

(2026) 03 KL CK 0762

In the High Court Of Kerala

Case No : Writ Petition (C) No. 31952 Of 2025

XXXXXX

APPELLANT

Vs

Kerala Social Security Mission Represented By Its Executive
Director

RESPONDENT

Date of Decision : 17-03-2026

Acts Referred:

Constitution of India, 1950 — Article 226
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)
Act, 2013 — Section 11(1), 18
Sexual Harassment of Women at Workplace Rules, 2013 — Rule 7, 7(2), 7(3), 7(4)

Citation : (2026) 03 KL CK 0762

Hon'ble Judges : M.B.Snehalatha, J

Bench : Single Bench

Advocate : Shibi.K.P., C.K.Sunil, Vidya K.G., K.R.Ganesh

Final Decision : Allowed

Judgement

M.B.Snehalatha, J

1. This writ petition has been filed by the petitioners seeking to quash Ext. P2 termination order dated 14.08.2025 and also to quash all adverse findings recorded against them and to set aside Ext.P3 report of Internal Complaints Committee (ICC).

2. The grievance of the petitioners is that the termination of the 1st petitioner as per Ext. P2 order and the adverse consequences visited upon the 2nd petitioner pursuant to the enquiry conducted by the ICC of the 5th respondent is arbitrary and illegal and in gross violation of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act for short) and according to the petitioners, the enquiry was conducted by the Internal Complaints Committee (ICC) by violating the principles of natural justice. Neither the copy of the complaint nor the ICC report was supplied to them as required under the statute. It is further contended that the

petitioners obtained a copy of the complaint only through the Right to Information Act, 2005, and that too after the passing of Ext. P3 order. It was further contended that they were summoned for enquiry without serving a copy of the complaint; that they were denied the opportunity to cross-examine the complainant and the witnesses and denied the right to know as to who are the witnesses cited in the complaint nor they were permitted to examine their own witnesses. According to the petitioners, they did not get a chance of a fair trial, which constitutes violation of the fundamental principle of audi alteram partem.

3. Respondents 1 and 5 filed their statements denying the case of the petitioners. It was contended that the ICC, being a statutory fact-finding body, evaluated the testimony, assessed its consistency, and found sufficient basis to conclude that the petitioners were made aware of the nature of the allegations and were given an opportunity to respond. It was further contended that the termination of the petitioners was not arbitrary but a consequence of the findings of the ICC under the POSH Act, 2013.

4. The learned Government Pleader and the learned counsel appearing for the 1st respondent submitted that if the petitioners are aggrieved by Ext. P2 order, their remedy is to prefer an appeal as provided under Section 18 of the POSH Act. It was further contended that Exts.P2 and P3 are not amenable to challenge before this Court under Article 226 of the Constitution of India.

5. The specific case of the petitioners is that there is violation of Rules 7(2), 7(3) and 7(4) of the POSH Rules and the petitioners were not given copy of the complaint as mandated under the POSH Act and Rules and they were not permitted to cross examine the complainant and witnesses.

6. Section 11(1) of the POSH Act reads as under:

"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:

Provided that where the aggrieved woman informs the 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."

7. On a reading of Section 11(1) of the POSH Act it can be seen that 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 and 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.

8. Rule 7 of the said POSH Rules reads as follows:

"Manner of inquiry into complaint.- (1) Subject to the provisions of section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.

(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).

(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.

(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex- parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be: Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present."

9. Rule 7(2) of POSH Rules specifically states that, on receipt of the complaint, the Complaints Committee shall send one of the copies to the respondent and the inquiry should be done in accordance with the principles of natural

justice.

10. Serving a copy of the complaint and other relevant documents to the delinquent is mandatory under Rule 7 of the POSH Rules and the failure to do so is in violation of the principles of natural justice.

11. As per Rule 7(3), delinquent is required to be given an opportunity to file a reply to the complaint, along with the list of documents and details of witnesses within a period of ten working days.

12. Rule 7(4) of the POSH Rules provides that Internal Committee shall conduct the enquiry in accordance with the principles of natural justice by providing reasonable opportunity to the delinquent to be heard and to present their case.

13. In Paragraph 53 of *Aureliano Fernandes v. State of Goa* (2023 KHC Online 6567), the Apex Court held as follows:

“At the same time, however, women-centric the Guidelines and the Act may have been, they both recognize the fact that any inquiry into a complaint of sexual harassment at the workplace must be in accordance with the relevant rules and in line with the principles of natural justice. The cardinal principle required to be borne in mind is that the person accused of misconduct must be informed of the case, must be supplied the evidence in support thereof and be given a reasonable opportunity to present his version before any adverse decision is taken. Similarly, the concerned employer is also expected to act fairly and adopt a procedure that is just, fair and reasonable.”

14. In the counter affidavit filed by the 5th respondent, it has been stated that “during the hearing, complaint was shown to each of the accused (portion involved in the particular person) (sic). Thus, from the counter affidavit filed, it is evident that there is merit in the contention put forward by the petitioners that they were not served with copy of the complaint. The records would also reveal that no opportunity was given to the petitioners to cross-examine the complainant and witnesses. Thus, prima facie, there is merit in the contention put forward by the petitioners that there is violation of the principles of natural justice.

15. It is evident that enquiry was conducted by ICC by violating the principles of natural justice and therefore, Ext.P3 report is vitiated and liable to be set aside, as the enquiry was conducted without following the POSH Act and Rules and principles of natural justice.

16. Accordingly, Ext.P3 is set aside and respondents 4 and 5 are directed to conduct the enquiry afresh in accordance with law, within a period of two months from the date of receipt of a certified copy of this judgment.

It is made clear that this Court has not considered the merits of the complaint filed by the complainant and the defence canvassed by the petitioners.