been filed by the college implicating her son and his friend. It was the plea of the appellant before the Police Commissioner that such complaint should not be pursued as against her son. In conclusion she asks the Commissioner to relieve her son and his friend, who is also an alumni of



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the College, from the case. Much as we may try, we do not find any indication in this communication that the appellant was facing sexual harassment that she wished should be enquired into.

18. No doubt the words in italics above are to the effect that R5 was harassing the appellant mentally, emotionally and sexually. We however find that statement incidental to the rest of the contents of the letter and casual, in that it is bereft of any details whatsoever. We also do not find any plea/request of the appellant asking the Commissioner, to whom the letter was addressed, to take action with respect to her statement alleging harassment.

19. The appellant had considerable experience in matters of administration and would have known the procedure for such matters as well as the impact of her chosen words. She was also obviously aware of the fact that she was addressing a very senior Police official who had all authority to look into such serious allegations, if only she had made such a request. She however consciously desists from pursuing her statement any further and the evident consequence is that no complaint was made at all.

20. The third communication is dated 29.11.2015, and is an e-mail addressed to more than dozen persons, extracted in the interests of completion:-

Mr. Suresh Adithan,

*I think it's about time that I step up and break my silence.
I have my own reasons for doing it now.*



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I had no knowledge about you, your family, professional background etc. and I am sure you would say the same thing about me and all this only baffles me as to why you would write a malicious letter personally attacking me on a LOHO letterhead??? So if anyone pays you money would you write anything on any letterhead??? Did you even mind about the names of those people which were on that letter head? Were those people also endorsing the contents of the letter? Were you not aware that you were about to commit a heinous crime?

For the record, since when did Loyola Alumni Association and LOHO have any MOU signed?? So who is being irresponsible here!!! It was so damn obvious that the FAKE NEWS CLOWN (Xavier Alphonse) had dictated the entire letter as an insurance to threaten me for his acts of folly and I am very sure he would have taken care of you very well for obliging.

It also came to my attention that you are a bankrupt and would do anything for money!!! That's a pretty damaging profile record but why should you stoop down to such low levels and play havoc with my life and my family. WHY SO MUCH SPITE??? Is that why you also made those threatening calls to me!!! It is characterless individuals like you who are convenient targets for vultures like XA who always operate like a sly criminal.

Do you even know what the problem was between me and Xavier Alphonse??? If someone gives you money you will do anything??? Who are you...a thug!!! Ridiculous, I never expected this kind of behavior from you and Balamurugan.

FYI XA was trying his best to embezzle the one crore corpus from the alumni fund. It looked like I was the only person between him and the money and he tried his absolute best only before I alerted the management and his signatory powers were removed. My complaint on this matter is on the college record.

When there was a LOHO meet at Munnar, XA asked me not to come, even when the Rector, Principal and others gave me permission. He refused to give me permission, the reason being that he is possessive of me and I should not talk or interact with other Jesuits. What sort of a Jesuit Priest would behave in this manner? Being a lady I had kept quiet for many reasons. XA's moral compass was so discorded that I could have slipped him but instead kept quiet for the sake of the college.



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During KallooriPaathai, it was you, Mr. Balamurugan and Mr. Bose who made it to the top three whiners list. You complained that you were not invited on stage. You made a statement on behalf of LOHO that XA made it his family function. Mr. Balamurugan was so insecure that he pressured me to call him on stage to give away an award. Mr. Bose was deeply upset that he wasn't called on stage? It was so evident that all you people were working only for APPLAUSE and not for a CAUSE!!

Also XA did the same when he bribed another bankrupt criminal with several fraud cases against individuals and State Bank of India (CIBIL Listed defaulter) by the name Sivaramselvakumar to write a letter against his own peer, the institution any my son in The Presidency Club. However, the only difference is that you wrote it in your name on the LOHO letterhead but this criminal sent an anonymous letter to all the club members. It was again a futile attempt as those who know my son, know my son. The club members felt that dragging the name of an institution in a social club was certainly not in good taste. Either way it was all done under the instructions of XA. When XA was confronted he first denied any knowledge but later confessed and apologized to his peer for his part. He even called my son several times on his phone a week before he was transferred to Tiruchi. I STILL HAVE NO CLUE WHY HE CALLED MY SON.

My son, being my son obviously does not believe in shadow boxing and on the contrary he had directly confronted XA and Rector & Principal for their manipulative games for being a partner in crime and harboring a criminal and a womanizer like XA. As a matter of fact the Rector had pleaded with me and my son that we take serious action against XA as the Jesuit society itself is unable to deal with him. He also used a metaphor of a STREET DOG to make comparisons with XA. He gave us two options either to take action against XA or just step aside. We decided to go with the former and undertook all measures to take very serious legal action against XA especially with all the evidence we had gathered against him. It was he who called for a compromise and came crying like a gigantic loser. He pleaded with me and my son that we don't initiate any action against him.

I also want to state on record that I was almost prepared to file serious harassment charge with the Commissioner of Police in Chennai against XA. He harassed me so much that I had developed a stress related illness and was hospitalized for 3 months. And because the Rector pleaded with me and for the sake of the institutions name I did not press any charges.



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All those who were involved in this scam, if you people came from a good family, you LOHO members would checked with me before sending out such an irresponsible communication. Do you people consider your LOHO forum to be an internationally reputed one??? It only proves beyond doubt that it is a forum on paper with some characterless individuals at the helm who are crazy for attention, power, money and position.

Also in my assessment the LOHO group which often visited the alumni office, always came with a hidden agenda, and no wonder you were all sidelined for the world Alumni Congress.

Bottom line I would pretty much peg all the problems in the Loyola Alumni Association to the current secretary Mr. Balamurugan who has been doing nothing but a great disservice to the committee. Many even questioned me over a period of time if he is the secretary for LOHO or LAA!!! Such was the influx of LOHO members in the Loyola Alumni Committee. He has not only failed miserably as a secretary but is only concerned about safeguarding his position as the secretary. I take the liberty in stating this since I was the one who recommended his name to the college authorities hoping he would do some good.

Also the mail sent by George Michael was absolutely true. The past history of Xavier Alphonsa clearly states that he had paid an hefty amount between Rs.50,00,000 lacs to One crore as a settlement to a lady with whom he had an affair with and spoil her life as well. Did anyone care to find out the source of this Settlement!!!

Another member who instigated XA was Mr Maria Antony Irudayaraj who came with a proposal for placement of engineering students since his daughter was studying engineering he said we can make good money, he offered this proposal to one Mr. Biji he flatly refused saying we come to the college to give back to the college and not to make money. Since we did not entertain him, he poisoned XA against me. This information XA himself shared with me. He further added that all the Jesuits in the community were against me because I am a well wisher of Fr. Casimirraj and that XA alone is protecting and defending me. When I checked with the fathers they all laughed at me saying please don't take it seriously he is like that.

It is really disheartening to note that a lady was tortured so much and there was no one to come to my rescue. If your wife or sister was in my place, will she also get the same treatment?



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I now make an appeal to the non LOHO members of the alumni association to choose a faculty member of the college for the secretary position in the interest of safeguarding the reputation of the college. Earlier this was the practice, XA changed everything to suit his convenience.

Not only did you misuse the office of Mr. AKV to give a fake complaint against my son, I havenow gathered so muchinformation against XA by which I will be placing on record on my complaint against you withMr AKV for entertaining XA to torture, harass me mentally, physically and sexually. I now demand you for an apology letter on the LOHO letterhead falling which I will be forced to take severe action against you and XA. You better ask him to dictate an apology letter. I am not going to spare you people, I will take this matter to the Women's Right Forum and the Ministry of Minority Affairs.

I am really ashamed to know the fact that you possess zero moral values.

Mrs. Mary Rajasekaran"

21. In this letter as well, the appellant has vented various grievances as against the college, particularly R5 and all the problems relate to funding. In fact in this e-mail she says that she was almost prepared 'to file serious harassment charge with the Commissioner of Police in Chennai against XA. He harassed me so much that I had developed a stress related illness and was hospitalized for 3 months, And because the Rector pleaded with me and for the sake of the institutions name I did not press any charges'. To our mind, this would establish the position that she had, in fact, never filed any charges for sexual harassment against R5 and hence the question of referring the complaint to the ICC does not arise.

22. Section 9 of the POSH Act relates to filing of a complaint of sexual harassment. We are cognizant that, bearing in mind the position of



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a victim of sexual harassment, it would be extremely difficult to make an allegation of sexual harassment either orally or in writing, particularly as against persons holding senior positions.

23. Hence, there must be a purposeful understanding and interpretation of Section 9. Even the slightest allegation of sexual harassment must be viewed and taken seriously by the Institution and forwarded to the appropriate committee for proper action.

24. It is also unnecessary that the complaint be graphic in detail or contains, even at the first instance, all details of the allegations of harassment. It would suffice that the primary details of the alleged occurrence be available on record, in order to trigger the proceedings in this regard. That apart, a complaint may be made to any person in the Institution, who would then be duty bound to forward the same to the authorities for appropriate action.

25. To this extent, we would disagree with the learned Judge, who has required that the complaint itself be detailed, containing all particulars of the occurrences. In our view, intricate details may not be necessary at the very first instance and once a complaint, even if sketchy, but clearly alleging sexual harassment, providing primary details and seeking redressal, is received, such a complaint assumes the character of a complaint under Section of the Act. It is then mandatory for the authority concerned/ICC to cause enquiry and take a decision if the complaint warrants/merits further investigation.



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26. Since Section 9 requires a specific complaint to be filed in order that requisite action be initiated, incidental reference to sexual harassment cannot be escalated, or equated to the level of a statutory complaint. In the present case, the appellant has not outlined any primary details of the alleged sexual harassment. Equally importantly, she has not demonstrated any inclination to complain and seek redressal as against her grievances. In fact, in one of her communications, dated .29.11.2015, she says as much, stating that the behaviour of R5 had almost led to her filing of a complaint of harassment. Thus, even as per her admission, there was no complaint filed.

27. In order to assuage our conscience that there is an ICC in place to address complaints of sexual harassment, if made, we had directed that the details of constitution of the ICC in the college be produced before us. By way of compilation dated 25.11.2024, the constitution of the Anti-Sexual Harassment committees for the years 2012 – 13 onwards till present i.e., 2024 – 2025 have been placed before us.

28. With this, we see no further requirement to intervene in the order of the writ court and this writ appeal is dismissed. No costs.

[A.S.M., J] [G.A.M., J]
27.11.2024

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ssm

To



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The Registrar,
University of Madras, Chennai – 600 005.



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