



2024:KER:91275

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 3<sup>RD</sup> DAY OF DECEMBER 2024/ 12TH AGRAHAYANA, 1946

W.P. (C) NO. 39915 OF 2018

PETITIONER:

ABRAHAM MATHAI,  
AGED 72 YEARS  
S/O. MATHAI, MANAGING DIRECTOR, AMSTOR  
INFORMATION TECHNOLOGY (INDIA) PVT. LTD.,  
AMSTOR HOUSE, TECHNO PARK,  
THIRUVANANTHAPURAM-695581.

BY ADVS.  
K.JAJU BABU (SR.)  
SRI.P.FAZIL  
SRI.V.S.SREEJITH  
SMT.JAYASREE MANOJ  
SRI.SAJU THALIATH  
SRI.JITHIN PAUL VARGHESE

RESPONDENTS:

1 STATE OF KERALA,  
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM-695001.



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W.P.(C) No.39915 of 2018

- 2 LOCAL LEVEL COMMITTEE,  
(CONSTITUTED UNDER THE SEXUAL HARASSMENT OF  
WOMEN AT WORK PLACE (PREVENTION, PROHIBITION  
AND REDRESSAL) ACT, 2013), COLLECTORATE, CIVIL  
STATION , KUDAPPANAKUNNU, THIRUVANANTHAPURAM-  
695043, REPRESENTED BY ITS CHAIRPERSON.
- 3 THE DISTRICT COLLECTOR,  
THIRUVANANTHAPURAM, COLLECTORATE, CIVIL  
STATION, KUDAPPANANAKUNNU, THIRUVANANATHAPURAM  
-695043.
- 4 VICTIM [XXX]
- 5\* UNION OF INDIA  
REPRESENTED BY SECRETARY TO GOVERNMENT,  
MINISTRY OF LAW & JUSTICE, GOVERNMENT OF INDIA,  
NEW DELHI.
- 6\*\* MINISTRY OF WOMEN & CHILD DEVELOPMENT,  
SHASTRI BHAWAN, NEW DELHI, PIN - 110001.

\*IMPLEADED AS PER ORDER DATED 11-08-2022 IN IA  
1/2019.

\*\*IS SUO MOTU IMPLEADED AS PER ORDER DATED 10-  
01-2024.

BY ADVS.

R1 TO R3 BY SRI.SANAL P.RAJ, PUBLIC PROSECUTOR

R4 BY SRI.R.ANILKUMAR

R5 & R6 BY SRI.M JAYAKRISHNAN VAZHOOR, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR FINAL  
HEARING ON 12.11.2024, THE COURT ON 03.12.2024 DELIVERED  
THE FOLLOWING:

**P.G. AJITHKUMAR, J.****"C.R."****W.P.(C) No.39915 of 2018****Dated this the 3<sup>rd</sup> day of December, 2024****JUDGMENT**

This writ petition under Article 226 of the Constitution of India was filed by the petitioner aggrieved by Ext.P5 report of the 2<sup>nd</sup> respondent and Ext.P6 proceedings issued by the 3<sup>rd</sup> respondent.

2. The petitioner is the Managing Director of the company named "Amstor Information Technology (India) Pvt.Ltd" operating from Technopark, Thiruvananthapuram. His wife was a Director. The 4<sup>th</sup> respondent was employed as an accountant-cum-manager in the company. She was appointed by the wife of the petitioner on 02.06.1997. Owing to the dereliction of duties, the 4<sup>th</sup> respondent was terminated from service with effect from 07.11.2017. She approached the Labour Court challenging her termination. The petitioner filed a suit before the Munsiff's Court, Thiruvananthapuram to restrain the 4<sup>th</sup> respondent from trespassing into the office of



the company. While so, an anonymous complaint was received by the 3<sup>rd</sup> respondent, which was forwarded to the 2<sup>nd</sup> respondent. An inquiry ensued and the 2<sup>nd</sup> respondent submitted Ext.P5 report to the 3<sup>rd</sup> respondent with the following recommendations:

- “(i) The respondent (petitioner herein) be asked to apologize in writing to the complainant for all the professional and personal damages he caused to her through his behavior and remarks.
- (ii) The respondent be directed to pay the complainant a lumpsum payment of Rs.19.80 lakhs within 90 days of the date of this order as compensation under the SHWW Act 2013, for the sexual harassment and consequent reputational damage caused to the complainant.
- iii) As the CEO of the company, the respondent be ordered to immediately establish an internal committee within the office, compliant with the SHWW Act 2013 within 30 days of receipt of this order, and report such action as completed to the office of the District Collector failing which the employer that is the respondent may be subject to fine as mandated by the 2013 SHWW Act, and a subsequent claim could render the potential threat of further and more serious actions.”

3. The 3<sup>rd</sup> respondent acting upon on the said report issued a letter dated 19.09.2018, Ext.P6, asking the petitioner to comply with the aforesaid directions. The petitioner alleges



that Exts.P5 and P6 are illegal and liable to be set aside.

Following are the reliefs claimed by the petitioner:

- "i) Issue a writ of mandamus or other appropriate writ, order or direction declaring Rule 7(6) of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Rules, 2013 as unconstitutional;
- ii) Issue a writ of certiorari or other appropriate writ, order or direction quashing Rule 7(6) of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Rules, 2013;
- iii) To call for the records relating to Exhibit P5 report and Exhibit P6 communication and issue a writ of certiorari or other appropriate writ, order or direction quashing Exhibit P5 report and Exhibit P6 communication."

4. The additional 5<sup>th</sup> respondent was impleaded as per the order dated 11.08.2022 in I.A.No.1 of 2019. Taking into account the relief claimed by the petitioner for declaring Rule 7(6) of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Rules, 2013 (POSH Rules) unconstitutional, this Court *suo moto* impleaded additional 6<sup>h</sup> respondent on 10.01.2024. The petitioner filed I.A.No.2 of 2024 producing therewith Exts.P8 to P10 as additional documents.



5. Heard the learned Senior Counsel appeared on instructions for the petitioner, the learned Government Pleader, the learned counsel for the 4<sup>th</sup> respondent and the learned Central Government Counsel.

6. The 2<sup>nd</sup> respondent is the Local Committee constituted by the 3<sup>rd</sup> respondent under Section 6 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act). The 2<sup>nd</sup> respondent commenced an inquiry as contemplated in Section 11 of the POSH Act based on any anonymous complaint, which was forwarded to it by the 3<sup>rd</sup> respondent. The ensued inquiry report, Ext.P5 and the corresponding direction by the 3<sup>rd</sup> respondent-District Collector are under challenge. The essential contentions raised to question vires of Ext.P5 report are the following:

- "i) Without a written complaint by the victim, no inquiry under Section 11 of the POSH Act could be conducted by a Local Committee.
- ii) The complaint was submitted beyond the time fixed in Section 9 of the POSH Act;
- iii) Even the anonymous complaint received by the 3<sup>rd</sup> respondent did not contain allegations constituting sexual harassment as defined in Section 2(n) of the POSH Act and



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therefore the inquiry was unauthorised.

- iv) The 2<sup>nd</sup> respondent did not abide by the principles of natural justice in conducting the inquiry, which is in total disregard of Section 11(3) of the POSH Act and Rule 11(4) of the Posh Rules.
- v) A totally illegal procedure was followed by the 2<sup>nd</sup> respondent inasmuch as the evidence was recorded through telephone and the witnesses were not allowed to be cross-examined by the petitioner.
- vi) The procedure followed by the 2<sup>nd</sup> respondent is vitiated inasmuch as the petitioner was denied assistance of a legal practitioner.
- vii) Rule 7(6) of the POSH Rules, which denies assistance of a legal practitioner to an incumbent, is violative of Articles 14, 19 and 21 of the Constitution of India and also principles of natural justice;
- viii) The recommendation of the 2<sup>nd</sup> respondent instructing the petitioner to apologize and pay an exorbitant amount of compensation, which was assessed without any reason or rhyme, are against the scheme of the POSH Act."

7. The learned counsel for the 4<sup>th</sup> respondent would submit that the procedure followed by the 2<sup>nd</sup> respondent cannot be found fault with inasmuch as the 4<sup>th</sup> respondent gave statement about the sexual harassment by the petitioner and such complaints were proved by the statements of witnesses. After considering all the materials only, the 2<sup>nd</sup> respondent arrived at the findings in Ext.P5 report. When the



4<sup>th</sup> respondent was subjected to harassment and beyond that she was blacklisted before the other employers, she was put to much inconvenience and harassment. She not only lost the employment in the company of the petitioner, but her opportunity to get employed in other concerns was also denied. Since the petitioner did not resort to the remedy of appeal under Section 18 of the POSH Act, this writ petition is urged to be untenable.

8. Section 9 of the POSH Act reads:

"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.”

9. In Ext.P5 report, it is stated that the 4<sup>th</sup> respondent denied having sent the complaint, based on which the 2<sup>nd</sup> respondent has initiated inquiry. While the committee interviewed, the 4<sup>th</sup> respondent iterated that the allegations and language in the complaint were substantially different from that of hers. Of course, during the interaction, the 4<sup>th</sup> respondent set forth a few allegations, which, according to the 2<sup>nd</sup> respondent, would amount to sexual harassment as defined in Section 2(n) of the Act. However, the committee observed in the report that the 4<sup>th</sup> respondent did not have an allegation that the petitioner either touched or asked her for sexual favours. In that context, the question is, can there be an inquiry under Section 11 of the POSH Act without a written complaint?

10. Section 9 of the POSH Act says that the aggrieved woman may make in writing a complaint of sexual harassment



at workplace within the time prescribed for its submission. It is provided that an aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Complaints Committee or the Local Committee, as the case may be, 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 the last incident. The said period of three months may be extended for a further period of three months, if there was sufficient reason. Section 11 of the POSH Act contemplates an inquiry into the complaint. Section 12 of the POSH Act emphasises that the inquiry shall be on a written complaint made by the aggrieved person. Rule 6 of the POSH Rules lays down the parameters and procedure for submission of a complaint. The aforesaid provisions insist on submission of a written complaint in order for initiating an inquiry under Section 11 of the POSH Act.

11. This Court in **Prasad Pannian (Dr.) v. Central University of Kerala [2020 (6) KHC 687]** considered the



requirement of a written complaint for conducting an inquiry. After advertng to the provisions of Section 9 of the POSH Act, it was observed that even an oral complaint can be given to the Presiding Officer or any Member of internal committee if the complainant is not in a position to give her complaint in writing. However, the need to have a complaint for conducting an inquiry is held to be mandatory.

12. The Rajasthan High Court in **Geeta Meena v. High Court of Judicature for Rajasthan and others [2018 CriLJ 3483]** held that the complaint mentioned in Section 9 of the POSH Act shall be submitted within the period prescribed therein. The High Court of Gujarat considered the question whether or not a complaint in writing is mandatory in **[Girishkumar Rameshchandra Soni v. State of Gujarat** (judgment dated 15.09.2017 in Special Civil Application No.11804 of 2017)]. It was held that either the aggrieved woman or some other person made mention of in Section 9 of the POSH Act should make a complaint in writing for the committee to commence the inquiry.



13. The need to have a complaint to initiate an inquiry by the internal committee, as the case may be, the local committee is emphasised consistently in the said decisions. Going by the scheme of the statute also, the committee can commence inquiry under Section 11 of the Act only on receipt of a complaint alleging sexual harassment as defined in Section 2(n) of the POSH Act. The period within which the said complaint has to be filed is also mandatory. As held by the Division Bench of this Court in **Prasad Pannian [2020 (6) KHC 687]**, even an oral complaint to the committee or a member of the committee can be acted upon if the circumstances are such that the complainant is not in a position to submit a written complaint.

14. As is seen from Ext.P5 report, the 4<sup>th</sup> respondent did not submit a written complaint. The complaint received by the District Collector was forwarded to the 2<sup>nd</sup> respondent and the same was proved to be an anonymous one. The 4<sup>th</sup> respondent stated before the committee, she did not make such a complaint. She went to the extent of stating that the



petitioner might have caused to sent such a complaint. Therefore, it can indubitably be said that there was no written complaint from the 4<sup>th</sup> respondent concerning any sexual harassment at the workplace.

15. Of course, the 4<sup>th</sup> respondent was queried by the 2<sup>nd</sup> respondent-Committee on 14.07.2018 and 23.07.2018. She stated a few allegations against the petitioner, which include that the petitioner clandestinely spread lewd remarks against himself in her name. The complaint in question was sent in June, 2018. If the allegations raised by the 4<sup>th</sup> respondent against the petitioner in the said interactions amounted to sexual harassment and the same can be treated as a complaint under Section 9, the same was within the period prescribed in Section 9 of the POSH Act.

16. It may be noted that the 4<sup>th</sup> respondent submitted complaints against the petitioner before the Police, Women's Commission, Labour Court, etc. Having submitted such complaints, it cannot be said that the 4<sup>th</sup> respondent was incapable of making a written complaint to the 2<sup>nd</sup>



respondent-committee. Therefore, in the facts and circumstances of this case, the oral complaints made by the 4<sup>th</sup> respondent cannot be a substitute for the complaint in writing contemplated by Section 9 of the POSH Act. In that view of the matter, the inquiry conducted by the 2<sup>nd</sup> respondent becomes illegal.

17. During the inquiry, the 4<sup>th</sup> respondent complained of a few instances of harassment against the petitioner. The incidents occurred on 27.07.2017, 30.10.2017, 02.11.2017, 14.11.2017 and also spreading lewd and lascivious comments implicating himself in her name, were the instances of sexual harassment complained of by the 4<sup>th</sup> respondent. The narration in Ext.P5 report would show that the incident on 27.07.2017 was scolding of the 4<sup>th</sup> respondent by the petitioner in the presence of his wife, who was also a director of the Amstor Information Technology (India) Pvt.Ltd. On 30.10.2017, the petitioner allegedly had behaved angrily against the 4<sup>th</sup> respondent and addressed her using unsavory words, the reason being the dispute concerning her



employment. It was further alleged that some rumors were spread indicting the petitioner by the petitioner himself in the name of the 4<sup>th</sup> respondent. She further alleged that on 02.11.2017, she demanded over phone payment of her salary, but the petitioner did not properly respond. The further allegations is that the petitioner made derogatory comments during the course of conciliation before the Labour Officer and also before the police, which were not at the workplace. The 4<sup>th</sup> respondent, however, categorically stated before the committee that the petitioner did not touch her or asked for any sexual favours during the long period of her employment under him. She even told the 2<sup>nd</sup> respondent that she doubt whether there was any sexual harassment in the case.

18. Section 3 of the POSH Act prohibits any kind of sexual harassment. The circumstances in which the sexual harassment would come within the purview of the Act are enumerated therein. The circumstances are,-

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her



- employment; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

Only if the aforementioned circumstances occurred or is present in relation to or connected with any act or behaviour of sexual harassment as defined in Section 2(n) of the POSH Act, the same would be actionable under the Act. Section 2(n) defines "sexual harassment" as follows:

"(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."

19. The 4<sup>th</sup> respondent categorically maintained before the 2<sup>nd</sup> respondent that the petitioner did not touch her or ask her for any sexual favours. What he did was that a hostile environment for her functioning in the petitioner's company





was created and for that end he behaved unfairly and cruelly towards her, which ultimately resulted in denial of salary and her termination. Those acts and behaviour of the petitioner would not come within the definition of "sexual harassment". Of course, the petitioner created a hostile working environment amounting to a circumstance mentioned in Section 3 of the POSH Act. But the same was not connected to any kind of sexual harassment, and therefore the 2<sup>nd</sup> respondent did not have jurisdiction to conduct an inquiry under Section 11 of the POSH Act. The dispute and harassment meted out on the 4<sup>th</sup> respondent were more relating to her employment and the reason thereof was the petitioner's personal grudge against her. It was a labour dispute rather than a dispute connected to sexual harassment. The 4<sup>th</sup> respondent had duly taken up the matter before the police as well as the Labour Court. The Labour Court, Kollam as per Ext.P8 decided the said dispute. The petitioner took up the matter before this Court and as per Ext.P9 judgment the dispute concerning termination of the 4<sup>th</sup>



respondent from service and related matters were finally decided by ordering payment of compensastion. In the above circumstances, I am of the view that the inquiry conducted by the 2<sup>nd</sup> respondent and Ext.P5 report are ultra vires the provisions of the POSH Act.

20. Sub-section (3) of Section 11 of the POSH Act vests powers of a civil court under the Code of Civil Procedure, 1908 (Code) on the Internal Complaints Committee/Local Committee while conducting inquiry in respect of a few matters. In regard to the summoning and examination of witnesses, the procedure prescribed in the Code is therefore expected to be followed by the Committee. Rule 7(4) of the POSH Rules says that the Committee shall make inquiry into a complaint in accordance with the principles of natural justice. The said provisions insists on the committee to follow the procedure while conducting inquiry in a way as to ensure principles of natural justice. This position was emphasised by this Court in **Shibu L.S. v. Air India Ltd. [2016 (2) KLT 374]**. It was held that the Committee



necessarily has to follow the principles of natural justice in conducting the inquiry.

21. A Division Bench of the Calcutta High Court in **Institute of Hotel Management, Catering Technology and Applied Nutrition and others v. Suddhasil Dey and another [2020 SCC OnLine Cal.3320]** explained that the provisions of the POSH Act or the Rules do not prohibit in any manner cross-examination of a complainant or her witnesses during the inquiry. It was observed that the right of cross-examination has to be read into the provisions of the POSH Act and the Rules and the report of inquiry held without affording an opportunity to the respondent to cross-examine the complainant and the witnesses cannot pass the test of judicial scrutiny.

22. The Apex Court in **M/s Dharampal Satyapal Ltd. [(2015) 8 SCC 519]** held that:

“25. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and



infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.”

The preponderance of judicial decisions is thus in favour of the view that the respondents shall be given an opportunity to cross-examine the complainant and her witnesses during the inquiry.

23. Here, as is seen from Ext.P5 statement of the 4<sup>th</sup> respondent and her witnesses, including the wife of the petitioner, were seen recorded. What can be inferred from the observations in Ext.P5 is that the examination of those witnesses was by telephonic conversation. It was not in the presence of the petitioner. He was not given any opportunity to cross-examine the witnesses also. That being the procedure followed by the 2<sup>nd</sup> respondent, its report, Ext.P5, is



vitiated for non-compliance of the provisions of Rule 7(4) of the POSH Rules and the principles of natural justice.

24. The petitioner seeks to declare Rule 7(6) of the POSH Rules unconstitutional since it denies assistance of a legal practitioner, *dehors*, the Committee invariably includes a legally qualified member. Considering the scheme of the statute, its objective and the need to protect the privacy of the complainant almost in all cases, such a provision would have been included in the POSH Rules. I found above that Ext.P5 report is untenable in law for the non-compliance of the provisions of the Statute and the principles of natural justice. In the light of the said findings, the plea for declaring Rule 7(6) of POSH Rules unconstitutional becomes academic in this case. The learned Senior Counsel appearing for the petitioner did not seriously press for the said relief also. Hence, I leave that question undecided.

25. Section 18 of the POSH Act provides that person aggrieved by the recommendations of the Committee under sub-section (2) of Section 13 or under the provisions of



Section 14 of the POSH Act may prefer an appeal to the court or tribunal, in accordance with the service rules applicable to the persons or where no such service rules exists, the person aggrieved may prefer an appeal as prescribed. Rule 11 of the POSH Rules prescribes the authority to which an appeal lies. It is contended by the learned counsel for the 4<sup>th</sup> respondent that as the petitioner filed this writ petition without exhausting that remedy, the writ petition is liable only to be dismissed. The essential grounds on which the petitioner seeks to set aside Ext.P5 are apparent violation of the provisions of the POSH Act in the matter of conducting inquiry. Its correctness is assailed only incidentally.

26. In **Commissioner of Income Tax v. Chhabil Dass Agarwal [(2014) 1 SCC 603]** the Apex Court held that non-entertainment of a writ petition under Article 226 of the Constitution of India when an efficacious alternative remedy is available is a rule and self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of



the High Court to grant relief under Article 226 of the Constitution of India, despite the existence of alternative remedy. However, High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same, unless he has made out an exceptional case warranting such interference or there exists sufficient ground to invoke the extraordinary jurisdiction under Article 226.

27. In **Authorised Officer, State Bank of Travancore v. Mathew K.C. [(2018) 3 SCC 85]** the Apex Court reiterated that the discretionary jurisdiction under Article 226 of the Constitution of India is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution of India ought not to be entertained if alternative statutory remedies are available, except in cases falling within the well-defined exceptions as observed in **Chaabil Dass Agarwal [(2014) 1 SCC 603]**,



i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question or in defiance of the fundamental principles of judicial procedure or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice.

28. In **Balkrishna Ram v. Union of India [(2020) 2 SCC 442]** the Apex Court held that the principle that the High Court should not exercise its extraordinary writ jurisdiction when an efficacious alternative remedy is available, is a rule of prudence and not a rule of law. The Writ Courts normally refrain from exercising their extraordinary power if the petitioner has an alternative efficacious remedy. The existence of such remedy however does not mean that the jurisdiction of the High Court is ousted.

29. As already held, Ext.P5 report is illegal and ultra vires of the provisions of the POSH Act. When the report is shrouded by such patent illegality, availability of a remedy of appeal does not debar the petitioner from approaching this





Court seeking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

30. The upshot is, Ext.P5 is liable to be quashed. Ext.P6 was issued by the 3<sup>rd</sup> respondent by endorsing the recommendations in Ext.P5. Needless to say, Ext.P6 is therefore unsustainable in law. Save direction No.3 for, that is only a direction to obey the mandate of Section 4 of the POSH Act. I take such a view also for the reason that the 3<sup>rd</sup> respondent issued Ext.P6 without giving an opportunity to the petitioner to submit his explanation before accepting the report and imposing the penalty.

The writ petition is accordingly allowed to the extent of quashing Exts.P5 and P6 except in regard to the establishment of an Internal Complaints Committee.

Sd/-

**P.G. AJITHKUMAR, JUDGE**

dkr



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APPENDIX OF WP(C) 39915/2018

## PETITIONER EXHIBITS

- EXHIBIT P1                      TRUE COPY OF THE COMPLAINT FILED BY  
THE 4TH RESPONDENT BEFORE THE  
COMMISSIONER                      OF                      POLICE,  
THIRUVANANTHAPURAM                      CITY                      DATED  
16/11/2017.
- EXHIBIT P2                      TRUE COPY OF THE PLAINT OF OS  
NO.1647/2017 DATED 16/11/2017 FILED BY  
THE PETITIONER/PLAINTIFF AS AGAINST  
THE 4TH RESPONDENT BEFORE THE  
PRINCIPAL                      MUNSIFF'S                      COURT,  
THIRUVANANTHAPURAM.
- EXHIBIT P3                      TRUE COPY OF THE COMPLAINT FILED BY  
THE 4TH RESPONDENT BEFORE THE  
COMMISSIONER                      OF                      POLICE,  
THIRUVANANTHAPURAM DATED 25/07/2018.
- EXHIBIT P4                      TRUE COPY OF THE PETITION FILED BY THE  
4TH RESPONDENT AGAINST THE PETITIONER  
BEFORE THE HON'BLE LABOUR COURT,  
KOLLAM (TRIVANDRUM CAMP) DATED  
26/03/2018 AND NUMBERED AS ID  
NO.15/2018.
- EXHIBIT P5                      TRUE COPY OF THE REPORT DATED  
22/08/2018 FORWARDED BY THE 2ND  
RESPONDENT TO THE 3RD RESPONDENT AS  
PER SECTION 13 OF THE ACT.
- EXHIBIT P6                      TRUE COPY OF THE COMMUNICATION DATED  
19/09/2018 ISSUED BY THE 3RD  
RESPONDENT TO THE PETITIONER.
- EXHIBIT P7                      TRUE COPY OF THE STATEMENT DATED NIL  
GIVEN BY SMT. SANTHAMMA.



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- |             |                                                                                                                                |
|-------------|--------------------------------------------------------------------------------------------------------------------------------|
| EXHIBIT P8  | A TRUE COPY OF THE AWARD DATED 26.02.2022 IN I.D NO.15/2018 FILED BY THE 4TH RESPONDENT HEREIN BEFORE THE LABOUR COURT, KOLLAM |
| EXHIBIT P9  | A TRUE COPY OF JUDGMENT OF HIGH COURT OF KERALA IN WP(C) NO.15966 OF 2022 DATED 03.08.2022                                     |
| EXHIBIT P10 | A TRUE COPY OF JUDGMENT OF FAMILY COURT, ERNAKULAM IN O.P NO.2090 OF 2018 DATED 29.06.2019.                                    |