

(2025) 08 KL CK 0813
In the High Court Of Kerala
Case No : Writ Appeal No.1622 Of 2025

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APPELLANT

Vs

Abraham Mathai

RESPONDENT

Date of Decision : 01-08-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act. 1947 — Section 2A
Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal Act, 2013 — Section 2(n), 3, 3(2)(i), 3(2)(ii), 3(2)(iii), 3(2)(iv), 3(2)(v), 9, 11, 12
Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Rules, 2013 — Rule 6, 7, 7(4), 7(6)

Citation : (2025) 08 KL CK 0813

Hon'ble Judges : Raja Vijayaraghavan V, J;K. V. Jayakumar, J

Bench : Single Bench

Advocate : R.Anilkumar, P.Fazil, M.Jayakrishnan, Saju Thaliath, Jayasree Manoj, Jithin Paul Varghese, C.Prabitha, Fadil Fazil, Aswathy Jayachandran, Akshaya Thomas, K.Jaju Babu

Final Decision : Dismissed

Judgement

Raja Vijayaraghavan V, J

1. The above-captioned appeal has been preferred, challenging the judgment dated 03.12.2024 in W.P.(C) No. 39915 of 2018 passed by a learned Single Judge of this Court. By the above judgment, the report dated 22.08.2018 of the Local Committee ("LC" for the sake of brevity) constituted under the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal Act, 2013 ("PoSH Act" for the sake of brevity) and the communication dated 19.09.2018 issued by the District Collector were held to be illegal and ultra vires of the provisions of PoSH Act and the same were quashed.

2. Short facts of the case are as under:

2.1. The 1st respondent herein is the Managing Director of a Company by name

"Amstor Information Technology (India) Pvt. Ltd." The said Company is having its operation at Technopark at Thiruvananthapuram. His wife was also a Director of the said Company. The appellant herein was employed as an Accountant cum Manager in the Company, and she was appointed by the wife, who was one of the Directors, on 02.06.1997. It appears that the appellant was terminated from service with effect from 07.11.2017.

2.2. The appellant approached the Labour Court and challenged the termination order. Immediately thereafter, the 1st respondent instituted a suit before the Munsiff's Court, Thiruvananthapuram, seeking to interdict the appellant from trespassing into the office of the Company. It appears that in the meantime, a complaint was forwarded to the 4th respondent, District Collector, raising certain allegations against the 1st respondent. The same was forwarded by the District Collector to the Local Committee constituted under the PoSH Act.

2.3. An enquiry was conducted by the Committee, and a report, which is produced as Ext.P5 in the Writ Petition, was submitted before the District Collector. In the said report, the following recommendations were made: "

(i) The respondent be asked to apologize in writing to the complainants 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."

2.4. On the basis of the said report, the District Collector issued Ext.P6 letter dated 19.09.2018 calling upon the 1st respondent to comply with the aforesaid directions.

2.5. Being aggrieved by the aforesaid letter and communication issued, the 1st respondent approached this Court and filed a Writ Petition seeking the following reliefs:

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."

3. The learned Single Judge, after adverting to the facts and circumstances and the submissions advanced by both sides, came to the following conclusion:

3.1. The absence of a written complaint submitted by the appellant, as admitted by her during the inquiry proceedings, was held to constitute a clear violation of Sections 11 and 12 of the PoSH Act and Rule 6 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (hereinafter referred as 'PoSH Rules').

3.2. The allegations levelled by the appellant did not make out a case of sexual harassment within the meaning of the PoSH Act. The inquiry conducted under the PoSH framework was therefore held to be ultra vires the provisions of the Act.

3.3. The 1st respondent herein was found to have been denied an opportunity to cross-examine the appellant and the witnesses whose statements were relied upon by the Local Committee, which constituted a clear violation of the principles of natural justice.

3.4. It was held that the impugned report being ultra vires and contrary to the provisions of the PoSH Act, the existence of an alternate remedy does not bar this Court from intervening under Article 226 of the Constitution of India.

4. Sri. R. Anilkumar, the learned counsel appearing for the appellant, submitted that the judgment rendered by the learned Single Judge cannot be sustained under law. According to the learned counsel, the Local Level Committee, on the basis of the evidence let in, as well as the complaint filed by the appellant, was convinced that sexually coloured remarks were made to make the workplace hostile and that the same would amount to sexual harassment in terms of the provisions of the PoSH Act. The learned counsel submitted that the mere fact that the appellant had approached the Labour Court is no reason as to why she was denied the benefits under the PoSH Act. Finally, it is submitted that when the 1st respondent has an alternate remedy under the PoSH Act, it is not for this Court to intervene under Article 226 of the Constitution of India.

5. In response, Sri. Jaju Babu, the learned Senior Counsel, as instructed by Sri P.Fazil, the learned counsel, highlighted that the learned Single Judge has taken note of the fact that the principles of natural justice have been violated. It is also submitted that the appellant had admitted before the Local Committee itself that the complaint which was forwarded to the Committee by the District Collector was not submitted by her. It is submitted that since the express provisions of the PoSH Act were violated by the illegal procedure adopted by the Committee, nothing stood in the way of this Court in exercising powers under Article 226 of

the Constitution of India.

6. We have carefully considered the submissions advanced and have perused the records.

7. The PoSH Act was enacted to provide protection against sexual harassment of women at the workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto, as can be seen from the preamble of the said act. 8. Section 2(n) of the PoSH Act defines sexual harassment. The said provision reads as under:

2. Definitions.

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(n) "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (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."

9. As can be seen from the provision "Sexual harassment" can mean and include any unwelcome act or behaviour of a sexual nature whether directly or by implication, including physical contact and advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography, or any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature. In *Prasad Pannian v Central University of Kerala* (2020 SCC OnLine KER 6550) , a Division Bench of this Court, after evaluating the provisions of the Act observed that sub-clauses (i) to (v) are only instances of unwelcome acts or behaviour and there may be other instances as well. It was, however, held that when an allegation of sexual harassment is made, though not coming within the parameters as specified in sub-clauses (i) to (v), the act should have something to do with a sexual advance either directly or by implication. It was observed that there may be other unwelcome acts or behaviour which, though not explicitly covered under the provision, could amount to a sexual advance or demand, and which a woman may find offensive or distressing on account of her gender.

10. Section 3 of the PoSH Act deals with the prevention of sexual harassment. The said provision reads as under:

"3. Prevention of sexual harassment.—

- (1) No woman shall be subjected to sexual harassment at any workplace.

(2) The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:—

- (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 intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety”.

11. The provision lists specific circumstances which, if connected to any act or behaviour of sexual harassment, may themselves amount to sexual harassment. These include implied or explicit promise of preferential treatment in employment, thereby suggesting that the woman will benefit at work if she submits to the unwelcome behaviour. It also includes implied or explicit threat of detrimental treatment, suggesting punishment or adverse consequences if she does not comply. Another instance would be implied or explicit threat about her present or future employment status, which for instance, may mean threatening dismissal, demotion, or denial of promotion. Another instance would be interfering with her work or creating a hostile work environment, thus making it difficult or intimidating for her to do her job due to the behaviour. Humiliating treatment likely to affect her health or safety, which would mean behaviour that causes emotional or physical distress due to being degrading or demeaning. The above provision clarifies that sexual harassment includes not only direct advances but also conduct that leverages power or workplace dynamics to control, influence, or intimidate a woman, provided such conduct occurs in relation to or is connected with any act or behaviour of sexual harassment.

12. In Prasad Pannian (supra), it was held that Section 3 creates an absolute prohibition to subject a women to sexual harassment at workplace. This Court went on to hold that any act which tends to affect the women in the form of clauses (i) to (v) in Section 3(2) would amount to sexual harassment only if such eventualities occur and should be in relation to or connected with any act or behavior of sexual harassment. The purport of Section 3(2) is that, if any of the eventualities mentioned under clauses (i) to (v) or any other circumstances occur, it should be in relation to or connected with any act or behaviour of sexual harassment.

13. We shall now deal with the provisions of the Act and the Rules dealing with the complaint. Section 9 of the Act speaks about complaints.

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. (emphasis supplied)

14. Rule 6 deals with complaint of sexual harassment. It reads as under:

Rule 6 - Complaint of sexual harassment

For the purpose of sub-section (2) of Section 9,--

(i) where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by—

(a) her relative or friend; or

(b) her co-worker; or

(c) an officer of the National Commission for Women or State Women's Commission; or

(d) any person who has knowledge of the incident, with the written consent of the aggrieved woman;

(ii) where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by—

(a) her relative or (sic: of) friend; or

(b) a special educator; or

(c) a qualified psychiatrist or psychologist; or

(d) the guardian or authority under whose care she is receiving treatment or care; or

(e) any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;

(iii) where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent;

(iv) where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.

15. Rule 7 deals with the manner of inquiry into a complaint. The said provision reads thus:

Rule 7 - 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. (emphasis supplied)

(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.

16. In the case at hand, it is evident from the report of the Committee that the appellant had clearly stated she had not submitted any written complaint. However, the report of the LC shows that a complaint received by the District Collector was forwarded to the Committee. Before the Committee, the appellant disowned the complaint and suggested that the 1st respondent might have been

the person who submitted it. It was based on these facts that the learned Single Judge had held that no written complaint was filed by the appellant regarding any allegation of sexual harassment at the workplace. The report further indicates that the LC summoned the appellant and recorded her statements on 14.07.2008 and 23.07.2018. In those statements, she raised certain fresh allegations against the 1st respondent, primarily that he had clandestinely spread rumours within the office that the appellant had claimed the father of the receptionist's child was the 1st respondent. According to the appellant, this was an intentional attempt by the respondent to discredit her in the workplace. She also alleged that, upon visiting the office of the 1st respondent, he behaved in a rash and abusive manner, using offensive and sexist language such as "ne" and "eddy", and shouted at her to leave the office. She further stated that he asked her to sign certain documents, and when she refused, he used derogatory language and subsequently terminated her from service. These assertions were noted by the Local Committee, which concluded that the oral statements made by the appellant amounted to sexual harassment. It is relevant to note that the appellant had also filed complaints against the 1st respondent before the police, the Women's Commission, and the Labour Court. In such circumstances, as rightly held by the learned Single Judge, it cannot be contended that the appellant was incapable of submitting a written complaint to the Local Committee. Therefore, the oral statement made before the Committee, after distancing herself from the original anonymous complaint, cannot be accepted as a substitute for the written complaint contemplated under Section 9 of the PoSH Act. We are of the view that the learned Single Judge was justified in holding that, in the absence of a written complaint, the inquiry conducted by the Committee was legally unsustainable.

17. As regards whether the allegations constitute sexual harassment, the appellant had categorically stated before the Committee that the 1st respondent did not physically touch her or demand any sexual favours. The portion of the report where this fact is noted reads as under:

[...] At the first meeting, the complainant gave the LC members a copy of her original complaint as well as provided additional information on the harassment she received from him after she had filed the complaint on November 14th, 2017. She said the respondent had not touched her or asked her for several favours, and was not sure whether there was any sexual harassment in the case. (emphasis supplied)

Her allegation was that the 1st respondent created a hostile work environment, behaved in an unfair and cruel manner, and ultimately denied her salary and terminated her service but without any unwelcome acts or behaviour which may tantamount to sexual harassment as defined under Section 2(n) of the Act. These acts, evidently, are connected to a labour dispute rather than constituting sexual harassment as defined under the PoSH Act.

18. At this juncture, it would be pertinent to note that the appellant had raised

an industrial dispute under Section 2A of the Industrial Disputes Act. The Labour Court, by Ext.P8 award, held that her termination was arbitrary, irregular, and illegal, entitling her to compensation of ₹ 7,00,000. This order was challenged before this Court, and by judgment dated 03.08.2022 in W.P.(C) No. 15966 of 2022, the learned Single Judge modified the compensation to ₹ 6,00,000 and directed the 1st respondent to deposit the same. In this background, it is clear that the labour dispute having been adjudicated, the LC was not justified in proceeding with an inquiry regarding alleged unfair labour practices, particularly when the appellant herself admitted there was no element of sexual harassment at the workplace.

19. The Committee examined three witnesses on the side of the appellant, namely, the wife of the 1st respondent (against whom matrimonial disputes were pending), his former driver, and a staff member from the Technopark office. However, as per Rule 7 of the PoSH Rules, which outlines the manner of conducting an inquiry, sub-rules (3) and (4) mandate that the Committee must conduct the proceedings in accordance with the principles of natural justice. In the instant case, the statements of these witnesses were recorded over the telephone and not in the presence of the 1st respondent. He was not granted an opportunity to cross-examine the witnesses or to challenge their statements.

20. In *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] , a Seven-Judge Bench of the Apex Court held that any person prejudicially affected by a decision of the authority entailing civil consequences must be given an opportunity of being heard.

21. In *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi* [(1978) 1 SCC 405], a Constitution Bench of the Apex Court had occasion to explain the meaning of the term 'civil consequences'. It was held that 'civil consequences' cover infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages.

22. In *D.K Yadav v. J.M.A Industries Ltd.* [(1993) 3 SCC 259] , a Three-Judge Bench of the Apex Court observed that "everything that affects a citizen in his civil life inflicts a civil consequence.

23. In *State of Orissa v. Dr. (Miss) Binapani Dei* [AIR 1967 SC 1269], the Apex Court held that every authority which has the power to take punitive or damaging action has a duty to give a reasonable opportunity to be heard. This Court further held that an administrative action which involves civil consequences must be made consistent with the rules of natural justice:

9. [...] The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function

intended to be performed : it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

In the case at hand, no opportunity was afforded to the 1st respondent to defend himself against the allegations relied upon by the Committee. Consequently, the order passed pursuant thereto cannot be sustained, as it was rendered in clear violation of the principles of natural justice, which the Local Committee was duty-bound to follow in terms of Rule 7(4) of the applicable Rules.

24. We are not persuaded by the contention of the appellant that this Court was not justified in exercising its jurisdiction under Article 226 of the Constitution of India. In *South Indian Bank Ltd. v. Naveen Mathew Philip* [2023 INSC 379] , the Hon'ble Supreme Court, after referring to *Whirlpool Corporation v. Registrar of Trade Marks* [(1998) 8 SCC 1] and *Harbanslal Sahnia v. Indian Oil Corporation Ltd.* [(2003) 2 SCC 107] , held that under Article 226 of the Constitution, the High Court has the discretion to entertain or decline to entertain a writ petition. However, the Court has imposed upon itself certain self-regulating restrictions, one of which is that, ordinarily, it would not exercise its writ jurisdiction where an effective and efficacious alternative remedy is available. That said, it has been consistently held that the existence of an alternative remedy does not operate as an absolute bar in at least three well-recognized exceptions, namely:

- (i) where the writ petition is filed for the enforcement of Fundamental Rights;
- (ii) where there is a violation of the principles of natural justice; and
- (iii) where the order or proceedings impugned are wholly without jurisdiction or where the vires of a statute is under challenge.

25. In the present case, as already noted, the Local Committee (LC) has acted in contravention of the statutory provisions and in gross violation of the principles of natural justice. In view of the above, the learned Single Judge was fully justified in exercising writ jurisdiction under Article 226 and in setting aside the report dated 22.08.2018 issued by the LC, as well as the consequential communication dated 19.09.2018 issued by the District Collector.

This Writ Appeal is accordingly dismissed.