



W.P.(MD)No.20346/2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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<i>Reserved on</i>	<i>25.07.2024</i>
<i>Pronounced on</i>	<i>24.10.2024</i>

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

W.P.(MD)No.20346 of 2023

G.Kishore Kumar

... Petitioner

Vs.

1. The Director of Medical and Rural Health Services (ESI),
Office of the Director of Medical and Rural Health Services (ESI),
Chennai - 6.
2. The Regional Administrative Medical Officer (ESI)
ESI, Madurai - 20.
3. The Inquiry Officer/Hospital Superintendent,
ESI Hospital, Sivakasi-626 124.
Virudhunagar District.
4. The Medical Officer,
Government ESI Dispensary,
Nagercoil, Kanyakumari District.
5. ABC

... Respondents

(Since the fifth respondent is the aggrieved woman her name is redacted as per Section 16 of the POSH Act.)



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari by calling for the entire records pertaining to impugned order passed by the 1st Respondent vide his proceedings in Ref. No.26325/ESI/SC/2021 dated 16.06.2023 and the Impugned Inquiry Report of the 3rd Respondent and quash the same.

For Petitioner : Mr.K.Kesavan

For Respondents : Mr.N.Ramesh Arumugam,
Government Advocate for RR1 to 4

ORDER

Heard Mr.K.Kesavan, the learned counsel for the petitioner and Mr.N.Ramesh Arumugam, the learned Government Advocate for the respondents 1 to 4.

2. The petitioner was working as an Office Superintendent at Government ESI Dispensary, Nagercoil. The fifth respondent sent a representation dated 29.04.2021 to the concerned superior authority to constitute Vishaka Committee for enquiring her complaint given against the petitioner. On 01.07.2021, the enquiry was conducted and the report was sent to the first respondent. Basing on that report, charges have been framed against the petitioner. Aggrieved over the same, the petitioner has filed a Writ Petition in W.P(MD). No. 2781 of 2022 and the same was disposed by



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observing that all the disputed facts on merits are to be adjudicated by the competent authority by affording an opportunity to all the parties by following the procedures as contemplated under the statute and rules in force. On 10.06.2022, the third respondent was appointed as an Enquiry Officer by the first respondent. In the said enquiry, the charges against the petitioner were proved. Aggrieved over the same, the petitioner has filed the present writ petition.

3. Mr.K.Kesavan, the learned counsel for the petitioner, submitted that the complaint given by the fifth respondent alleging sexual harassment is false; for the purpose of inquiring the complaints of sexual harassment an Internal Committee established in each department or office for inquiring such complaints shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority and the Internal Committee shall hold the enquiry as far as practicable in accordance with the procedure laid down under 17(b) of the Tamil Nadu Civil Services Discipline and Appeal Rules; as the above procedure was not followed the impugned order passed by the first respondent is illegal; there is violation of principles of natural justice; no appropriate opportunity was given to the petitioner during the domestic enquiry and witnesses were not examined in his presence; when the



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complaint has been given against the petitioner and one Thanu, the co-delinquent was not enquired along with the petitioner and that is in violation of Rule 9A of the Tamil Nadu Civil Services (Discipline & Appeal) Rules; in an enquiry conducted on 13.08.2019 on the very same allegations the charges were not proved and closed; the police complaint given by the fifth respondent's husband was also withdrawn by the fifth respondent; the report of the Internal Committee (Vishaka Committee) is improper because the members of Non-Governmental Organisations have not signed; on 02.08.2021 the petitioner raised an objection that the signature of members of Non-Governmental Organisations was not found in the impugned committee report, however they were found in the committee report dated 07.07.2021 and hence it is anti-dated; there is no reference about the other delinquent Thanu in the report; the fifth respondent is in the habit of filing false complaints of this nature.

4. Mr.N.Ramesh Arumugam, the learned Government Advocate appearing for the respondents 1 to 4, submitted that on 29.07.2019 the fifth respondent gave a false complaint and a detailed enquiry was conducted on 13.08.2019 and the same was closed as not proved; a report in this regard was sent by the fourth respondent on 29.01.2020 to the second respondent;



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however, the petitioner was given with the charge memo subsequently on 21.01.2022; the report of the Committee was served on the petitioner belatedly on 21.01.2022 and the complaint given by the fifth respondent on 29.07.2019 against the petitioner; the fourth respondent had issued a memo to the petitioner on 03.08.2019 and a preliminary enquiry was conducted and the same was closed on 20.08.2019; the allegations are not proved and all the staffs were warned to work without any hindrance to the administration.

4.1 Subsequent to the complaint filed by the fifth respondent's husband against the petitioner before the Vadaseri police Station, the fifth respondent was transferred to E.S.I. Dispensary, Thuckalay; the petitioner had filed a Criminal Original Petition in CrI.O.P.No.11258/2020 before the Madurai bench of Madras High Court seeking police protection and in which an observation has been made that if the complaint filed against the petitioner makes out any cognizable offence, the FIR should be registered and action to be taken; the fifth respondent had filed a writ petition in W.P. (MD) No.10306/2021 and sought a prayer to form Vishaka Committee to inquire on the complaint of sexual harassment given by her against the petitioner and another hospital worker by name Thanu through her complaint dated 20.09.2021 and 26.06.2021; hence the Internal Committee was formed



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by the second respondent as per the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (in short “POSH Act”); the committee inquired the complaints and the report of the committee was submitted and in which it is stated that the allegations against the petitioner were proved; based on the report of the said committee, disciplinary proceedings have been initiated against the petitioner after serving a charge memo and giving him sufficient opportunity of hearing; the petitioner’s request for cross-examining the witnesses was also allowed and the documents requested by the petitioner were also granted to him; the Enquiry Officer has submitted the report after conducting the enquiry by giving due opportunity to the petitioner and with the finding that the charges against the petitioner were proved; a copy of the report was also served upon the petitioner and he had also given his representation on 24.07.2023; in due course, the petitioner has filed this writ petition and obtained an order of stay against the respondent Government from proceeding to the next stage of action; there is no procedural violation; as per the report of the Vishaka Committee, the allegations against Thanu was not proved and hence the necessity to invoke Rule 9A of Tamil Nadu Civil Services (Discipline & Appeal) Rules; eight witnesses out of twelve witnesses have deposed against the petitioner; hence there is no merits in the grounds raised by the



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petitioner.

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5. The petitioner was working as an Office Superintendent in E.S.I. Dispensary, Nagercoil during the year 2019 and the fifth respondent was working as a Staff Nurse. On 29.07.2019 the fifth respondent had given a complaint against the petitioner alleging sexual harassment. Immediately the said complaint was not inquired by the Complaints Committee to be constituted under the POSH Act. The then Medical Officer by name Mrs.Eugene Reena Nesakumari closed the complaint stating that there is no sufficient materials and the said Medical Officer has given a general warning to all the staff members to work harmoniously without causing hindrance to the administration. Since the fifth respondent felt that she was not given with due redressal, she has filed a writ petition subsequently in W.P.(MD) No. 10306/2021 with a prayer to direct the fourth respondent to constitute a Complaints Committee in compliance of POSH Act.

6. The fifth respondent was sending several representations insisting the same and alleging the harassment caused to her by the petitioner. Only thereafter the Internal Committee was formed and after the Committee enquired the complaint, it has given a report stating that the allegations against the petitioner were proved. Subsequent to that the petitioner has been



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subjected to disciplinary proceedings and in which the charges against him were proved and a copy of the report has also been served upon him.

7. The petitioner has raised a fundamental point that as per Rule 17(b) (ii) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, the Internal Committee shall be deemed to be the Enquiring Authority appointed by the Disciplinary Authority and hence, it is not fair on the part of the third respondent Enquiry Officer to hold an enquiry consequent to the report filed by the Internal Committee. For the sake of Clarity, the Rule 17(b)(ii) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules is been extracted hereunder:

“Rule 17(b): (ii) After the inquiry or personal hearing referred to in clause (i) has been completed, the authority competent to impose the penalty specified in that clause, is of the opinion, on the basis of the evidence adduced during the inquiry, that any of the penalties specified in Rule 8 should be imposed on the person charged, it shall, before making an order imposing such penalty, furnish to him a copy of the report of the inquiry or personal hearing or both, as the case may be, and call upon him to submit his further representation, if any, within a reasonable time, not exceeding fifteen days. Any representation received in this behalf within the period shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidence adduced during the inquiry only. It shall not be necessary to give the



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person charged any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Tamil Nadu Public Service Commission, the disciplinary authority shall consult the Tamil Nadu Public Service Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty:

Provided further that in the case of a person appointed to a post in a temporary department by transfer from any other class or by recruitment by transfer from any other service, the State Government may, at any time before the appointment of such person as a full member to the said post, revert him to such other class or service, either for want of vacancy or in the event of his becoming surplus to requirements or if the State Government are satisfied that he has not got the necessary aptitude for work in the said post, without observing the formalities prescribed in this sub-rule.”

8. Rule 20-B of Tamil Nadu Government Servants Conduct Rules would obligate that no Government Servant shall indulge in any act of sexual harassment and that every Government Servant who is in charge of a workplace shall take appropriate steps to prevent sexual harassment to any women at work places and the also defines sexual harassment. The said rule



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is extracted hereunder for a better appreciation:

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“ 20B: Prohibition of sexual harassment of working women:

(1) No Government servant shall indulge in any act of sexual harassment of any woman at work place.

(2) Every Government servant who is in charge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.”

9. The above definition would show that it is in accordance with the guidelines laid down in ***Vishaka and others Vs. State of Rajasthan & others reported in AIR 1997 SUPREME COURT 3011***, wherein the definition for sexual harassment is held as under:

“ .. 23. Sexual harassment includes such unwelcome sexually determined behavior as physical contacts and advance, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions.”

10. As per Section 6 of the POSH Act, each workplace shall have a Compliance Committee. As per Section 11(1) of the POSH Act, if the respondent is an employee, the Internal Committee shall make an enquiry in accordance with the provisions of the Service Rules applicable to the respondent or in any such manner as may be prescribed for the purpose of



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making an enquiry of that nature, the Internal Committee shall have the same powers as vested with the Civil Court and the enquiry should be completed within a period of 90 days. On the completion of enquiry by the Internal Committee it shall provide a report of its finding to the employer within a period of 10 days from the date of completion of the enquiry. If the Internal Committee arrives at a conclusion that the allegations against the respondent have been proved, it shall recommend the employer of the District Officer as the case may be, to initiate action for misconduct in accordance with the provisions of the service rules applicable to the respondent. So the introduction of Rule 17(b)(ii) of the Tamil Nadu Civil Services (D&A) Rules, 1955, did not take away the discretion of the committee to recommend the disciplinary action as per Section 13 of the POSH Act.

11. Section 28 of the POSH Act would ensure that the provisions of the POSH Act shall not be in derogation to the provisions of any other law. Hence, the Internal Committee formed under POSH Act should be considered as the inquiring authority appointed by the disciplinary authority for the purpose of disciplinary action initiated against him and hence the disciplinary action initiated by appointing the third respondent as Enquiry Officer, subsequent to the report of the Internal Committee is illegal. In other



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words, the Disciplinary Authority could have chosen to punish the petitioner immediately after the Internal Committee submitted its report with the finding that the allegations are proved and hence there is no need for a separate domestic enquiry. By issuing charge memo to the petitioner consequent to the receipt of the Internal Committee's report, the petitioner has got an added advantage of making his defense in another enquiry conducted by the third respondent in accordance with the disciplinary rules. So the added benefit given to the petitioner cannot be considered as less advantageous to him and that it is in contravention to the Rule 17(b)(ii) of the Tamil Nadu Civil Services (D&A) Rules,1955 or much less any of the provisions under POSH Act.

12. The next legal point raised by the petitioner is that the fifth respondent has raised various allegation against one Thanu who is a Hospital worker and hence in accordance with Rule 9A of the Tamil Nadu Civil Services (D&A) Rules,1955, the enquiry ought to have been conducted by joining Thanu also along with the petitioner during the Domestic Enquiry.

13. The fourth respondent / Medical Officer has stated in the counter that the Internal Committee report does not render any adverse finding



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against Thanu. Hence, it did not necessitate the fourth respondent to initiate any disciplinary action against Thanu and hence the invocation of Rule 9A of the Tamil Nadu Civil Services (D&A) Rules, 1955 does not arise.

14. Now with regard to other grounds, the main ground raised by the petitioner is that he was not given with sufficient opportunities and that it is in violation of principles of natural justice.

15. In fact, the petitioner after receiving a copy of the Internal Committee report, has challenged the same by way of filing a writ petition in W.P.(MD) No.2871/2022. Vide order dated 15.02.2022, the writ petition was disposed by giving liberty to the competent authority to agitate the issue after affording opportunity to all the parties concerned and by following the procedure contemplated under the Statutes and Rules in force. So the Internal Committee's report has not been quashed and the petitioner has got an opportunity to get the disputed facts adjudicated by the Enquiry Officer during the disciplinary proceedings.

16. Even according to the materials submitted by the petitioner, especially the enquiry report, it is seen that the petitioner has been given



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with an opportunity to cross-examine some of the witnesses. The then Medical Officer Mrs.Eugene Reena Nesakumari has also been examined by the delinquent even though she was not cited as a witness on the side of the department. In fact, the said Medical Officer has given a closure to the complaint given by the fifth respondent without causing it to be enquired by the Internal Committee. However, subsequent to the direction of the High Court the complaint was enquired by the Internal Committee. The Internal Committee has also inquired the then Medical Officer Dr.Eugene Reena Nesakumari and in which the said Doctor has given evidence stating that the allegations made by the fifth respondent against the petitioner are all true. So it might be for the administrative convenience and to ensure harmony among workers.

17. At the first instance Mrs.Eugene Reena Nesakumari did not take the complaint of the fifth respondent so seriously and closed it just by issuing warning to the workers. But, that is not the way in which the complaints of sexual harassment should be handled and it demands more sensitivity and the rules and statutes also would mandate certain procedure to be adhered while dealing with such complaints. Obviously Mrs.Eugene Reena Nesakumari did not follow the same and later the duly formed Internal



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Committee had enquired the complaint and given a finding that the allegations of sexual harassment made by the fifth respondent against the petitioner were proved.

18. It appears from the record that the petitioner and the fifth respondent were in friendly terms at some point of time. The petitioner is alleged to have developed more acquaintance with the fifth respondent and involved himself in helping the fifth respondent as her husband was working abroad. The inconvenience is said to have started when the petitioner is said to have taken advantage of her situation and started to harass her. At some point of time the fifth respondent was compelled to file a complaint against the petitioner in this regard. The tension between the petitioner and the fifth respondent had also affected the office environment and caused difficulties for the administration. The husband of the fifth respondent has also given a complaint against the petitioner through online and subsequent to that the fifth respondent has been transferred to some other place.

19. However, the fifth respondent herself had withdrawn the complaint given by her husband but she was persistent in pursuing the complaint given by her against the petitioner for causing sexual harassment,



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which was inquired by the Internal Committee. In fact the fifth respondent has filed a writ petition challenging the order of transfer and the said petition was allowed by cancelling her transfer. The petitioner was also transferred to some other place and he had challenged the same by way of filing some other writ petition. In the meanwhile he was given with yet another transfer.

20. The petitioner was subjected to departmental action by giving him the charge memo containing the following charges:

“ 10... the following two charges raised against the petitioner as held as “Proved”

(i). that he was in the habit of speaking double entendre words with act of unwelcome non verbal conduct & sexual harassment against ABC during working hours at ESI Dispensary, Nagercoil, Kanyakumari District.

(ii) Due to non co-operation for the sexual expectations, he had harassed her by hiding the attendance register.”

21. As stated already though the Internal Committee has also given an adverse finding against the petitioner, the department thought it fit to initiate a fresh enquiry in accordance with the disciplinary rules by appointing the third respondent as Enquiry Officer. The petitioner was given with an opportunity to offer his explanation and at his request some of witnesses



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whom he wanted to cross-examine were also permitted to be cross examined.

In fact the petitioner had demanded to appoint another Inquiry Officer along with the demand for requesting certain copies of the document. Though the enquiry was completed and the report was filed prior to such request, the first respondent thought it fit to give instruction to the third respondent to furnish the documents as requested by the petitioner. Once again the petitioner was given with another opportunity of providing all the additional documents which he required and he was allowed to examine the witnesses. At each stage of proceedings, the petitioner was given with sufficient opportunities and in fact the report of the third respondent would show the manner in which the petitioner was able to cross-examine the witnesses by asking several questions.

22. Much ado was made by the petitioner about the previous punishments given to the fifth respondent for some of the lapses but the petitioner failed to establish the relevancy of those actions to the present sexual allegations which was proved before the Internal Committee as well the Enquiry Officer appointed by the Disciplinary Authority.



23. The further submission made by the petitioner is that the fifth respondent was in the habit of giving false complaints. But when the fifth respondent makes such allegations against the petitioner, it was properly enquired by a committee constituted as per the provisions of POSH Act and in which a finding has been rendered that the allegations made against the petitioner were proved. During the disciplinary action, out of 12 witnesses 8 of the witnesses have given evidences against the petitioner. In fact some of the witnesses were not cited but called by the petitioner for cross-examination also stated that the allegations made in the complaint given by the fifth respondent against the petitioner was true.

24. The petitioner submitted that the fifth respondent has been in the habit of giving such complaint against several persons. The alleged attitude of the fifth respondent for giving complaints against persons who alleged to have caused harassment can be viewed from two angles. One by appreciating her courageousness to initiate action whenever such occurrence happens by raising doubts that she is in the habit of exaggerating or giving false complaint.



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25. Had the complaint given by the fifth respondent against the petitioner was found to be false then a little weight can be given to the allegation now made by the petitioner against the fifth respondent. The petitioner did not show any materials before the Internal Committee to prove that the fifth respondent was in the habit of making false complaints and the complaint made against him was one such complaint. In a detailed enquiry made by the department by examining 12 witnesses and getting statement of 8 witnesses against the petitioner and also offering the petitioner for cross-examination, the findings have been rendered that the charges were proved. So the allegations that the fifth respondent was in the habit of giving false complaint can only be seen as nothing but a frustrated statement of the fifth respondent.

26. As the enquiry has been conducted against the petitioner by the Disciplinary Authority by complying all the procedure contemplated in accordance with the disciplinary rules and a finding has been given by the Enquiry Officer on the basis of the strong materials available before him and after giving sufficient opportunity to the petitioner, the report of the third respondent cannot be considered as illegal. Hence, I feel the impugned report of the third respondent needs no interference.



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27. In the result, the Writ Petition is **dismissed** and the fifth respondent is directed to proceed further in pursuant to the enquiry report given by the third respondent and pass appropriate orders. No costs.

24.10.2024

Index : Yes
Speaking
Neutral Citation : Yes
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To

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