

MANU/TN/2712/2024

Equivalent/Neutral Citation: (2024)IIILLJ87Mad

IN THE HIGH COURT OF MADRAS

W.P. No. 10707 of 2024, W.M.P. Nos. 11796 and 11797 of 2024

Decided On: 11.06.2024

R. Mohanakrishnan **Vs.** The Deputy Inspector General of Police, Coimbatore Range and Ors.

Hon'ble Judges/Coram:

D. Bharatha Chakravarthy, J.

Counsels:

For Appellant/Petitioner/Plaintiff: S. Sivakumar

For Respondents/Defendant: Stalin Abhimanyu, Additional Government Pleader

Case Category:

SERVICE MATTERS

Case Note:

Service - Enquiry report - Quashing of - Section 9 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) - Present petition filed to challenge enquiry report submitted by Internal Complaints Committee (ICC) recommending disciplinary action against petitioner for incidents of sexual harassment - Whether impugned enquiry report is liable to be quashed, as complaint is beyond six months and hence violative of Section 9 of POSH Act - Held, allegations against petitioner are not isolated incidents but part of pattern of serious and continuous misconduct, including rape, molestation, and harassment -Such ongoing misconduct creates fresh cause of action each day until addressed - Argument that complaint filed in 2022 for incidents occurring in 2018 is time-barred under Section 9 of POSH Act is rejected - Petitioner's reliance on technicalities is not sufficient to invalidate complaint or stall inquiry - Procedural timelines are intended to ensure prompt action but are not grounds for delinquent to escape punishment or halt inquiry - Despite some victims retracting their statements, two others confirmed sexual harassment by petitioner - Complaint is not barred by limitation, and petitioner must defend charges on their merits - Petitioner must face inquiry based on substantive allegations rather than procedural lapses - Petition dismissed. [8.6],[8.7],[8.8],[8.9]

ORDER

D. Bharatha Chakravarthy, J.

1. This Writ Petition is filed challenging the enquiry report dated 06.03.2023 submitted by the 3rd respondent - Internal Complaints Committee (ICC), The Nilgiris District. By the said report, the ICC took into account that a criminal case was already registered against the petitioner / delinquent and recommended that in respect of every incident of sexual harassment committed by him, disciplinary action should be taken. The ICC also

recommended that the petitioner be continued under suspension, till the completion of the departmental proceedings. In the event of revocation of suspension, the petitioner should be transferred to any distant place, outside the Nilgiris District.

Case of the Petitioner:-

2 . The case of the petitioner is that he was appointed as Junior Assistant on compassionate grounds on 08.02.1995. He was promoted as Assistant(2002) and further as Superintendent(2005). While so, when the petitioner was serving as Superintendent in the District Police Office, Nilgiris District, as part of his official duties, he conducted an audit and found that two Scorpio vehicles were sanctioned by the Office of the DGP, during the year 2020 for the purpose of community policing service centres at hill areas for the Tribals. However, the said vehicles were used by the officers instead of the scheme, which amounts to misuse of Government property and funds and therefore, he submitted a report to the administrative officer, for necessary action and perusal of the Superintendent of Police.

2.1. After submission of the report, he went on leave, since his mother was sick. While so, the person who was actually using the vehicle upon coming to know about the audit report, with the help of her associates engineered the co-employees and on their ill advice one Mrs. AAA, Junior Assistant had made a statement containing certain allegations on 05.12.2022 and 07.12.2022. Even in the said statements, there were no allegations of sexual harassment. However, by threat and coercion of the concerned officials on 08.12.2022, she made a false allegation that the petitioner sexually misbehaved with her during the year 2018 and that she was under depression and mental agony from then on.

2.2. Even though the complaint was not lodged within three months from the alleged last incident of sexual harassment, still the ICC was constituted as per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'the POSH Act'). The ICC proceeded further with the enquiry of the time- barred complaint. The Committee did not conduct the enquiry as contemplated under Section 7 of the POSH Act. It failed to send a copy of the complaint to the petitioner within a period of 7 working days. The Committee did not also follow the principles of natural justice. Only after the persistent effort of the petitioner, a copy of the complaint was furnished to him. No opportunity to cross-examine or a fair hearing was given to the petitioner.

2.3. Apart from the said Mrs. AAA, two other persons' names (Ms. BBB and Ms. CCC) were also referred to in the enquiry report. The statements made by them do not come within the definition of sexual harassment. In any event, the said allegations also relate to the period 2018 to 2021. Further, Section 13(i) of the POSH Act contemplates that the copy of the enquiry report should be served on the petitioner within a period of 10 days from the date of completion of the enquiry. The employer shall also act upon the recommendation, within 60 days of its receipt. Without complying with the above, only on 01.12.2023, a charge memorandum was issued to the petitioner. Even while issuing the charge memorandum, the respondents did not furnish any of the documents mentioned in Annexure - III. Only after a request was made by the petitioner, the documents were furnished to him on 12.02.2024. Even a perusal of the documents would make it clear that the witnesses were not examined in the presence of the petitioner and no opportunity whatsoever was granted to the petitioner to cross-examine the witnesses. As a matter of fact, even the defence witnesses were shown as if they were prosecution witnesses. There is complete non-application of mind on the

part of the committee and hence the Writ Petition.

Case of the Respondents:-

3. When the Writ Petition came up for admission, Mr. Stalin Abhimanyu, the learned Additional Government Pleader appearing on behalf of the respondents produced a copy of the entire set of records of the enquiry. Since the grounds which were raised in the Writ Petition are either legal grounds of noncompliance with the provisions of the POSH Act or violations of procedure /principles of natural justice by the committee, the learned Additional Government Pleader argued the matter on the strength of the records. Accordingly, the matter was taken up for final disposal.

Submissions of the petitioner:-

4. Mr. Sivakumar, the learned counsel for the petitioner firstly would submit that even by taking the statements of the alleged victims at face value, it would be clear that all the three victims had made allegations regarding the occurrences which took place in the year 2018 - 2019. As per the statements of one of the victims, the last incident took place in the year 2018 and as far as the period of limitation is concerned, the complaint should be lodged within a period of three months from the alleged incident. However, the complaint was lodged only on 05.12.2022. Therefore, the entire proceedings are hopelessly barred by limitation. The second proviso to Section 9 of the POSH Act permits the 3rd respondent - committee to extend the time limit for filing the complaint only for a further period of three months. Therefore, from the language of Section 9 of the Act, it would be clear that the outer limit of a six-month period is mandatory. In support of his contention, the learned counsel would rely upon the Judgment of the Calcutta High Court in Shri Debdulal Maity Vs. National Insurance Co. Ltd. & Ors., MANU/WB/1391/2014 whereunder the punishment which was imposed was quashed as the complaint was not lodged within the period of limitation.

4.1. The learned counsel placed further reliance on the Judgment of the Calcutta High Court in Prof. Dr.Saswat Samay Das Vs. Indian Institute of Technology & Ors.2016 SCC OnLine Cal 9957 more specifically paragraph No.3 to contend that the complaint ought to have been instituted within a period of six months. The learned counsel would rely upon the Judgment of the High Court of Kerala in K.Reeja Vs. Pradeep T.C., and Ors., 2017 SCC OnLine Ker 10625 more specifically in paragraph No.10 to contend that when the complaint is even beyond the condonable time limit, the authorities have no power to act upon the said complaint and pass orders.

4.2. The learned counsel would next submit that even in matters of sexual harassment unless appropriate enquiry is conducted by allowing the petitioner to cross-examine the witnesses, no punishment whatsoever can be imposed on the petitioner. In support of his submissions, the learned counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in Dr. Vijayakumaran .C.P.V Vs. Central University of Kerala and Ors., MANU/SC/0094/2020 : 2020:INSC:93 : (2020) 12 Supreme Court Cases 426 more specifically paragraph No.12 to contend that such complaints should be lodged within the period prescribed under Section 9 of the Act and such complaints ought to be taken to its logical end by initiating departmental/regular enquiry as per the service rules so as to enable the employee to vindicate his position and establish his innocence.

4.3. The learned counsel further relied upon the Division Bench Judgment of the High Court of Calcutta in Institute of Hotel Management and Ors. Vs. Suddhasil Dey and Another, MANU/WB/0458/2020 more specifically relying upon paragraph Nos.28, 29 and 34 to contend that the principles of natural justice have to be mandatorily followed

before imposing any punishment. The learned counsel would finally place reliance on *Aureliano Fernandes Vs. State of Goa and Ors.*, MANU/SC/0572/2023 : 2023:INSC:527 : (2024) 1 Supreme Court Cases 632 more specifically by relying upon paragraphs Nos.65 to 70 and 81 to contend that merely because an enquiry has been conducted by the ICC, it would not be a ground to give a complete go-by to the procedural fairness of the enquiry required to be conducted especially when such enquiry would lead to the imposition of a major penalty. Further, to press home both his contentions, relating to appropriate evidence being brought on record and relating to limitation, the learned counsel also relies upon the Judgment of the High Court of Madhya Pradesh in *Mukesh Khampariya Vs. State of Madhya Pradesh and Ors.*, MANU/MP/2838/2023 more specifically paragraph Nos.14, 17 and 19 of the Judgment. Thus, he would submit that the enquiry being statutory in nature and binding on the employer and the employer has chosen to act as per the enquiry, is liable to be set aside by this Court for the aforesaid illegalities.

Submissions of the Respondents:-

5 . Per contra, M r Stalin Abhimany u, the learned Additional Government Pleader appearing on behalf of the respondents would submit that the complaint was lodged on 05.12.2022 to the Superintendent of Police and the Superintendent of Police thought it fit to refer the complaint to the ICC. The plain reading of Section 9 of the Act would make it clear that the period specified therein will be applicable if only the victim had made a complaint to the ICC and the period which is mentioned in Section 9 is not applicable when the complaint is referred by the employer.

5.1. Secondly, in the instant case, the petitioner had indulged in harassing several women employees. Even though some of them did not stand to their version during the course of the enquiry, it can still be seen that the petitioner had indulged in a series of misconduct and the first victim, viz., Mrs. AAA was subjected to rape and in this regard a case in Crime No.12 of 2022 was registered by All Women Police Station, Ooty, for the offences under Sections 376 (2) (k) and 506 (i) of the Indian Penal Code. Despite such a heinous offence committed against her, out of fear, she could not lodge the complaint immediately and in such a situation, every day the victim is prevented from lodging a complaint. The act of sexual harassment should be held to be a continuing act and therefore, the argument relating to the period of limitation has to be rejected.

5.2. He would submit that the copy of the complaint and other materials which are sought by the petitioner were furnished by the ICC. The petitioner had submitted his explanation and considering the sensitive nature of the case and the frailty of the victims, instead of directly being permitted to cross-examine the victims, pertinent questions as per the petitioner's case were put across the victims and their answers were elucidated.

5.3. A reading of the enquiry report would make it clear that the witnesses were subjected to cross-examination. Therefore, when due opportunity has been given to the petitioner, the arguments relating to noncompliance with the principles of natural justice do not hold any water. In support of his submissions, the learned Additional Government Pleader would rely upon the Judgment of the High Court of New Delhi in *Ashok Kumar Singh Vs. University of Delhi and Ors.*, MANU/DE/2419/2017 whereunder the High Court of New Delhi had considered the atmosphere of a sexual harassment case and the necessity for giving the victim a space to express her case had upheld the cross-examination by the local commissioner himself by permitting the petitioner to submit a questionnaire.

5.4. He also further relies upon the Judgment of the Hon'ble Supreme Court of India in *Medha Kotwal Lele and Ors. Vs. Union of India and Ors.*, MANU/SC/0898/2012 : (2013) 1 Supreme Court Cases 297 whereby the Hon'ble Supreme Court of India has held that the report of the ICC will be binding on the disciplinary authorities and had even directed amendments in respective Conduct Rules in tune with the Judgment made in *Vishaka Vs. State of Rajasthan*, MANU/SC/0786/1997 : 1997:INSC:604 : (1997) 6 SC 241.

Questions arise for consideration:-

6. I have considered the rival submissions made on either side and perused the material records of the case. The following questions arise for consideration in the instant case :

- (i) Whether or not, the impugned enquiry report is liable to be quashed, as the complaint is beyond six months and hence violative of Section 9 of the Act?
- (ii) Whether or not, the impugned report is liable to be quashed for violation of principles of natural justice?

The Prelude:-

7. Before proceeding to consider the questions mentioned above, it is necessary to advert to the menace of sexual harassment in the work-place and the development of the law relating to the prevention of the same, to more appropriately address the submissions made concerning the provisions of the Act.

7.1. Sexual harassment of women by men in the workplace is a pervasive and often hidden social problem. Sexual harassment encompasses a wide range of behaviours¹. In the context of sexual harassment of women in the workplace, the POSH Act contains an inclusive definition under Section 2 (n), which reads as follows:-

"2(n) - "sexual harassment" includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:--

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non- verbal conduct of sexual nature;"

7.2. Sexual harassment causes considerable harm to women. Harassment undermines women's workplace authority, reduces them to sexual objects and reinforces sexual stereotypes and inappropriate gender behaviour. It can have deleterious consequences for the mental and physical health of women. The victims of harassment continue to report depressive symptoms even after a decade later and the longevity of the after-effects is more. The mental deterioration includes depression, self-doubt, withdrawal from employment, fear of being labelled as troublemakers and spoiling the organisation's reputation etc.,². In the Indian context also the fear is writ large as the victims themselves will be blamed for the harassment. Such secondary victimization is

not only in the hands of the employer or the larger society, it is also feared within the immediate society and family.

7.3. Sexual harassment of women in workplace, not only seriously harms the victims, but has a serious consequence for women workers as a group themselves and thus has a telling effect on the workforce of every organization and as a result on the economy of the nation itself. Thus, there is a need to deal with the same not just by a remedial action, but also by implementing measures for prevention and also to provide protection for the victims specifically and to the women workforce in general.

7.4. Since there was no legislation governing the field, the Hon'ble Supreme Court of India by taking note of the sexual harassment in workplace prevailing in our country coupled with the international treaty obligations stepped in and issued mandatory directions in the exercise of its power under Article 141 of the Constitution of India in Vishaka's case (cited supra). Since the directions were not implemented by all the States and stakeholders including the employers, the matter was further taken up in Medha Kotwal Lele and Ors. Vs. Union of India and Ors. MANU/SC/0898/2012 : (2013) 1 Supreme Court Cases 297 and a series of directions were issued with respect to the implementation of the guidelines in Vishaka's case (cited supra). As a matter of fact, the States and the Union Territories were directed to carry out adequate and appropriate amendments in their respective Civil Service Conduct Rules. The Court also held that the right to a safe and secure work environment is a fundamental right flowing from Article 21 of the Constitution of India.

7.5. The Hon'ble Supreme Court of India in Aureliano Fernandes case (cited supra) considered the lapses in enforcement of the Act and issued a series of directions to the Union of India, State Governments and the Union Territories. Further, the Hon'ble Supreme Court of India had again considered the issue in detail in Union of India Vs. Dhillip Paul MANU/SC/1213/2023 whereby the Hon'ble Supreme Court of India had held that the Court should not get swayed by discrepancies and hyper technicalities while considering the cases relating to sexual harassment and the overall fairness of the enquiry should be considered regarding any procedural violation which is complained of. Union of India and Ors. Vs. Mudrika Singh MANU/SC/1180/2021 also held that the Courts should uphold the spirit of the right against sexual harassment which is vested in all persons as part of their right to life and right to dignity under Article 21 of the Constitution of India. The Hon'ble Supreme Court of India cautioned that the Courts to be mindful of the power dynamics that are mired in sexual harassment at the workplace and several considerations and the deterrents that an aggrieved subordinate of sexual harassment has to face when they consider reporting the sexual misconduct of their superior.

7.6. It can be seen from the Act that the ICC shall be constituted as per Section 4 of the Act by every employer. Section 9 of the Act states that the complaint of sexual harassment is to be made and enquired by the internal committee and the same is extracted hereunder:-

"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: 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."

While Section 10 directs attempting of a conciliation, Section 11 delineates the procedure to be adopted by the internal committee or the local committee into the complaint. Section 12 directs that the internal committee shall conduct an enquiry in accordance with the provisions of the service rules. As per Section 13, the committee shall submit a report by giving its findings to the employer. Under Section 13 (3), if the committee arrives at a conclusion that the allegation against the delinquent has been proved, it shall recommend to the employer or the District Officer as the case may be to take action for sexual harassment as misconduct in accordance with the provisions of the service rules as applicable to the employer.

7.7. Even though directions were issued in Medha Kotwal Lele's case (cited supra) holding that the report of the local complaints committee should not be treated as a mere preliminary enquiry, but as an enquiry report giving a finding on the misconduct itself, it can be further seen that the same is specifically made in the absence of the Act and also directions were given for amendment of the service regulations. After the advent of the Act, the Hon'ble Supreme Court of India in Aureliano Fernandes case (cited supra) specifically considered the question as to the nature of enquiry and after considering the Articles 309, 310 and 311 of the Constitution of India it held that the principles of natural justice have to be mandatorily complied with. While considering the amended CCS and CCA rules in respect of the Central Government employees, the Court has held in paragraph No.51 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."

7.8. As far as the State of Tamil Nadu is concerned, the manner of imposing the major punishment is contained in Rule 17 (b) of the Tamil Nadu Civil Services (Discipline And Appeal) Rules (hereinafter referred to as 'the Rules'). Under the directions of the Hon'ble Supreme Court of India, the Government of Tamil Nadu had issued a G.O.No.160 P & AR (N) Department dated 20.09.2006, by which a proviso has been inserted to Rule 17 (b). The entire Rule 17 (b) (i) along with the inserted proviso is reproduced hereunder:-

"17 (b) (i) Without prejudice to the provisions of the Public Servants' Inquiries Act, 1850, (Central Act XXXVII of 1850), in every case where it is proposed to impose on a member of a service or on a person holding a Civil Post under the State any of the penalties specified in items (iv), (vi), (vii) and (viii) in rule 8, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegation, on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned. Even if a person charged has waived an oral inquiry, such inquiry shall be held by the authority concerned in respect of charges which are not admitted by the person charged and which can be proved only through the evidence of witnesses. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. Whether or not the person charged desired or had an oral inquiry, he shall be heard in person at any stage if he so desires before passing of final orders. A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of the evidence, if any, and a statement of the findings and the grounds thereof. Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly recorded by itself;

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided: * **Provided further that where there is a complaint of sexual harassment within the meaning of rule 20-B of the Tamil Nadu Government Servants' Conduct Rules, 1973, the complaints Committee established in each Government department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold the inquiry as far as practicable in**

accordance with the procedure laid down in these Rules. *(Vide G.O.Ms.No.160, P&AR(N) Department, dated 20.9.2006 w.e.f. 20.9.2006)

Provided also* that the Government Servant may take the assistance of any retired Government servant to present the case on his behalf but may not engage a legal practitioner for the purpose unless the inquiring authority is a legal practitioner or the inquiring authority, having regard to the circumstances of the case, so permits. *(Vide G.O.Ms.No.160, P&AR(N) Department, dated 20.9.2006 w.e.f. 20.9.2006)

(emphasis supplied)"

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 of the above directions, 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 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 alter e m 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 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.

7.10. In this background, let us proceed to consider the questions which arise for determination in this case.

Question No.1:-

8. As far as the complaint of Mrs.AAA is concerned, firstly it can be seen that at the first instance in her complaint dated 05.12.2022, it is stated that the petitioner would frequently call her and would make sexually coloured conversations. He has been sending WhatsApp messages and she was afraid of even complaining the same to the superior. Even though she was counselled by her co-employees, her mental agony increased day by day and therefore, she sought action. Upon being counselled by the employer, she opened up and came up with the serious allegations that during April 2018, the petitioner came to her house in the morning and forcibly had sexual intercourse. She was unable to disclose it to anybody. Upon such a statement on 08.12.2022 and the preliminary enquiry revealed prima facie grounds to proceed, therefore, a case in Crime No.12 of 2022 was registered by the concerned jurisdictional police.

8.1. As a matter of fact, the subsequent statement dated 19.12.2022 requires further consideration. She states that despite assurances given by the employer and everybody, the copy of the FIR with her name was shared by some unknown persons on a YouTube channel. She was afraid that her son would come to know about the same. She was very much concerned that the matter should not be known to her son. Thus, when the offence complained of is a serious one having the effect of causing grave mental trauma and stress to the victim, pushing her to a dilemma not to reveal or complain due to the fear of secondary and tertiary victimization, on the other hand, she is also unable to withstand, swallow or suppress the same, then that state of the victim fits the definition of undergoing continuous sexual harassment. So long she undergoes such a phenomenon, the same is directly attributable only to the perpetrator and therefore would amount to a continuing offence. Such a phenomenon is not just the effect of the act, but is the injury itself.

8.2 The injury is not complete just by the forcible physical intercourse. The injury adds up every day when the victim is thereafter made to silently keep quiet and also face the petitioner at the workplace. Further, the injury is confounded by fear of secondary and tertiary victimisation.

8.3 In the context of Criminal Law, the Hon'ble Supreme Court of India, in *Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath*, MANU/SC/0535/1991 : 1991:INSC:41 : (1991) 2 SCC 141 held as follows:

"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."

8.4 Further in *Udai Shankar Awasthi v. State of U.P.*, MANU/SC/0018/2013 : 2013:INSC:27 : (2013) 2 SCC 435 the Hon'ble Supreme Court of India held as follows :

"24. In *Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan* [MANU/SC/0174/1959 : 1959:INSC:27 : AIR 1959 SC 798] AIR p. 807, para 31 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.*** The distinction between the two wrongs therefore depends upon the effect of the injury. In the said case, the Court dealt with a case of a wrongful act of forcible ouster, and held that the resulting injury caused was complete at the date of the ouster itself, and therefore there was no scope for the application of Section 23 of the Limitation Act in relation to the said case.

emphasis supplied"

8.5 In the context of service jurisprudence, the Hon'ble Supreme Court of India in *Union of India v. Tarsem Singh*, MANU/SC/7976/2008 : 2008:INSC:930 : (2008) 8 SCC 648 held as follows:

"4. The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A "continuing wrong" refers to a single wrongful act which causes a continuing injury. "Recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in *Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan* [MANU/SC/0174/1959 : 1959:INSC:27 : AIR 1959 SC 798] explained the concept of continuing wrong (in the context of Section 23 of the Limitation Act, 1908 corresponding to Section 22 of the Limitation Act, 1963): (AIR p. 807, para 31)

"31. ... It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. ***If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong.*** In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.

Emphasis supplied"

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. Thus, in this case, I reject the submissions of the learned counsel for the petitioner that merely because the incident happened in the year 2018, the complaint cannot be entertained by the local committee in the year 2022. The Judgments relied upon by the learned counsel for the petitioner in Prof. Dr.Saswat Samay Das's case (cited supra), Reeja's case (cited supra) and Mukesh Khampariya's case (cited supra) do not deal with serious continuing misconduct as in the instant case.

8.7. Adding further, the allegations made against the petitioner are that he is a serial predator. Even though some of the victims have not stood by their statements during the enquiry, two other victims have deposed about the sexual harassment meted out to them, though no serious allegations as in the case of Mrs. AAA.

8.8 As held by the Hon'ble Supreme Court of India in Mudrika Singh's case (cited supra) and Dilip Paul's case (cited supra), the petitioner cannot rely upon hyper-technicalities. Therefore, I answer the question against the petitioner that the complaint is not barred by limitation and as such is not violating of Section 9 of the Act.

8.9 Even the other contentions of the learned counsel for the petitioner regarding non-supplying the complaint within the time frame, not acting upon the report within the time frame etc., as noted supra, are only timelines intended to ensure prompt action and are not grounds for the delinquent to wriggle out of punishment or stall the very inquiry itself. The petitioner has to defend the charges in the inquiry on merits.

Question No.2:-

9. In this case, after the enquiry report is received, a charge memorandum containing two charges, in respect of the sexual harassment meted out to Mrs. AAA alone has been issued. In this connection, it can be seen that such a charge has been specifically put to the victim and enquiry of the ICC has already been specifically made known to the delinquent employee and the ICC had already completed the enquiry and arrived at a finding. The finding of the ICC is that the delinquent employee has misbehaved with Mrs. AAA, Ms. BBB and Ms. CCC (3 victims). The charge memo speaks only in respect of Mrs.AAA alone. Therefore, the very issue of the charge memorandum on 01.12.2023 itself can be termed only as by way of abundant caution / and it was superfluous. This is not a case where the petitioner can plead that he did not know what the allegation was. Even as per the statement of the petitioner, after his request, copies of the complaint and the statements were duly provided to him.

9.1. A reading of the complaint and the further statements convey the allegations which were put against the petitioner. Therefore, this is also a case where Mrs.AAA, seems to have suffered serious trauma and stress and thus, in tune with the Judgment of the Hon'ble Supreme Court of India in Aureliano Fernandes case (cited supra) (Paragraph No.51), the ICC was right in protecting her from facing the delinquent directly thereby avoided exposing the victim once again before the delinquent. However, even in a case where sensitivity requires that the victim not be exposed before the perpetrator, the right to cross-examination is still a valuable facet to ensure fairness and impartiality in the enquiry and the principles of natural justice.

9.2. Now, it is relevant to extract the portion of the enquiry report, which is extracted hereunder:-

“Mrs.AAA Further Statement is
(Date:14.02.2023) நீங்கள் சூப்பிரண்டு
மோகனகிருஷ்ணன் மீது கொடுத்த புகார்
சம்மந்தமாக விசாராக கமிட்டியில் விசாரித்த
போது அதற்கு அவர் விளக்கம்
கொடுத்துள்ளார். அது சம்மந்தமாக
கேட்கப்பட்ட கேள்விகளுக்கு உங்களின்
விளக்கம் தரவும்.”

9.3. Thereafter, the committee framed the questions as if it were a cross-examination and the questions were administered to the victim and answers were elucidated. During the enquiry, on 19.01.2023 the petitioner was summoned to appear before the ICC on 20.01.2023. On 21.01.2023 when the petitioner was specifically questioned about the allegations of sexual harassment, he pleaded for copies of the relevant documents. It is essential to extract the question and the answer, which is as follows:-

“நீலகிரி மாவட்டத்தில் பணிபுரியும்
நான்கு பெண்கள் உங்கள் மீது குற்றச்சாட்டு
கூறியுள்ளார்கள். அது சம்மந்தமாக பதில்
சொல்வீர்களா ?
நான் தற்சமயம் பதில் உடனடியாக
சொல்லும் நிலையில் இல்லை. ஏற்கனவே
ஜெயிலில் இருந்ததாலும் எனக்கு உடம்பு
சரியில்லாமல் இருந்து மாத்திரை சாப்பிட்டு
வருவதாலும் எனது அம்மாவின் உடல் நிலை
சரியில்லாததாலும் எனக்கு கால அவகாசமும்
சம்மந்தப்பட்ட விசாரணை குறித்த நகல்களும்
எனக்கு வழங்க வேண்டும். அதற்காக எனது
விண்ணப்பத்தை பெற்றுக்கொண்டு வழங்குமாறு
கேட்டுக்கொள்கிறேன்.”

9.4. The documents which were sought by the petitioner were furnished to him on the same day. Thereafter, the petitioner pleaded for further time. On the enquiry which was adjourned on further dates, the petitioner pleaded for further time. Thereafter, on 06.02.2023, the petitioner submitted his detailed explanation in respect of every allegation made by the victims.

9.5. On 11.02.2023, one A. P. Rajkumar, Vijayakumar, Shakila and Kowsalya were examined by the ICC. One Ramesh, Prasob, Sundarapandiyan and Kumaresan were examined on 13.02.2023. Mrs. AAA, Ms. BBB, Ms. CCC and Ms. DDD were administered questions based on the explanation submitted by the delinquent employee and their answers were elucidated on 14.02.2023. Similar exercises were done with Ramesh, Deepak, Afzal Khan and Vinoth Kumar on various dates. Thereafter, the present impugned enquiry report was submitted by the ICC.

9.6. Considering the sensitivity of the issue and the rule position, it cannot be said that the entire action of the ICC in recording the statements was violative of principles of natural justice, but in respect of the witnesses who are not examined on behalf of the petitioner / delinquent, but on behalf of the prosecution to establish the charges, an opportunity needs to be given to the petitioner to cross-examine the witnesses. Though the committee may be right in not exposing the victims directly to the delinquent, at least, the cross- examination should be done based on the questions that are prepared by the petitioner. Such questions depending on the nature of the witness should be permitted to be put before the witnesses directly by the delinquent. However, in respect of Mrs.AAA alone questions can be put by any local commissioner/employee who may

be nominated by the petitioner. The absence of such an exercise would not comply with the opportunity of hearing and effectively putting forth the case of the petitioner to satisfy the mandate of Article 311 of the Constitution of India.

9.7. Therefore, to that extent, the petitioner is bound to succeed, however, the matter has to be remitted back to the ICC from the stage in which the enquiry is to be continued. Accordingly, I answer the question that the impugned enquiry report would stand partially vitiated for the flaw of not providing the petitioner an opportunity to cross-examine the witnesses.

The Result:-

10. Given the aforesaid findings, the Writ Petition is allowed on the following terms:-

(i) The impugned enquiry report of the 3rd respondent dated 06.02.2023 in C.No.28/DSP/RURAL SDO/UDLM/2023 shall stand set aside;

(ii) The proceedings of the 3rd respondent including the statements recorded so far, questions which were put to the witnesses and their version, and questioning of the delinquent employee shall all hold good;

(iii) The ICC as far as possible in the same composition shall continue with the enquiry in the manner hereinafter delineated. It is made clear that if any one or some members in the ICC are not available, the enquiry being statutory in nature and all the procedures being recorded stage- wise, shall be continued from the present stage by replacing with a new member, if necessary;

(iv) The ICC shall reassemble/reconstitute and such committee shall conduct the next enquiry on 01.07.2024;

(v) On the said date, the petitioner shall appear before the committee and among all the witnesses who are already examined, the petitioner can indicate the names of the witnesses whom he would prefer to cross-examine, such witness shall be re-summoned by the committee for cross-examination and the same may be permitted by the ICC;

(vi) On such adjourned date, without fail on the dates of the witnesses being present, the petitioner shall cross-examine them. If the petitioner fails to cross-examine the witnesses on such date fixed by the ICC, the petitioner will forfeit his right to cross-examine the particular witness;

(vii) As far as the victims - Mrs.AAA, Ms.BBB and Ms.CCC are concerned, if the committee is of the opinion that the victims need not be exposed directly before the delinquent, then the victims shall be protected by a screen and answer the questions or then the delinquent / petitioner shall prepare a list of questions and the questions can be administered by any other employee or who may be chosen by the petitioner, who may not be the rank higher than that of the petitioner, viz., the Superintendent; If the petitioner is unable to make such a choice, such questions can be administered by the ICC itself to the victims;

(viii) The petitioner had already examined the witnesses on his part and if he chooses to examine any other witnesses, he can also do the same. After the examination/cross-examination, the petitioner can also examine himself, if he chooses to;

(ix) After completion of evidence, the petitioner can also be permitted to make such oral or written arguments before the ICC and the committee shall arrive at a finding and submit its report afresh by objectively considering the evidence on record, without reference to the present report which is being set aside by this Court;

(x) The 3rd respondent - ICC shall complete the entire exercise within 60 days and as far as possible conduct the proceedings on a day-to-day basis and shall make every endeavour to complete the proceedings as directed above within 60 days from 01.07.2024, i.e., on or before 31.08.2024;

(xi) Upon receipt of the enquiry report by the ICC, the disciplinary authority shall take further steps to complete the disciplinary proceedings as the case may be, as if it received the enquiry report pursuant to the charge memorandum under 17 (b) of the Rules, within a period of four weeks therefrom. If the disciplinary authority is of the opinion that a punishment has to be imposed on the delinquent, then issue a second show cause notice and a decision should be arrived only after hearing the petitioner. Such exercise shall be completed within four weeks from the date of receipt of the enquiry report by the 3rd respondent - ICC;

(xii) No costs. Consequently, connected miscellaneous petitions are closed.

¹Why Women Are Blamed for Being Sexually Harassed: The Effects of Empathy for Female Victims and Male Perpetrators Renata Bongiorno, Chloe Langbroek, Paul G. Bain, Michelle Ting, and Michelle K. Ryan - <https://journals.sagepub.com/doi/pdf/10.1177/0361684319868730>

²THE ECONOMIC AND CAREER EFFECTS OF SEXUAL HARASSMENT ON WORK WOMEN - Author(s): HEATHER MCLAUGHLIN, CHRISTOPHER UGGEN and A BLACKSTONE- Source: Gender and Society, Vol. 31, No. 3 (June 2017), pp. 333-358 - Published by: Sage Publications, Inc. - Stable URL: <https://www.jstor.org/stable/44280313>

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