

(2025) 03 KL CK 1316

In the High Court Of Kerala

Case No : Original Petition (KAT) No. 80 Of 2025

Thomas Antony, S/O. K.T. Antony

APPELLANT

Vs

State Of Kerala, Represented By Its Secretary

RESPONDENT

Date of Decision : 18-03-2025

Acts Referred:

Constitution of India, 1950 — Article 227
Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal)
Act, 2013 — Section 11, 11(1), 13, 13(3)(i)

Citation : (2025) 03 KL CK 1316

Hon'ble Judges : A. Muhamed Mustaque, J;P. Krishna Kumar, J

Bench : Division Bench

Advocate : K.R.Ganesh, Elvin Peter P.J., Jeleetta Gregory, Anamika M.J., Adarsh Babu C.S, Sunilkumar Kuriakose

Final Decision : Dispose Of

Judgement

P.Krishna Kumar, J

1. While the petitioner was serving as Deputy Director in the District Tourism office, an enquiry was initiated against him by the Internal Complaint Committee constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ('POSH Act', for short), on the basis of Annexure A1 complaint. The gist of the allegation against the petitioner is that he harassed the complainant, a female co-worker in his office, in various ways. Based on Annexure A3 report of the Internal Committee, Annexure A5 Memo of Charges was issued to the petitioner. Later, he received Annexure A20 Show Cause Notice by which a punishment of lowering him as the junior most in the category of Tourist Information Officer was tentatively proposed.

2. After submitting Annexure A23 reply against the said notice by raising serious objections against the enquiry report and the consequential actions taken, the petitioner approached the Kerala Administrative Tribunal for setting aside Annexure A3 report and further proceedings. The Tribunal refused to interfere

with the proceedings initiated against the petitioner. It observed that the challenge made by him is premature and he could avail of his remedies when final orders are issued. This order is impugned in the present original petition filed under Article 227 of the Constitution of India.

3. We heard the learned Senior Counsel for the petitioner Sri. Elvin Peter P.J., as instructed by Sri.K.R.Ganesh, and Sri.Sunilkumar Kuriakose, the learned Government Pleader.

4. The upshot of the contentions of the petitioner is that as per Section 11 of the POSH Act, the Internal Committee is bound to enquire into the complaint in accordance with the provisions of the Service Rules applicable to the incumbent employee, but the petitioner was not even permitted to participate in the enquiry while the complainant was examined and thus he was also not permitted to cross-examine the complainant. It is further contended that as per the provisions of the Kerala Civil Services (Classification, Control and Appeal) Rules, the Service Rules applicable to the petitioner for conducting a disciplinary enquiry, a delinquent is entitled to participate in the enquiry and cross-examine the complainant and thus the Committee was bound to participate the petitioner while conducting the enquiry. The petitioner further assails the procedure followed by the Committee in so much as it violates the second proviso to Section 11 of the POSH Act. Reliance is also made on the decision of this Court in *Sibu L. S. v. Air India Ltd., New Delhi and Others* (2016(2) KHC 569).

5. In this context, it is necessary to advert to the relevant part of Sections 11 and 13 of the POSH Act, which reads thus:

" Section 11 :Inquiry into complaint (1) subject to the provisions of S.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 S.509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

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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.

Section 13: Inquiry report- (1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the

District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

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(3) Where the Internal Committee or the Local Committee as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be -

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed."

(emphasis supplied)

6. It is evident from a combined reading of Sections 11(1) and 13(3)(i) of the POSH Act that an enquiry to be conducted under the said Act against an employee of the State must be in the form of a disciplinary enquiry to prove misconduct. Thus, the procedure to be followed in such enquiry must be the procedure prescribed under the Kerala Civil Services (Classification, Control and Appeal) Rules or such other departmental rules applicable to the employee.

7. However, before permitting the delinquent to cross-examine the victim of the sexual harassment, the Committee must ensure her capability to depose before them fearlessly and without any intimidation. This Court in *Sibu L.S. v. Air India Ltd. New Delhi* (supra) enunciated the procedure to be followed in such matters, and in particular, the manner in which the principles of natural justice have to be secured in the enquiry conducted in a complaint relating to the sexual harassment. It reads:

"The fundamental principles relating to the principles of natural justice is that when a prejudicial statements are made, the same shall not be used against any person without giving him an opportunity to correct and contradict. In sexual harassment complaint, sometimes the complainant may not have courage to depose all that has happened to her at the work place. There may be an atmosphere restraining free expression of victim's grievance before the Committee. The privacy and secrecy of such victims' also required to be protected. It is to be noted that verbal cross examination is not the sole criteria to controvert or contradict any statement given by the aggrieved before any authority. Primarily, in a sexual harassment complaint, the committee has to verify and analyse the capability of the aggrieved to depose before them fearlessly without any intimidation. If the Committee is of the view that the aggrieved is a feeble and cannot withstand any cross examination, the Committee can adopt such other measures to ensure that the witnesses statement is contradicted or corrected by the delinquent in other manner. The fair opportunity, therefore, has to be understood in the context of atmosphere of free expression of grievance. If the Committee is of the view that the witness or

complainant can freely depose without any fear, certainly, the delinquent can be permitted to have verbal cross examination of such witnesses. In cases, where the Committee is of the view that the complainant is not in a position to express freely, the Committee can adopt such other method permitting the delinquent to contradict and correct either by providing statement to the delinquent and soliciting his objections to such statement.”

From the above principles it is clear that, the mere fact that the delinquent was not permitted to verbally cross-examine the victim, it cannot be said that the enquiry is vitiated.

8. As a general rule, a delinquent facing a disciplinary enquiry should not be permitted to challenge the intermediary proceedings until the enquiry and the consequential decision of the disciplinary authority are concluded. If at all there is any violation of the principles of natural justice or the relevant statutory provisions while conducting the enquiry, the employee can raise those matters while challenging the final outcome. If the enquiry proceedings or disciplinary actions are subjected to challenges at every interim stage, there will not be any finality to the process and that will affect the very system of public administration. Thus, we find no jurisdictional error in the impugned order.

9. However, considering the repeated assertions made by the petitioner in the present case that he was not permitted to controvert or contradict the complainant in any manner, we deem it appropriate to dispose of the original petition in the following lines:

i) In view of the provisions contained in Section 11 of the POSH Act, the disciplinary authority should ensure that the Internal Committee proceeded with the enquiry in the manner provided in the Kerala Civil Services (Classification, Control and Appeal) Rules and the petitioner was given an opportunity to discredit the complainant or to adduce evidence before the Committee.

ii) The disciplinary authority can also verify whether the second proviso to Section 11(1) of the Act was also complied with.

iii) If the disciplinary authority finds that the proceedings were in substantial compliance with the statutory requirements, it can proceed to the further stages as contemplated in law.

iv) If any irregularity is found, the disciplinary authority is entitled to remit back the matter to the Internal Complaint Committee for curing the defects and for a fresh report, as per Rule 15 (1) & (2) of the Kerala Civil Services (Classification, Control and Appeal) Rules. v) Considering the undue delay that occurred in this matter, the respondents are directed to complete the entire process at the earliest and at any rate within a period of three months from the date of receipt of this judgment.

10. During the course of hearing this petition, we noticed that at present there is no mechanism to anonymise the complainant, who alleges that she faced sexual

harassment or other atrocities as envisaged by the POSH Act, in the various proceedings related to the enquiry. When the right to privacy is recognized as one of the important facets of the fundamental rights of a person, a complainant who raises such a grievance is also entitled to ensure that her whereabouts are anonymised from the public domain. That said, this should be done in such a manner not prejudicial to the rights of the employee against whom the complaint is made, while he defends the enquiry. For this purpose, we direct the first respondent to formulate necessary guidelines within a period of four months.

We note that the Bombay High Court has issued certain guidelines in P v. A & Ors. (Suit No.142 of 2021 dated 24.09.2021). Though the said guidelines were framed mainly to ensure the privacy of the victim under the POSH Act during the court proceedings, if the Government finds it appropriate to follow any part of the said guidelines with necessary variations, it can do so, irrespective of the fact that the Bombay High Court has later clarified that the said guidelines are not meant for general application.