2025:KER:11075

'C.R'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE D. K. SINGH

MONDAY, THE 10TH DAY OF FEBRUARY 2025 / 21ST MAGHA, 1946

WP(C) NO. 24867 OF 2024

PETITIONER/S:

[redacted]

BY ADVS.
K.M.SATHYANATHA MENON
AYISHA
ANJALI
NIRMAL DAS P.

RESPONDENT/S:

1 THE KERALA STATE FINANCIAL ENTERPRISES LTD
BHADRATHA, MUSEUM ROAD, P.B. NO.510, THRISSUR, REPRESENTED BY ITS MANAGING DIRECTOR, PIN - 680020

2 INTERNAL COMPLAINTS COMMITTEE
KSFE REGIONAL OFFICE, THIRUVANANTHAPURAM (URBAN)
THIRUVANANTHAPURAM, REPRESENTED BY THE PRESIDING OFFICER, PIN - 695001

3 [redacted]

695011

BY ADVS.
Gopikrishnan Nambiar M
Salil Narayanan K.A.
K.S.ARUN KUMAR
K.JOHN MATHAI(K/413/1984)
JOSON MANAVALAN(J-526)
KURYAN THOMAS(K/131/2003)
PAULOSE C. ABRAHAM(MAH/58/2006)
RAJA KANNAN(K/356/2008)
AMRUTHA K P(K/000800/2019)
K.BINCYMOL(K/478/2013)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is working as the Manager of Kerala State Financial Corporation (KSFE), Vikas Bhavan Branch, Thiruvananthapuram. The petitioner has approached this court impugning the proceedings initiated by the Internal Complaint Committee (ICC) on a complaint filed by the 3rd respondent. The petitioner has challenged the notice issued in Ext.P5 by the presiding officer of the ICC, KSFE, regional office, Thiruvananthapuram (URBAN) dated 03.07.2024 in the present writ petition.

2.The petitioner issued a memo dated 31.05.2024 to eight Junior female staff in his office for the non-achievement of a chitty canvassing target. The memo was issued asking the eight employees to furnish their explanations for the failure to comply with the work order within seven days of receipt of the memo. The eight members of the staff who were issued with the memo did not submit any proper explanation to the memo, and the petitioner reported the matter to the higher authorities of the 1st respondent on 19.06.2024.

3.On the very next day i.e., on 20.06.2024, the 3rd respondent, who is not even working in the branch headed by the petitioner along

with several members of the political union from various branches of the 1st respondent without any prior appointment and permission of the petitioner forcibly entered the cabin of the petitioner at 2:45 PM and misbehaved with him. They attempted to snatch the mobile phone of the petitioner. The petitioner lodged a complaint about this incident to the Police in Ext.P2 on 21.06.2024. It is alleged in the complaint that the 3rd respondent along with other employees forcibly made entry to the cabin of the petitioner and when the petitioner asked them to vacate the cabin except for three members among them, the 3rd respondent directed all other employees to remain standing inside the cabin of the petitioner and tried to snatch his mobile phone as well. He said that they created a hostile atmosphere inside the office of the petitioner and threatened him to inflict physical harm if any action were taken against any of the employees.

4.The statement of the petitioner was recorded by the Police on 27.06.2024.

5.The 3rd respondent thereafter made a complaint to the ICC which would read as under:-

[redacted]

To
Smt. Preetha Divakar
Presiding officer,
Internal Complaint Committee,
Thiruvananthapuram Urban Region

Madam,

With regard to the issuance of memo to eight female employees of the Vikas Bhavan branch for the reason that they had not done the chit canvassing, I as an office bearer of the Party, along with other office bearers visited Vikas Bhavan Branch on 20.6.2024. But when I entered the cabin of Manager Harish M.S, he tried to record my video with his mobile camera and shouted to me get out of the cabin in obscene language. He behaved in such a way without considering me as a woman and by insulting me in front of others. Request to take strict action against this manager.

Faithfully,
S/d
[redacted]

6.On this complaint, a notice has been issued to the petitioner in Ext.P3 on 08.07.2024. The learned counsel for the petitioner submits that the notice issued in Ext.P3 to the petitioner is wholly without jurisdiction. The 3rd respondent was not an employee in the branch of the petitioner. She forcibly entered the cabin of the petitioner, and she was the person who misbehaved with the petitioner, tried to snatch the mobile phone and disrupted the official work being performed by the petitioner. There is no allegation of sexual harassment in the complaint, and therefore, the cognizance taken on the said complaint by the 2nd respondent is without jurisdiction.

7.On the other hand, Ms Pooja Menon, the learned counsel appearing for the first respondent, submits that the petitioner's apprehension that the enquiry will proceed is premature. The proceedings before the ICC are only at a preliminary stage, and the committee has not decided whether the complaint requires further proceedings or not.

8.ICC is only empowered to recommend if it finds the behaviour of the employee amounts to sexual harassment at

workplace under the provisions of Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 [hereinafter referred to as POSH Act, 2013]. The ICC does not have the power to impose any punishment. If the ICC finds that the complaint has no substance, it cannot impose punishment for a false complaint. However, the power to decide whether an allegation of sexual harassment is made or not is solely the domain of the ICC, and this court may not interfere with the proceedings of the ICC at this stage.

9.The learned counsels for the 02nd and 03rd respondents have supported the submissions advanced on behalf of the 1st respondent.

10.I have considered the submissions advanced on behalf of the learned counsel for the parties.

11.At this threshold, the question that needs to be considered is whether the complaint in Ext.P2 discloses allegations of sexual harassment as defined in Section 2(n) of the POSH Act, 2013.

Sexual harassment is defined as under:-

> "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;

12.The complaint that has been re-produced above does not have an allegation of 'physical contact and advances, a demand or request of sexual favour or making sexually coloured remarks or showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature'. Even if the complaint is believed to be correct, the only allegation is that the petitioner tried to record the conversation and he hurled abuses on the 3rd respondent and other employees who were present there at the cabin of the petitioner. The complaint is about the language used by the petitioner and the alleged insult caused to the 3rd respondent.

13.As stated above, the 3rd respondent is not employed in KSFE, Vikas Bhavan Branch, Thiruvananthapuram. She claims

to be an office bearer of the party and had visited the petitioner's cabin along with other office bearers. The petitioner did not give her permission, and she allegedly made a forceful entry into the petitioner's cabin.

14.When the complaint/allegation does not constitute "sexual harassment" as defined under Section 2(n) of the POSH Act, 2013, the jurisdictional fact for taking cognizance on such a complaint and issuing notice to the petitioner is missing. Therefore, this complaint cannot be proceeded with under the provisions of the POSH Act, 2013.

Accordingly, the impugned notice in Ext.P3 is set aside, and the writ petition stands allowed.

Sd/-

D. K. SINGH

JUDGE

SJ

APPENDIX OF WP(C) 24867/2024

PETITIONER EXHIBITS

Exhibit P1	**A TRUE COPY OF ONE OF THE CHARGE MEMO SERVED TO SMT.SHRUTHIMOL D., SPECIAL GRADE ASSISTANT, VIKASBHAVAN BRANCH DATED 31.05.2024**
Exhibit P2	**A TRUE COPY OF THE COMPLAINT DATED 21.06.2024 SUBMITTED BY THE PETITIONER BEFORE THE STATION HOUSE OFFICER, MUSEUM POLICE STATION**
Exhibit P3	**A TRUE COPY OF THE FIRST INFORMATION REPORT NO.883/2024 OF MUSEUM POLICE STATION, THIRUVANANTHAPURAM CITY**
Exhibit P4	**A TRUE COPY OF THE COMPLAINT DATED NIL SUBMITTED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT AND SERVED ON THE PETITIONER ON 22.06.2024**
Exhibit P5	**A TRUE COPY OF THE NOTICE DATED 03.07.2024 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER BY POST**
Exhibit P6	**A TRUE COPY OF THE COMMUNICATION FORWARDED BY THE PETITIONER TO THE 2ND RESPONDENT BY MESSENGER AND HAVING RECEIPT ENDORSEMENT WITH DATE 8.07.2024**

Translation of Exhibit P2 **Translation of Exhibit P2**

Translation of Exhibit P3 **Translation of Exhibit P3**

Translation of Exhibit P4 **Translation of Exhibit P4**

Translation of Exhibit P5 **Translation of Exhibit P5**