

WEB COPY

W.P. No.5643 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>24.10.2024</i>
<i>Pronounced on</i>	<i>22.01.2025</i>

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.5643 of 2020
and W.M.P.No.6594 of 2020 & 25713 of 2021

HCL Technologies Ltd.,
 Rep. by Mr.Merwin Dhanraj
 Associate Vice President – LOB HR HEAD
 94, South Phase Road,
 Ambattur Industrial Estate,
 Ambattur,
 Chennai – 600 058.

...

Petitioner

/vs/

N.Parsarathy
 S/o. Late N.L.Narasimhan
 B 107, Barcelona Xs Real Catalunya City,
 Siruseri,
 Chennai – 600 130.

... Respondent

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorari to call for the records of the Principal Labour Court at Chennai, pertaining to the order dated 11.12.2019 of the Principal Labour Court at Chennai in Standing Order Appeal No.1/2018 and quash the same.



WEB COPY



For Petitioner : Mr.Srinath Sridevan
Senior Counsel
for Ms.Anita Suresh

For Respondents : Mr.K.M.Ramesh
Senior Counsel
for Mr.V.Subramani

ORDER

This writ petition has been filed challenging the order of the Principal Labour Court, Chennai dated 11.12.2016 made in Standing Order Appeal No.1 of 2018.

2. The above Standing Order Appeal has been preferred by the respondent to set aside the recommendations of Internal Complaints Committee of the petitioner's company furnished to him on 30.08.2018.

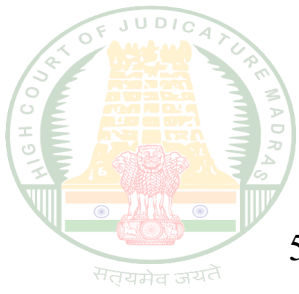
3. The respondent joined in the petitioner's company as an Associate General Manager in pursuant to the appointment letter dated 28.03.2016. The petitioner's company has got Internal Complaints Committee (in short "ICC") constituted under the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (in short



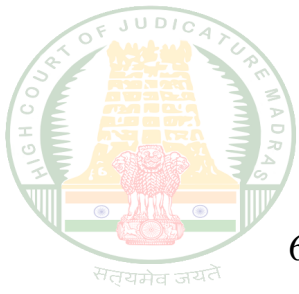
“PoSH Act”) in order to look into the complaints arising under the Act. The

members of the ICC has been constituted in terms of the commissions of the Act.

4. The respondent was working as a Service Delivery Manager in the first respondent company since the year 2016. The respondent has been brought to enquiry before ICC twice within a span of few years of his appointment. There was an allegation of sexual harassment against him in the year 2017 and on an enquiry made by ICC, he was found guilty for his inappropriate behaviour under the PoSH Act. Even thereafter the petitioner company has received many sexual harassment complaints against the respondent from many women who are working under him. The respondent held a supervisory post under the designation “Service Delivery Manager” and several employees work under his supervision. The safety of women employees is the utmost concern of the petitioner's company and it endeavours to create a safe and conducive workplace for women.



5. During the year 2018 one of the women employee by name “A” (hereinafter called as first complainant) had alleged that the respondent indulged in an unwelcome physical contact by hovering close to her when she was seated. During enquiry, the said complainant disclosed that such contact would take place even when the respondent had no connection with the project at work. The other staff by name “B” (hereinafter called second complainant) alleged that the respondent had verbally harassed her by repeatedly asking her physical measurements and making her to feel extremely uncomfortable. She had stated that the respondent had leaned closed to her, touched her shoulder and asked her to remove her garment for the purpose of measurement. The other complainant by name “C” (hereinafter referred as third complainant) had complained that the respondent was inquisitively asked her about her menstrual cycles. On receiving the complaints from the complainants 1 and 2, enquiry was initiated and at the end of the enquiry, ICC found that the behaviour of the respondent was highly inappropriate and it amounted to sexual harassment.



WEB COPY

6. The ICC has made the following recommendations:

“ 1. Along with a final warning letter, the Respondent to be made an individual contributor – should not be given a supervisory role; and his work location to be limited to India only.

2. He will not be eligible for a pay rise or any other related benefits for the next two years.”

7. Aggrieved by the above recommendations, the respondent preferred an appeal before the Labour Court and the Labour Court had reversed the findings of the ICC by holding that the respondent was not given with fair opportunity of hearing and consequently set aside the harassment complaints. As the Principal Labour Court has not properly appreciated the facts made before it, the petitioner preferred an appeal challenging the order of the Principal Labour Court made in Standing order appeal No.1/2018 dated 11.12.2019.

8. Mr.Srinath Sridevan, the learned Senior Counsel for the petitioner, submitted that the Labour Court has gone beyond its jurisdiction and made its observations and discussions; the ICC recommendations have been carried out on 31.08.2018 and the respondent was terminated on



12.07.2019; from 31.08.2018 to 11.12.2019 the respondent did not file any

proceedings to challenge the implementations of the recommendations of ICC; the appeal filed by the respondent was subsequent to his termination and that has been disposed on 11.12.2019. The courts ought not to have interfered with the proceedings of ICC except for the following reasons:

- a) The order was contrary to law;
- b) relevant factors were not considered;
- c) irrelevant factors were considered
- d) no reasonable person would have taken such a decision, and it is contrary to the doctrine of proportionality.

8.1 The enquiry was conducted by complying the principles of natural justice; the respondent asked the petitioner company CCTV footage but the ICC took a decision that the CCTV footage cannot be of any use; the nature of the complaint does not require the ICC footage but the same was not properly appreciated by the Labour Court; the Labour Court has allowed the appeal preferred by the respondent by wrongly holding that fair opportunity was not given; as the principles of natural justice is amenable to change



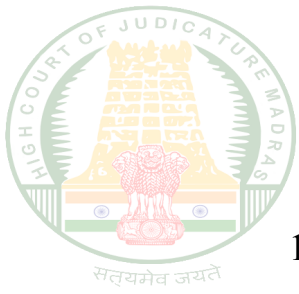
basing upon the facts and circumstances of the case, the Court cannot expect the same to be fit in any rigid formula; merely because the respondent conducted the cross-examination vide written communication instead of oral communication, it cannot be said that the respondent was not given with proper opportunity; hence the impugned order of the Labour Court is liable to be set aside.

9. Mr.K.M.Ramesh, the learned Senior Counsel for the respondent, submitted that the complainants did not give any statement supporting their complaint; the questions intended by the respondent were not put to witnesses during the enquiry and their answers were not obtained; the witnesses could have been made to answer the questions through video conferencing and that was not done and hence there is violation of principles of natural justice; the respondent was in complete dark about the cross-examination of the witnesses; the video footage was not given to the respondent and he was not allowed to question about the same; the ICC's conclusions are based upon premises and surmises and are not reliable; the Labour Court has rightly understood the issue and given the right finding;



one of the staffs had written a letter stating that the respondent did not indulge in any such activity; the questions raised by the respondent was disallowed and hence the order of the Labour Court setting aside the ICC's report is correct and hence it does not require any interference.

10. On a perusal of the orders of the Principal Labour Court dated 11.12.2019, it appears that the Court had placed its reasoning for setting aside the recommendations of ICC dated 30.08.2018 only on two grounds that the CCTV footage was not furnished to the respondent at his request and that the non-examination of the employees viz. first and second complainant, went fatal to the enquiry. The further observation of the Principal Labour Court dated 11.12.2019, does not disclose whether there is any ICC and who are its members and that the enquiry has been made by a well known lady and hence it did not ensure a fair opportunity being granted to the respondent. The Court had gone further and observed that the Enquiry Officer has not passed any order of rejection on the questionnaire given by the appellant.



W.P. No.5643 of 2020

11. The above observation of the Labour Court would only show that the Court had not understood the fundamental principle that the enquiry made by the ICC cannot be equated to an enquiry made in an Industrial Dispute. Even the respondent did not have any grievance about the existence and constitution of ICC. But the court appears to have created points on its own imagination even when the respondent himself did not intend to raise them. For the reasons best known to the respondent, the respondent had impleaded ICC also as a party, when the Management itself is a party to the proceedings initiated by him before the Labour Court.

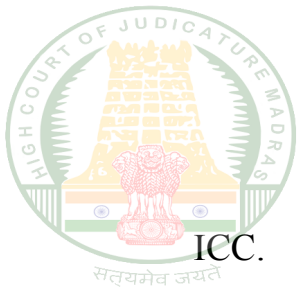
12. The respondent had rushed to the Court after he was served with the order of termination letter dated 12.07.2019. The termination letter dated 12.07.2019 does not have any reference about the enquiry report issued by ICC. In fact the respondent had filed the proceedings before the Labour Court to set aside the recommendation of the ICC dated 30.08.2018. But it was sought subsequent to his order of termination only. The respondent did not challenge the recommendation and thought it fit to question the same only after his termination and that would show his implied acceptance of



recommendation at certain point in time. Though the respondent was prompted to challenge the recommendations of ICC after he was terminated, the merits of his submission that the ICC was a biased one and that he was not given with a fair opportunity, are to be examined.

13. As per the mandates of the PoSH Act, the petitioner's company did have an ICC to deal with the complaints of sexual harassment made by the women employees of the company. In view of such complaints received against the respondent, the ICC had taken up the task of enquiring those complaints. The first complaint was given by the first complainant alleging that the respondent would stand behind her and that made her to feel awkward and he would sometimes give inappropriate looks and insisted to give hand shake. In fact the first complainant had also given a statement before the ICC and that has been mentioned in the report of ICC as well.

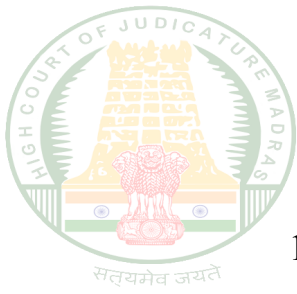
14. The Labour Court without perusing the records, has chosen to make an observation by making an explicit reference of the first complainant's name and that she had not given any statement before the



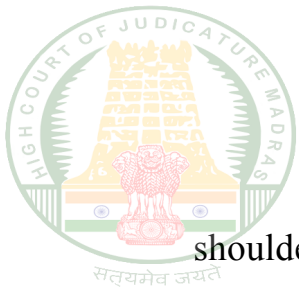
WEB COPY

15. The respondent had asked certain clarification with regard to the statements given by the first complainant through a mail dated 26.07.2018 and that would only confirm the fact that the first complainant had given statement before the ICC. However, for the complaint made by the first complainant there was no witness except the complainant's testimony. The respondent was given with an opportunity to ask various questions by submitting a questionnaire and those questions were also put to the first complainant. The ICC has also recorded that the first complainant had given consistent statement by asserting her complaint.

16. So far as the second complainant is concerned she had also given a statement before the committee and in fact there were some witnesses who have also given statements in this regard. However, the second complainant refused to respond further after she had gone out of the company. The witnesses have given their response to the questions raised by the respondent and that has been observed in the report as well.



17. The respondent defended himself stating that it was part of his work to observe the team's work without disturbing them and he would usually observe the men's work also by standing behind them. The first complainant had alleged that the respondent would come and stand behind her without any reason and that embarrassed her. She had also stated that he had insisted hand shakes by standing close to her. The respondent tried to convince the committee by stating that as a person in a Supervisory capacity, it is his duty to supervise the performance of a staff and the necessary action which he needed to do as a part of his job and that should not be construed as harassment. So far as the second complainant is concerned, it is about the respondent asking her about the size of the coat as overcoats were going to be distributed to the staff. Even after the second complainant told that her size is '2XL', the respondent had insisted her to give the measurements in 'cms' or to remove the coat which she was wearing and give it to him for taking measurement and this unwelcome action would certainly amount to sexual harassment within the definition of sexual harassment under the PoSH Act. The second complainant has also complained about some unprofessional behaviour on the part of the respondent that he touched her

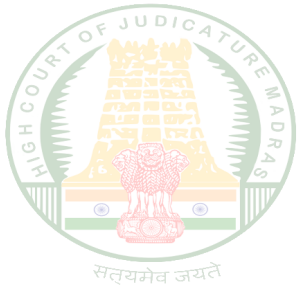


shoulders.

WEB COPY

18. The above allegations were denied by the respondent by stating that he only insisted to give the size in order to distribute the ladies overcoats gifted by a Saudi customer for the lady staffs. But the explanation of the respondent was not accepted by the ICC and the ICC proceeded to believe the statement of the complainant and the witnesses and had arrived at a conclusion that both the complaints have been proved and that the respondent had behaved in an inappropriate manner.

19. The respondent also examined some of the witnesses. The witnesses of the respondent have stated that the respondent used to be a polite and good person and he would never speak disrespectfully to women. The respondent witnesses have given a generalised opinion about the respondent and their statements were not specific to the incidents alleged by the complainants. Before analyzing the reasonableness of the enquiry and the soundness of the finding of the ICC, it is appropriate to read the definition of “harassment” as given in PoSH Act under Section 2 (n).



“ Section 2. (n) “sexual harassment” includes any

WEB COPY *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;”*

20. The complainants felt the gestures of the respondent as embarrassing and unwelcome. In an institution like the petitioner's where both men and women work, interaction between both the sexes are inevitable. At some times physical gesture like handshake, touching the shoulders might also happen between the opposite sexes also but what really matters is how those gestures are felt by the recipient. In these kinds of allegations, feelings of the complainants matter a lot than the statement of other witnesses or the visuals that might or might not have been recorded in the CCTV's fixed in the office premises.

21. It is the submission of the respondent that there is a possibility that some of the complainants who fell under his direct supervision could



W.P. No.5643 of 2020

have made revengeful statements in the form of complaints in order to wreck their vengeance.

22. Except the fact that the respondent was doing supervisory role and it might require him to stand close and observe the performance of lady staff, the materials on record do not disclose any ulterior motive for the complainants to give a false complaint against the respondent. In an official settings it is understandable that the supervisor has to oversee the performance of the team working under him and the team would also be aware of the same. In fact the complainants would not have worked under the respondent alone and their services would have been supervised by other similar staffs who were playing the same role at a different point in time.

23. These kind of complaints are raised only against the respondent and not all those who have been performing similar roles and hence it becomes a matter of concern. The petitioner's company also is not seem to have developed any illegal motive against the respondent to make use of the complaints to make any false complaints. The ICC already available in the



petitioner's company has been given with a task of enquiring the complaints.

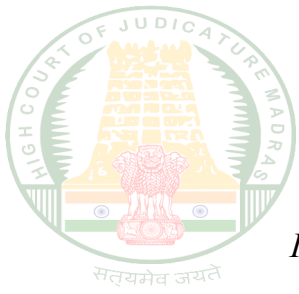
Though the respondent has claimed that the ICC is the face of the company and it is not impartial, that was not substantiated with any materials. Had not the complainants given any complaint, there would not have been any necessity for the petitioner's company to cause an enquiry to be made against the respondent by the ICC.

24. So far as the powers of ICC are concerned, it has been prescribed under Section 11 of the PoSH Act and it is extracted hereunder:

“ Section 11. Inquiry into complaint.

(1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the



WEB COPY



Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

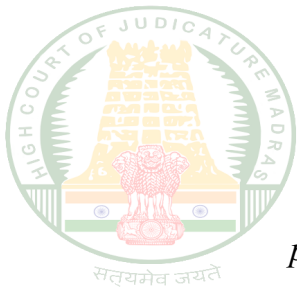
(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a

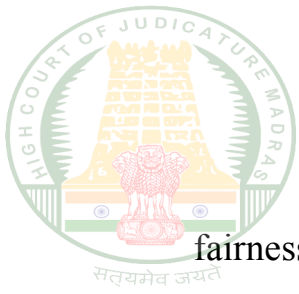


period of ninety days.”

WEB COPY

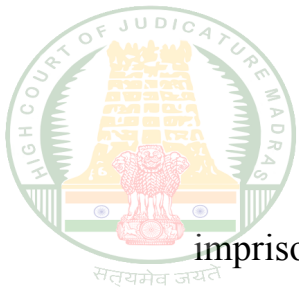
25. The Hon'ble Supreme Court while issuing directions in ***Medha Kotwal Lele and ors. Vs. Union of India reported in AIR 2013 SC 93***, stated that the report of the ICC shall be deemed to be an enquiry report as the ICC would be deemed to be the inquiring authority for the purpose of disciplinary action. Necessary amendments have been made in the Tamil Nadu State Service Conduct and Disciplinary Rules, Industrial Employment Standing Order Rules, consequent to the direction given by the Hon'ble Supreme Court in the order dated 26.04.2004 in ***Medha Kotwal Lele's and others Vs. Union of India and others in Writ Petition (CRIMINAL) NOS. 173-177 OF 1999***. Hence the inquiry made by the ICC in the instant case should be deemed to be an inquiry made for the purpose of disciplinary action as done by the Enquiring authority.

26. While considering the ICC as an inquiry authority it is needless to state that a reasonable opportunity should be given to both the parties. But the complication comes when the standards of the reasonableness and



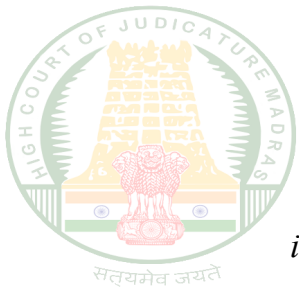
fairness is set by the ICC. So far as the second respondent is concerned, he claims that non- furnishing of CCTV footage had deprived him to get a fair opportunity and the Labour Court has also endorsed his views. In any enquiry made against the delinquent by the inquiry authority, a fair amount of reasonableness should be there in the interest of justice. But the object of reasonableness is to ensure that the respondent should not become a scape goat at the hands of someone due to some malice. However, there cannot be any straight-jacket or a rigid formula to suggest the standards of reasonableness to be adopted during the departmental inquiry. So far as the charges of sexual harassment is concerned, the privacy, secrecy and safety of the victims also need to be given priority and hence the fairness formula to be adopted during such inquiry can be flexible and suiting to the nature of the complaint, type of the institution and even the conduct of the parties also.

27. In this regard it is appropriate to refer the judgment of the Hon'ble Supreme Court held in *Union of India Vs P.K Roy* reported in (ILLJ 633 SC) wherein it is stated that the doctrine of natural justice cannot be



imprisoned with the straight-jacket or a rigid formula and its application depends upon several factors. The Hon'ble Supreme Court had taken cue from the earlier judgment rendered in ***Hira Nath Mishra and ors. Vs. The Principal, Rajendra Medical College, Ranchi and ors.***, reported in ***AIR 1973 SC 1260*** to endorse the above view. In ***Hiranath's*** case the Hon'ble Supreme Court has held in paragraph No.11 that the rules of natural justice cannot remain the same applying to all conditions and for a better clarity, it is extracted hereunder:

“.. 11. Rules of natural justice cannot remain the same applying to all conditions. We know of statutes in India like the Goonda Acts which permit evidence being collected behind the back of the goonda and the goonda being merely asked to represent against the main charges arising out of the evidence collected. Care is taken to see that the witnesses who gave statements would not be identified. In such cases there is no question of the witnesses being called and the goonda being given an opportunity to cross-examine the witnesses. The reason is obvious. No witness will come forward to give evidence in the presence of the goonda. However unsavoury the procedure may appear to a judicial mind, these are facts of life which are to be faced. The girls who were molested that night would not have come forward to give evidence in any regular enquiry and if a strict enquiry like the one conducted in a court of law were to be



WEB COPY

imposed in such matters, the girls would have had to go under the constant fear of molestation by the male students who were capable of such indecencies. Under the circumstances the course followed by the Principal was a wise one. The Committee whose integrity could not be impeached, collected and sifted the evidence given by the girls. Thereafter the students definitely named by the girls were informed about the complaint against them and the charge. They were given an opportunity to state their case. We do not think that the facts and circumstances of this case require anything more to be done.”

28. Certain amount of sensitivity is required on the part of the employer in order to ensure that the complainants shall not be allowed to stand a long and grilling cross-examination in the name of availing a fair opportunity.

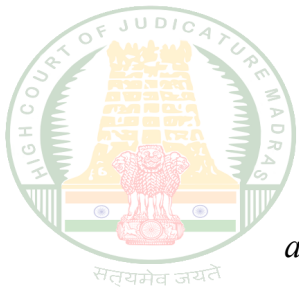
29. In the recent order of this Court held in ***W.P.(MD)Nos.13981, 9747 & 12601 of 2024 dated 21.11.2024, reported in 2024 livelaw (mad) 461*** this Court has given a detailed analysis about the standard of reasonableness during such inquiry. This Court observed that nothing would prevent the inquiring authority from limiting or deciding the fairness of



inquiry suiting to the situations on hand but by recording the reasons. In the instant case it appears that the ICC had chosen the mode of receiving the questionnaires from the respondent and had put the questions to the complainants and the witnesses. During such occasions the ICC is not deprived of its power to limit the questions if they are found to be unnecessary or harassing. In this regard, it is appropriate to extract the relevant paragraphs of the above judgment for the purpose of this discussions:

“ 116. It is not really a rocket science to understand the women’s perspective, because all the complainants including the petitioners have been speaking in one voice that they are aggrieved due to the insensitivity, apathy and ridiculousness to which they are exposed. More often they are asked to bring witnesses for proving the allegations of sexual harassment, knowing full well that such harassment does not take place in public view. Popular women from various industries and women groups whose views are expressed in public forum and reported in dailies whenever there is an outcry after a large scale sexual violence is reported, also share the same concern.

117. The recently reported sexual violence and murder of a young female doctor of a Hospital at Calcutta during her night duty

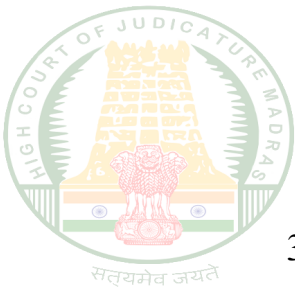


WEB COPY

and the Report of Justice Hema Committee on the allegations of sexual harassment against women in Malayalam film industry have also generated such a outcry. Views expressed during that time from all quarters and women from all walks were the hot news in the media. So women's perspective is neither too difficult to be discernable nor too deep to be unfathomable.

118. All aggrieved women and her empathizers only wish that the complaints of this nature should be dealt with due sensitivity and enquired by applying the principles of fairness with equitable knack and flexibility and without giving any scope for secondary victimization. They dislike the false empathy shown unto them just to convince them to sweep those incidents under the carpet. They deplore the unreasonable demand to bring eyewitnesses or exposing them to face the unreasonable and crooked questions of the perpetrators in the name of cross examination.

119. Nothing would prevent the inquiry authority from limiting or designing the fairness of inquiry, suiting to the situation on hand, but by recording reasons to do so. To ensure a supportive environment is not always a demand of the aggrieved woman from the employer alone but also from the colleagues, families and every social human being who share their existence in this planet.”



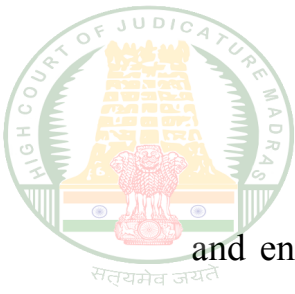
W.P. No.5643 of 2020

30. In *Joseph Oncale vs Sundowner Offshore Services, Inc.* 523 U.S

75(1998), the U.S. Supreme Court has observed that in the matter of complaints given for sexual harassment in work places, the standard of reasonableness is not the standard of a reasonable man but *the standard of reasonable woman*.

31. The conduct of the respondent as it appears from the record would show that he was in the habit of sending list of questions in the name of availing fair opportunity and the ICC cannot be expected to handle all questions by putting it to the victim. It is at the discussion of the ICC to filter or rephrase those questions and put it to the victim and the witnesses. As the ICC had rightly understood the scope and nature of the enquiry and adopted the right mode suiting to the purpose of enquiry and struck a balance and the reasons recorded for arriving at the conclusion is also acceptable, I do not find any valid reasons for interference with its report.

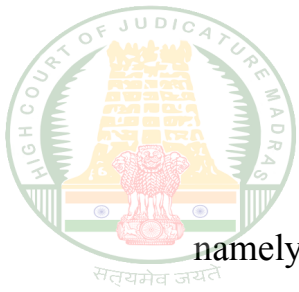
32. The committee was also conscious of the fact that the respondent stood in a supervisory capacity who was superior to the complainant woman



W.P. No.5643 of 2020

and ensured fairness by designing a type of enquiry which is suitable and appropriate to serve the interest of both the parties. But the above nuances were not properly appreciated by the Labour Court and the Labour Court had set aside the inquiry report just because the CCTV footages were not given to the respondent. It has been already stated that the respondent's act has caused a feeling of embarrassment and discomfort in the mind of complainants. The respondent did not deny the fact that he was standing near the complainant but had justified that it was his duty to supervise the works of the complainant. So the CCTV footage and the visuals cannot help him to prove or disprove the intention. All that can be understood is how it was felt by the recipients who are the complainants.

33. The respondent who has got his corporate experience should have known to execute his functions without making the women employees embarrassed or frightened due to his actions. The complainants did not state something in the air but have given details of the incidents and have also stated how it was felt by them. If something is not received well and it is inappropriate and felt as an unwelcome behaviour affecting the other sex

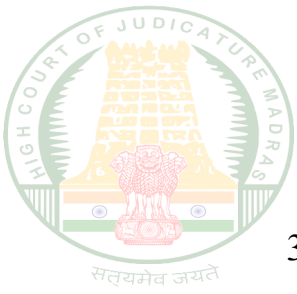


W.P. No.5643 of 2020

namely the women, no doubt it would fall under the definition of “*sexual harassment*”.

WEB COPY

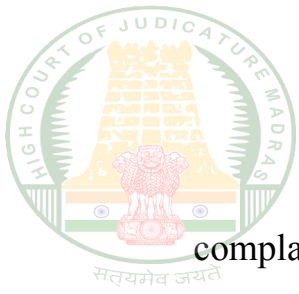
34. The powers to review with regard to the inquiring reports of the ICC is limited to ensure whether the inquiry has been conducted in a fair and proper manner or whether there was any deviance from the basic principles. In this regard, the judgment of the Bombay High Court in *Vidya Akhave Vs. Union of India reported in 2016 SCC OnLine Bom 9288* would assume much relevance. In the said case it has been observed that the court shall not ordinarily interfere with the proceedings of ICC except when there is a non-compliance of the fairness. Time and again it is held in several judgments of the Hon'ble Supreme Court that in disciplinary proceedings especially the proceedings taken in pursuant to the charges of sexual harassment, the Courts should not be carried away with insignificant discrepancies or hyper-technicalities and the appreciation should be comprehensive.



W.P. No.5643 of 2020

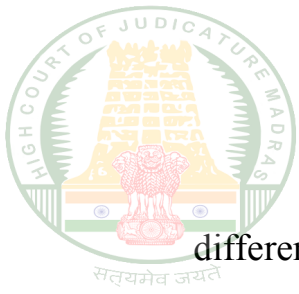
35. In *B.C.Chaturvedi Vs. Union of India*, reported in (1996)ILLJ1231 SC the Hon'ble Supreme Court has held that the power of judicial review is meant to ensure that the individual should receive fair treatment and the conclusion which the authority reaches is not necessarily correct in the eye of the Court. The power of judicial review cannot be used like the power of the appellate authority to re-appreciate the evidence and to arrive at an independent findings by the Court. Such interference can be done only when the manner in which the inquiry has been conducted was completely inconsistent to the course of natural justice or in violation of the rules prescribing in the mode of enquiry or the conclusion and findings reached are without any evidence but on mere assumptions and presumptions.

36. Regarding the appreciation of materials in the charges of sexual harassment, the Hon'ble Supreme Court has held in *Apparel Export Promotion Council Vs. A.K.Chopra* reported in AIR 1999 SC 625, that the Court cannot overlook the ground realities and ignore the conduct of the respondent against his junior female employees. In the instant case also the



complainants are juniors or subordinate to the respondent and the respondent is expected to conduct himself in such a manner that he does not cause a feeling of discomfort embarrassment. His postures or gestures while standing closer to the women employee should be compatible to the purpose and object of the work and not beyond that. It would have been a different case if the complainants had exaggerated the usual and routine interaction as a case of sexual harassment. There is no misunderstanding in the mind of the complainants before giving the complaints against the respondent. Their statements and the materials placed on record would show that in the name of performing duty the respondent had put the complainants in an embarrassing and an uneasy position. No doubt such kind of gestures either physical, verbal or non verbal, are unwelcome ones.

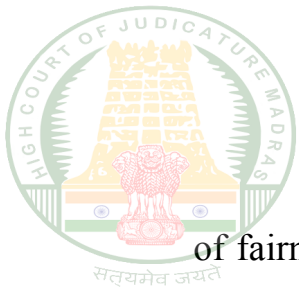
37. The definition of “sexual harassment” as it is seen from the PoSH Act has given significance to the act than the intention behind the same. In the event of such actions are reported as criminal offense then the prosecution may be expected to prove the intention also. It is the fundamental discipline and understanding with which the employees of



different gender are expected to interact with each other where decency is the yardstick and nothing else. While speaking about the decency it is not the decency which the respondent thinks within himself, but how he makes the other gender to feel about his actions.

38. The ICC appears to be sensitive and reasonable in its approach during the process of inquiry and had formulated its own method of ensuring fairness in giving opportunities to both the complainant and the respondent. Strict rules of evidence has got no application to the type of inquiry that is being made by the ICC on the charges of sexual harassment against the women employees.

39. As the inquiry is a quasi judicial one, it is sufficient to come at a logical conclusion basing upon the materials which are relevant to the issue. In the given circumstances of the case, if the statements of witnesses, if appreciated holistically that would only make out the charges as alleged against the respondent. Not yielding to hyper-technicalities even when the respondent pulled the inquiring authority, can also be considered as a feature



of fairness during inquiry. The Labour Court ought not to have given much significance to the non-furnishing of CCTV footage to the respondent. The nature of the complaint, the constitution of the ICC, the course of inquiry and the findings of the ICC are seen to be interlinked with each other and the committee did not wander over and beyond the scope of inquiry with any malicious intention against the respondent.

40. In view of the above stated reasons and in view of the short sighted appreciation of the Labour Court, I feel the order of the Labour Court is liable to be quashed.

41. In the result, this Writ Petition is allowed and the Standing Order Appeal No.1/2018 dated 11.12.2019 on the file of the Principal Labour Court at Chennai, is hereby quashed. No costs. Connected miscellaneous petitions are closed.

22.01.2025

Index: Yes
Speaking order
Netural Citation Case : Yes
bkn



WEB COPY

To:

The Presiding Officer,
Principal Labour Court,
Chennai



WEB COPY

VERDICTUM.IN



W.P. No.5643 of 2020

R.N.MANJULA ,J.

bkn

Pre-delivery order made in
W.P. No.5643 of 2020

22.01.2025