



WP(MD)No.6376 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.05.2025

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.6376 of 2021
and
WMP(MD)No.4976 of 2021

G.Thirupathi Prabhakar

: Petitioner

Vs.

1. (Deleted)
- 2.The Deputy Inspector General of Police,
Madurai Range,
Madurai.
- 3.The Superintendent of Police,
Madurai District,
Madurai.
- 4.The Chairperson / ADSP / CAWC,
Internal Complaints Committee,
Madurai District.
- 5.The Senior Administrative Officer / Oral Enquiry Officer,
O/o.The Deputy Inspector General of Police,
Madurai Range,
Madurai.



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6.P.Roja Ramani

7.A.Rajeswari

: Respondents

[R.1 deleted vide order dated 28.06.2023]

[R.6, R.7 impleaded vide order dated 28.06.2023]

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records relating to the impugned order of the fourth respondent in C.No. 03/ADSP/CAWC/MDU/2020 dated 10.01.2020 and the consequential charge memo issued by the second respondent vide Na.Ka.No.A2/05676/340/2020 dated 17.09.2020 under Rule 17(b) of Tamil Nadu Government Servant (Discipline and Appeal) Rules and the appointment of fifth respondent as Enquiry Officer vide proceedings in C.No.A2/05676/340/2020 dated 03.12.2020 and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai
for Mr.S.Balamurugan

For Respondents: Mr.P.T.Thiraviam
Government Advocate
for R.2 to R.5

No appearance for R.6, R.7

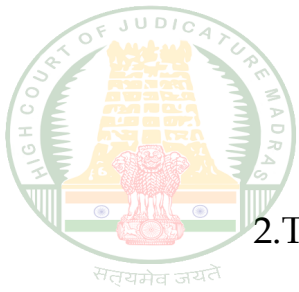


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ORDER

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The petitioner is a Section Superintendent in the District Police Office, Madurai. Two women staff have lodged a complaint as against him that he has sexually harassed them. Based on their complaints, the internal committee constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [hereinafter referred to as 'the Act'], has conducted an enquiry and found that the allegations levelled as against the petitioner are *prima facie* made out and submitted its report to the Head of the Department. Based on the report and the complaint of the victims, a disciplinary proceedings was initiated as against the petitioner, by issuing a charge memo dated 17.09.2020 under Rule 17(b) of the Tamil Nadu Government Servant (Discipline and Appeal) Rules and the fifth respondent was appointed as the Enquiry Officer, by proceedings dated 03.12.2020. The charge memo dated 17.09.2020 and the appointment of Enquiry Officer dated 03.12.2020 are challenged in this writ petition.



2.The main contention of the petitioner is that the charge memo was issued as against the petitioner based on the report of the internal committee constituted under the Act. The internal committee is not having any jurisdiction to enquire into the complaint made against him, in view of latches. Even according to the complainants, for the alleged incident said to have taken place in the year 2006, complaints have been made in the year 2019.

3.By referring to the provision u/s.9 of the Act, learned Counsel for the petitioner submitted that the internal committee is not expected to conduct an enquiry on those complaints which were made after a period of three months from the date of incident. Section 9 is extracted as under:-

“9.Complaint of sexual harassment. -

(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:



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Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section."

4.The second contention of the petitioner is that the charge memo was issued based on the internal committee report. The internal committee was headed by an Officer in the rank of Additional Deputy Superintendent of Police, as the Chairperson. In the disciplinary proceedings, the Chairperson has been arrayed as one of the witnesses. The fifth respondent / Enquiry



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Officer is an officer subordinate to the Chairperson. In the event, if any evidence has been given by the Chairperson, being the superior officer, the Enquiry Officer may proceed against the petitioner.

5.Learned Government Advocate denied the allegations made by the petitioner and submitted that this petitioner has harassed the women staff sexually and it continued from the year 2006 onwards. The complaint was lodged along with a CD, which expose the nature of harassment made by the petitioner. He further submitted that this petitioner did not cross examine the complainants and did not produce any defense witness during the enquiry before the internal committee. He further submitted that as per the Service Register of the petitioner, he was already awarded with a punishment of postponement of increment for a period of two years, in connection with another departmental proceedings.

6.This Court considered the rival submissions made on either side and perused the materials placed on record.



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7.As per Section 9 of the Act, the aggrieved woman has to make a complaint in writing to the internal committee within a period of three months from the date of incident and in case of series of incidents, within a period of three months from the date of last incident. The internal committee is also empowered under the proviso to extend the time limit by another three months, if it is satisfied that the victim was prevented from filing the complaint within the stipulated period. Sub-Section 2 of Section 9 enables the legal heirs or other persons to make a complaint under this section, if the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or both or otherwise.

8.In this case, two women have preferred complaints. As per the complaint of one of the victims, the petitioner said to have continuously harassed her. The complaints were also supported with audio recordings.

9.In *Re Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath* [(1991) 2 SCC 141], the Hon'ble Supreme Court has held as

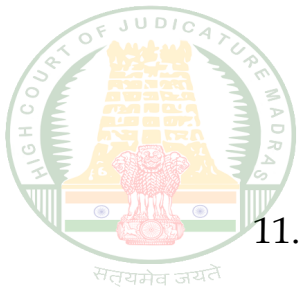


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"25.The expression 'continuing offence' has not been defined in the Code. The question whether a particular offence is a 'continuing offence' or not must, therefore, necessarily depend upon the language of the statute which creates that offence, the nature of the offence and the purpose intended to be achieved by constituting the particular act as an offence."

10.In ***Udai Shankar Awasthi v. State of U.P*** [(2013) 2 SCC 435], the Hon'ble Supreme Court has held as follows:-

"24. In Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneswar Maharaj Sansthan [AIR 1959 SC 798] this Court dealt with the aforementioned issue, and observed that a continuing offence is an act which creates a continuing source of injury, and renders the doer of the act responsible and liable for the continuation of the said injury. In case a wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the said act may continue. If the wrongful act is of such character that the injury caused by it itself continues, then the said act constitutes a continuing wrong."



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11.Following these ratios, this Court, in ***R.Mohanakrishnan v. Deputy***

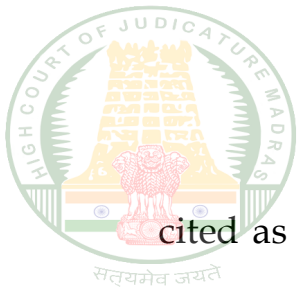
Inspector General of Police, Coimbatore Range and Others [WP.No.10707

***of 2024, dated 11.06.2024*], has held as follows:-**

“8.6 The instant case is not an isolated incident of misconduct such as passing lewd remarks or inappropriate touching etc. In such a solitary instance, the victims cannot be permitted to withhold and exercise their right of remedy to their wish and time, thereby preventing the delinquent employee from having a fair and impartial hearing to be in a position to defend himself effectively. Whereas in cases of serious allegations such as rape or continuous molestation or harassment, the same would be a continuing misconduct and every day until the situation is redressed or brought to the notice of the appropriate authority would give rise to a fresh cause of action. The purpose of the provision of Limitation in Section 9 has to be understood in this context.”

12.Therefore, this Court is not inclined to accept the petitioner's plea that the complaint is hit by limitation, inasmuch as it is a continuous one.

13.The petitioner has also raised another grievance that the internal committee was headed by ADSP / Chairperson. The Chairperson has been



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cited as witness no.5 in the charge memo. The petitioner apprehends that the Enquiry Officer / fifth respondent, being a subordinate officer to the ADSP / Chairperson, would be carried over by the evidence. The apprehension of the petitioner is unwarranted. In any event, it is made clear that the Enquiry Officer has to give his findings independently, based on the available materials, uninfluenced by the rank / designation of the persons who are giving evidence.

With the above observations, this writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Internet : Yes
gk

16.05.2025

To

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Madurai.
- 2.The Superintendent of Police,
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