

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 29.10.2024

PRONOUNCED ON : 04.12.2024

CORAM

**THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN
AND
THE HON'BLE MS.JUSTICE R.POORNIMA**

W.A.(MD).Nos. 413 & 414 of 2020

W.A.(MD).No. 413 of 2020

The Research Scholar

... Appellant/2nd Respondent

Vs

1. Research Guide/Professor

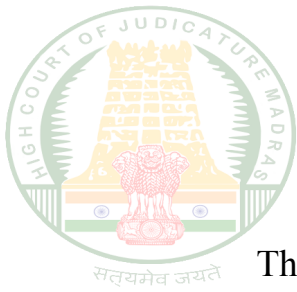
... 1st Respondent/Petitioner

2. The Registrar,
The University

3. The Syndicate Committee,
The University

4. The Convenor
Internal Complaints Committee,
The University

5. The Vice Chancellor,



The University

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...Respondents 2 to 5/Respondents 1 & 3 to 5

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 24.01.2020 in W.P.(MD).No. 19440 of 2019 and allow the present Writ Appeal.

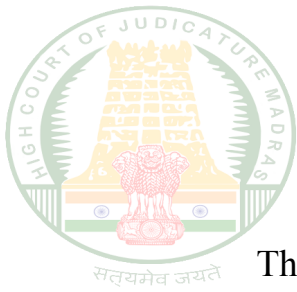
For Appellant : Ms. R.Vaigai
Senior Counsel
for Mr.V.Ajoy Khosh

For 1st Respondent : Mr.V.Prakash
Senior Counsel
for Mrs. Indira

For 2nd Respondent : Mr. S.R.Rajagopal
Senior Counsel
for Mr. T.Cibi Chakrabarthi

W.A.(MD).No. 414 of 2020

1. The Registrar,
The University
2. The Syndicate Committee,
The University
3. The Convenor
Internal Complaints Committee,
The University
4. The Vice Chancellor,



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The University

...Appellants/Respondents 1, 3, 4 & 5

Vs

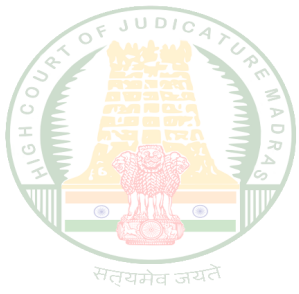
- | | |
|-----------------------------|---|
| 1. Research Guide/Professor | ... 1 st Respondent/Writ Petitioner |
| 2. The Research Scholar | ... 2 nd Respondent/2 nd Respondent |

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 24.01.2020 in W.P.(MD).No. 19440 of 2019 on the file of this Hon'ble Court and allow the present Writ Appeal.

For Appellants : Mr. S.R.Rajagopal
Senior Counsel
for Mr. T.Cibi Chakrabarthi

For 1st Respondent : Mr.V.Prakash
Senior Counsel
for Mrs. Indira

For 2nd Respondent : Ms. R.Vaigai
Senior Counsel
for Mr.V.Ajoy Khosh



COMMON JUDGMENT

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PER:- C.V.KARTHIKEYAN, J.

This is the narration of the travails of a young Research Scholar who aspired to obtain a Doctorate Degree (Ph.D) in the Centre for Film and Electronic Media Studies at the University and her allegations of mental, emotional and sexual harassment against her Research Guide/Professor.

A call to screen identity:

2. Even before proceeding further, we would direct the Registry to place a copy of this Judgment before the Hon'ble The Chief Justice urging formulation of Standard Operating Protocols and Practice Directions by the Civil Rules Committee and Criminal Rules Committee of the High Court to obliterate from the records, the names and identities of not just the Research Scholar in this case but every victim of mental, emotional and sexual harassment in all proceedings, be they in civil, criminal or writ jurisdiction and also incidentally, to protect the identity



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of the alleged perpetrator of such harassment and of the educational institution.

3. We had put considerable thought to this aspect and one of the options which we would urge for consideration is that when matters of similar nature are filed, a Practice Direction may be issued that in the original copy, the names and identities may be given and that original copy may be retained in a sealed cover by the Registry and in every other copy, even in those circulated to the Court and also among the counsels, the names and identities are redacted. If ever, there is a challenge to the identity or a denial that the person involved is not the person drawn into litigation, then and only then should a reference be made to the original retained in the sealed cover.

4. We also draw attention to the fact that the Criminal Rules Committee had issued directions to the Courts in the Districts that in cases relating to offences under the POCSO Act, the names of the victim children should be redacted in all papers circulated and the name and other identifying markers should be retained only in the original, even



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when evidence is taken, and that original should be retained by the Court in a sealed cover.

5. Screening of identity is required as there could always be a possibility of the victim being exploited later if the Court were to hold that the allegations were baseless, and the alleged perpetrator had been named, he/she would suffer and it would be a torturous ordeal to erase the stigma which would have attached to him/her in view of the allegations.

6. While issuing the order copy in these Writ Appeals, the Registry may indicate in the cause title in W.A.No. 413 of 2020 the appellant as “the Research Scholar” and the first respondent as “the Research Guide/Professor” and the second to fifth respondents by giving their designation but not giving name of the University and only indicate “the University”. Similarly, in W.A.No. 414 of 2020 the appellants may be indicated only by their designation of “the University” and the first respondent as “the Research Guide/ Professor” and the second respondent as “the Research Scholar”. No further detail may be



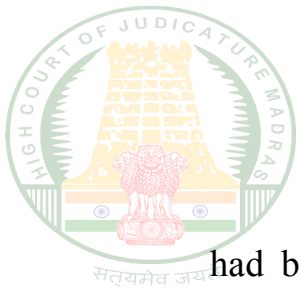
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disclosed in the cause title even when certified copies are issued or orders are uploaded in the website.

Background Facts:

7. The Research Scholar had been admitted to the Centre for Film and Electronic Media Studies in the University as a Non-Stipendiary Research Scholar by intimation dated 25.05.2017. She was provisionally registered on 28.09.2017 for Ph.D Degree as a full time Research Scholar on the subject titled “*A Study of Political Advertising and its impact on the Ideologies and Voting Pattern in Kerala with reference to 2016 Assembly Election*”.

8. Her supervisor, the Research Guide was Associate Professor and Head of Department, Centre for Film and Electronic Media Studies in the University. Her registration was confirmed by communication dated 09.10.2017. It was also communicated to the Research Guide/Professor. It was very specifically stipulated that the Research Scholar would work in the Department under the Research Guide/Professor, who



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had been approved for the said purpose in accordance with the Ph.D regulations in force. The Research Scholar also joined the Ph.D programme. She was placed under the guidance of the Research Guide/ Professor. Her registration for Ph.D (full time) had been granted from 28.09.2017.

A few ruminations:

9. Even before examining the nature of the allegations raised by the Research Scholar, it would only be appropriate to understand that any student aspiring to get a Doctorate (Ph.D) will necessarily have to perforce move away from the security of class room study to a one-to-one interactive relationship with the Research Guide/Professor and seek guidance on the subject thesis. It involves close interactions, exchange of ideas, deep discussions, preparation of draft thesis and obtaining guidelines for further research and more importantly, approval of the research paper by the Research Guide/ Professor. The Research Scholar would realise that it was no longer a course tested on the basis of external examinations which was the familiar method of evaluating her



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performance during school, undergraduate or post graduate studies. At that time, every student is one among many in a class room and grievances of mental / emotional / sexual harassment could be shared with other students. The protection of her classmates would be a source of comfort, to a little extent. But, as a student with aim to obtain a Doctorate Degree, the years of doubts of studying a non descript course during graduation and post graduation would evaporate as the student would now be in a pole position to obtain a Doctorate in her avowed subject and prepare a thesis which would place her in a position of prominence in that field of education. If, during the efforts taken to obtain the Doctorate Degree, a Research Scholar is shattered either emotionally or mentally or sexually by inappropriate behaviour or misconduct by the Research Guide / Professor, the dream of the student collapses like a pack of cards. The purpose of her study is lost. It must also be kept in mind that a student, who aspires to obtain a Doctorate Degree has to go through the rigmarole of undergoing under graduate and post graduate study in a course which by itself would have no future. During that period of study, she would be compared with disadvantage with her other schoolmates, who had joined professional courses. The



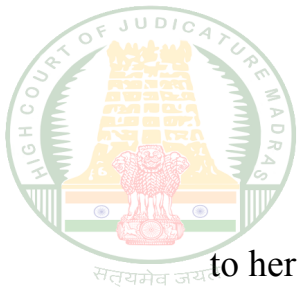
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student however perseveres further with the aim of obtaining a Doctorate Degree and delving deeper to do further research on any specific topic in her preferred subject. This requires resilience, extreme hard work and dedication for a cause with purpose to achieve her dreams.

10. If that bliss were to be disturbed at the last stages of achieving her dreams owing to inappropriate behaviour of her Research Guide / Professor, then the damage caused to the spirit, soul and body could hardly be imagined. For all practical purposes, she would be at the mercy of the Research Guide / Professor, who could exercise authority and hold out an impression, that by a stroke of pen, he could cancel her registration as Research Scholar.

The threat:

11. Before moving deeper into the facts, the Research Scholar in this instant case, was the recipient of a letter from the Research Guide/Professor which ominously ended with the following statement which could be interpreted by an already broken mind as a direct threat



to her mental peace:

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“.... Also, you may note that failing to provide a reasonable and satisfactory reply, will lead to recommending to the Authorities to cancel the Ph.D registration, for indiscipline and providing false information.”¹

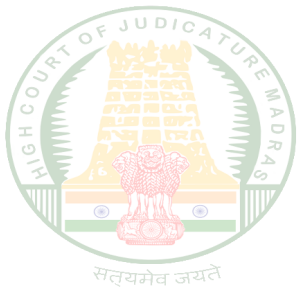
The allegations:

12. In the instant case, the Research Scholar had raised the following complaints against the Research Guide/Professor:-

*1. Non-Allocation of sitting place for the first six months even after the continuous insistence. Later, she was allocated a chair direct opposite to the research supervisor, ***, though *** expressed her uncomfortable state, she was made to sit in the same way.*

*2. Threat of cancellation of Ph.D of ***.*

1. Letter dated 04.12.2018 from the Research Guide/Professor to the Research Scholar.



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3. *She has given sum of two lakhs as bribe to *** for her Ph.D registration process as demanded by her guide ***.*

4. *Seeking of sexual favours.*

5. *Unauthorised academic assignments to the complainant, including handling of entire three papers in different semesters, question setting and evaluation of internal test.*

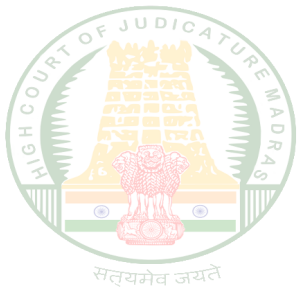
6. *Physically touched her hands in name of palmistry.*

7. *Frequently calling her to accompany him in the car and to use his car.*

8. *Unwelcome invites for dinner frequently.*

9. *Personal comments praising her physical appearance like praising her nose ring and fair complexion.*

10. *Offering gifts.”*

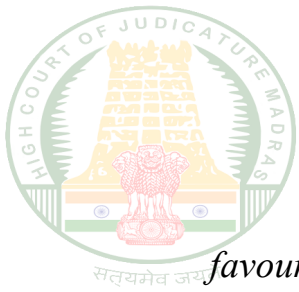


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Further facts:

13. The Research Scholar lodged a complaint with the Registrar of the University on 06.12.2018. In her own words, she stated that she was fortunate to be a part of the University but unfortunate to be a part of the term under the Research Guide/Professor. She further alleged that she had been emotionally abused for one year from the date of her application for Research study.

14. She alleged that she was issued with a memo on a Tuesday warning her that owing to her absence for one day, he would recommend cancellation of her Ph.D Degree. She further stated that she was harassed by picking up schedules that required her presence with him as a Research attendee. She was forced to be part of programmes that, according to her, he intentionally made, so that she could be in his presence. She also alleged that he involved himself in her personal matters and conveyed that to be accomplished on the research, she “*need to do offering that he suggest with inappropriate comments for sexual*



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favours”.² She further alleged in the said letter that to her “shock and embarrassment, he arranged the table for my one year of continuous hard work inside his cabin next to him and ignoring to place it outside the staff area”.³

15. This complaint was forwarded by the Registrar to the Internal Complaints Committee (ICC) of the University. The report of the ensuing enquiry which was filed on 03.02.2019 was further examined by the Registrar of the University, who passed the order impugned in the Writ Petition.

16. In the impugned order dated 22.08.2019, the Registrar had noted the report by ICC, the show cause notice dated 13.06.2019 issued to the Research Guide/Professor and the fact that an explanation was not submitted despite sufficient opportunity being provided and had conveyed the decision of the University Syndicate in their meeting held on 22.08.2019 that his conduct requires to be viewed very seriously and

2. Letter from the Research Scholar to the Registrar of the University dated 06.12.2018 with copy to the Women Cell, the University, Principal Secretary, Higher Education and District Collector.

3. *ibid* (2)



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that his continuation in service would not only be highly detrimental to the interest of the students but also a grave danger to the scholars of the University and therefore, notwithstanding the suggested punishment of the ICC, held that it would only be appropriate to discharge him from service on compulsory retirement. Accordingly, the Registrar passed orders discharging the Research Guide/ Professor from the service of the University on compulsory retirement with effect from 22.08.2019.

W.P.(MD).No. 19440 of 2019:

17. This order was challenged by the Research Guide/Professor, in W.P.(MD).No. 19440 of 2019 before this Court. A learned Single Judge of this Court by order dated 24.01.2020 had allowed the Writ Petition. The learned Single Judge was of the opinion that there was no violation in the constitution of the Internal Complaints Committee (ICC), but had observed that the complaint by the Research Scholar was lodged with the Registrar of the University and not with the ICC, which, the learned Single Judge held, was a violation of the rules. It was further held that she had not submitted supporting documents and names and

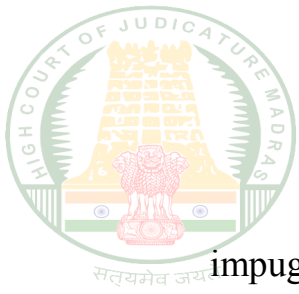


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addresses of the witnesses. The procedure adopted by the Committee during enquiry was also criticised by the learned Single Judge who held that there was violation of the principles of natural justice. It was also held that the complaint had not been lodged within three months from the last date of sexual harassment. It was therefore held that the complaint violated the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

18. The learned Single Judge also observed that the report of the ICC was not furnished within a reasonable time and held this was also a violation of statutory provisions. It was also held that the impugned order was given effect without approval of the Chancellor and therefore, it was invalid and illegal. It was also observed that 50% of the allegations were not proved.

19. Finally, on considering the records, it was held that the allegations of sexual harassment had not been proved in manner known to law. The Writ Petition was allowed and the report of the ICC and the



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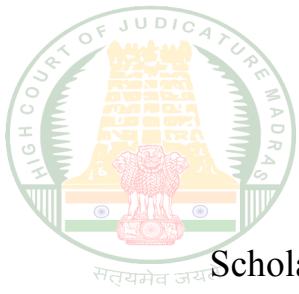
impugned order to discharge the Research Guide/ Professor from the University were set aside.

20. Challenging that order, the Research Scholar had filed W.A. (MD).No. 413 of 2020 and the University had filed W.A.(MD).No. 414 of 2020.

21. Heard arguments advanced by Ms.R.Vaigai, learned Senior Counsel for the Research Scholar/ Appellant in W.A.(MD).No. 413 of 2020, Mr.S.R.Rajagopal, learned Senior Counsel for the University/Appellant in W.A.(MD).No. 414 of 2020 and Mr.V.Prakash, learned Senior Counsel for the Research Guide/ Professor/ first respondent in both the Writ Appeals and the writ petitioner in W.P. (MD).No. 19440 of 2019.

The Arguments:

22. Ms.R.Vaigai, learned Senior Counsel for the Research



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Scholar took the Court through the findings of the Internal Complaints Committee and its proceedings. The learned Senior Counsel was emphatic that the Committee had been constituted in accordance with the UGC Regulations 2015. She further pointed out that the constitution was not questioned by the Research Guide/Professor but rather he voluntarily participated in the proceedings and deliberations. She therefore stated that the challenge to the constitution of the Committee must fail as it had been raised only during the course of arguments and not as a ground in the Writ Petition. Even otherwise, the learned Senior Counsel pointed out that the learned Single Judge had upheld the constitution of the Committee.

23. The learned Senior Counsel further pointed out that if there had been violation of principles of natural justice on substantive issues then, the proceedings could be interfered with, but not when the violations complained were about minor procedural aspects. She also pointed out that the proceedings before the ICC involved understanding the nature of the complaint and examining whether redressal of the grievances could be granted. She argued out that for this purpose,

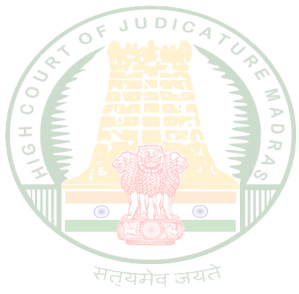


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flexibility should be afforded in the proceedings. There cannot be a determined or a rigid manner in which the enquiry should be conducted.

She further pointed out that in a complaint of this nature, made by a student against the Head of the Department, other students would not normally come forward to state any fact as they would naturally apprehend that such statement would affect their future career as students.

24. The learned Senior Counsel pointed out that the learned Single Judge had stated that the complaint had been lodged after three months and questioned this finding of the learned Single Judge. According to the learned Senior Counsel, the harassments were continuous in nature as is evident from the electronic mails issued by the Research Guide/ Professor to the Research Scholar which went till 12.00 in the midnight. On the very next day, the complaint was lodged. It was therefore urged that the finding of the learned Single Judge that the complaint was lodged with a delay of three months cannot be sustained and has to be set aside by this Court.



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25. The learned Senior Counsel further pointed out that in view of the sensitive nature of the entire issue, the statements of the witnesses were recorded separately. She pointed out that most of the students had come forward voluntarily to state their experiences. She further pointed out that the Research Scholar had been forced to take classes and to prepare question papers which were beyond her remit as student.

26. The learned Senior Counsel further pointed out that the Research Guide/Professor had placed the chair of the Research Scholar in his chambers. This was a source of grievance for the Research Scholar. Her privacy was invaded.

27. With respect to the procedure adopted, the learned Senior Counsel pointed out that the Research Guide/ Professor was informed about the contents of the statements recorded and a copy of the preliminary findings had been furnished to him for his perusal. He had not tendered any evidence on his side. He had not raised any objections. He had not produced any documents to support his case. As a matter of fact, he had issued a legal notice after the second Show Cause Notice was



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issued to him. The learned Senior Counsel was emphatic in her assertion that more than fair opportunity had been granted to the Research Guide/Professor and that he had participated without protest during the meetings.

28. The learned Senior Counsel also pointed out that the entire issue snowballed owing to the marking of attendance on 02.11.2018 which was a Friday. The signature of the Research Scholar was erased with a whitener by the Research Guide/ Professor and later, a letter was also written by him threatening to cancel her Ph.D., registration. The learned Senior Counsel pointed out that extremely coercive threats were held out by the Research Guide/ Professor.

29. She also pointed out that the Research Guide/ Professor had not given any explanation for the allegations raised by the Research Scholar. The learned Senior Counsel therefore stated that the learned Single Judge had erred in coming to a conclusion that the Research Guide/ Professor had not caused any harassment to the Research Scholar. She urged that the said finding of the learned Single Judge should be set

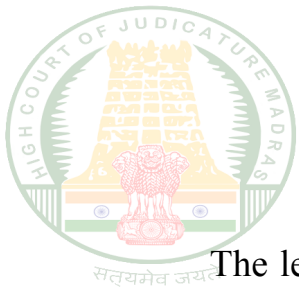


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aside and the Writ Appeal filed by the Research Scholar should be allowed.

30. Mr.S.R.Rajagopal, learned Senior Counsel on behalf of the University pointed out that a complaint was lodged by the Research Scholar before the Registrar of the University raising grievances of sexual harassment at the hands of the Research Guide/ Professor. Thereafter, in accordance with the University Grants Commission Guidelines (Prevention, Prohibition and Redressal of Sexual Harassment) Regulations 2015, an Internal Complaints Committee was immediately constituted on 16.05.2018 by the University.

31. The learned Senior Counsel very strongly refuted all allegations raising imputations against the members of the Committee. According to him, the Presiding Officer of the Committee was a Professor/ Head of Department of Chemistry, who was Senior to the Research Guide/Professor. Further, the members of the Committee also included two Assistant Professors, two Deputy Registrars and three Research Scholars and one member of a Non Government Organisation.



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The learned Senior Counsel pointed out that the regulations of the UGC of the year 2015 provided for constitution of such a Committee and Clause 4 of the Regulations provided that the Presiding Officer shall be a woman faculty member not below the rank of a Professor in the case of a University and that the Committee must have as its members, two faculty and two non teaching employees and also three students if the matter involves a student. There should be one member from a Non Government Organisation.

32. In the instant case, the learned Senior Counsel pointed out that the Internal Complaints Committee constituted by the University was in strict compliance of the aforementioned requirements of the UGC Regulations 2015. The Presiding Officer was the Head of Department of the Chemistry, there were two faculty members, the Assistant Directors in the Department of Youth Welfare Students and in the Department of Econometrics, two Deputy Registrars, who were non teaching employees and three Research Scholars, since the complainant in this case was a student. There was also a member from a Non Government Organisation. He also pointed out that one half of the committee were women and that



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out of 9 members including the Presiding Officer, six members were women. He therefore stated that the Committee had been properly constituted. He also pointed out that the learned Single Judge had also upheld the constitution of the Committee.

33. With respect to the procedure adopted by the Committee, the learned Senior Counsel stated that the constitution of the Committee and the proceedings were intimated to the Research Guide/ Professor. He pointed out that the Research Guide/ Professor was given a copy of the complaint. He was given adequate time to reflect on the allegations and recollect about the incidents/ complaints mentioned. Thereafter, the members of the Committee had raised questions and sought clarifications from him. The questions raised and the clarifications were recorded. Written statements were also obtained from both the Research Scholar and from the Research Guide/Professor.

34. Further, to ascertain the correctness of the facts stated, the Committee had also enquired students, teaching and non teaching staff and their answers were also recorded. The entire records were maintained

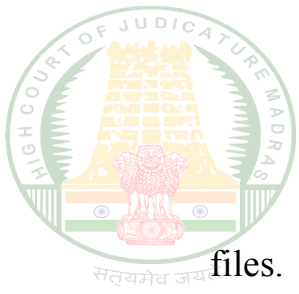


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meticulously. The proceedings were not conducted in haste but over a period of time. It was conducted on 12.12.2018, 13.12.2018, 21.12.2018, 11.01.2019 and on 21.01.2019.

35. It was also pointed out by the learned Senior Counsel that the entire proceedings were recorded in a compact disk and retained by the Presiding Officer in an audio format. He took the Court through the proceedings of ICC in which the records of the each day proceedings had been meticulously stated. He also pointed out that an issue was raised about an audio tape and to clarify, the same was played to both the Research Scholar and the Research Guide/ Professor in the presence of the members of the Committee.

36. He further contended that as a matter of fact, when the Research Scholar sought further witnesses to be examined in the meeting held on 21.01.2019, the Committee had refused to accept such request. The audio recording presented by the Research Scholar was also played before the Research Guide/ Professor and his explanations were also sought. He had sought time to produce a compact disk with two audio

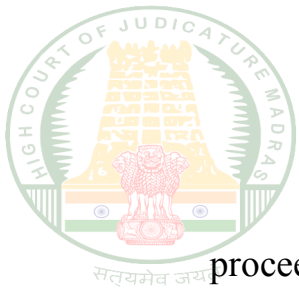


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files. But the compact disk did not work. Thereafter, he sought permission to bring the audio files in a pen drive. Such permission was also granted. He however confirmed that it was his voice speaking in the audio tape produced by the Research Scholar.

37. In the proceedings, it was also noted that the Research Guide/Professor, had made a request to enquire some of the teachers relating to the conduct of the Research Scholar but for reasons given, the Committee had refused to accede to the said request. The learned Senior Counsel pointed out all the above facts which were on record and stated that sufficient and fair opportunity had been afforded to the Research Guide/Professor.

38. The learned Senior Counsel further stated that during the course of arguments, additional points had been put forth on behalf of the Research Guide/Professor but they were not supported by any affidavit of the Research Guide/Professor. The learned Senior Counsel pointed out that even the learned Single Judge had held that 50% of the charges had been proved. The learned Senior Counsel therefore urged that the

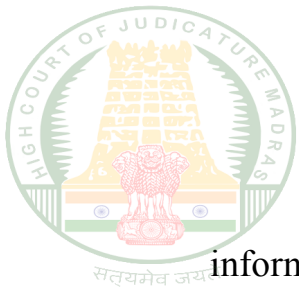


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proceedings of the Committee should not have been set aside and there should not have been a direction to reinstate the Research Guide/Professor.

39. With respect to the allegations that there had been no approval from the Chancellor of the University, the learned Senior Counsel pointed out that the final order of the Syndicate was forwarded to the Office of the Vice Chancellor and even before any order could be passed, the Writ Petition has been filed. The learned Senior Counsel argued that the learned Single Judge had travelled into the facts of the case and had erred in setting aside the order of the Syndicate discharging the Research Guide/ Professor from service. He also stated that the Writ Petition had been allowed on technical and legal pleas. In view of all these reasons, he urged that the order in the Writ Petition should be interfered with by this Court must be set aside.

40. Mr.V.Prakash, learned Senior Counsel for the Research Guide/ Professor/ first respondent in both the Writ Appeals, in his arguments first pointed out that the Research Guide/ Professor was



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informed about the constitution of the Internal Complaints Committee only after the constitution of the Committee. He was then informed about the date on which the hearing would be conducted. He pointed out that therefore the Research Guide/ Professor had no other alternate but to participate in the enquiry. The learned Senior Counsel stated that merely because the Research Guide/ Professor had participated in the enquiry cannot be urged as a ground to infer that he had accepted the correctness of the constitution of the Committee or the eligibility of the Members to be part of the Committee.

41. In this connection, the learned Senior Counsel pointed out that the Presiding Officer of the Committee was the Head of Department of the Chemistry Department, and therefore held an equivalent post as that of the Research Guide/ Professor. He then pointed out the regulations and the stipulations in the Act and argued that it was not just sufficient that a senior level person should be the Presiding Officer but the status was also important. Her status was Head of Department, which was the equivalent status of the Research Guide/ Professor. The learned Senior Counsel therefore contended that she was not eligible to be



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nominated as the Presiding Officer of the Committee. Further when the allegations were against a Head of Department, it was impermissible to have three Research Scholars as members of the Committee to sit in Judgment over the complaint lodged by the Research Scholar.

42. The learned Senior Counsel stated that though the Writ Petition had been allowed in favour of the Research Guide/ Professor, he still had a right to question that part of the order wherein the learned Single Judge had upheld the constitution of the Committee. The learned Senior Counsel drew reference to the Regulations wherein it had been provided that if a senior level Officer was not available in the Institution then the Presiding Officer could be appointed from a Senior level Officer in any other Department or Institution. Placing his argument on these aspects, the learned Senior Counsel questioned the authority of the Committee to conduct the enquiry against the Research Guide/ Professor.

43. The learned Senior Counsel then pointed out the proceedings of the Committee and stated that even a mere reading of the proceedings would indicate that witnesses were examined independently and there



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was no offer granted to cross examine them. It was not an enquiry but a fact finding exercise. The statements of the witnesses were not tested to arrive at a conclusion that they were correct. The learned Senior Counsel stated that the statements should have been corroborated by independent evidence. He pointed out that the Research Guide/ Professor was seriously prejudiced by the manner in which the proceedings were conducted. The statements of each one of the witnesses were recorded separately. The contents were not to the knowledge of the Research Guide/ Professor. He did not know who the witnesses were and why they had been called and what they deposed. The witnesses did not depose in his presence.

44. It was further contended by the learned Senior Counsel that the complaint had emanated owing to the misconduct by the Research Scholar, who had signed the attendance on 02.11.2018 as if she was present. The attendance Register was available only in the chamber of the Research Guide/ Professor and therefore, it was evident that the Research Scholar had signed the attendance on an earlier date. She was not to be found within the campus on 02.11.2018. Therefore, exercising



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his authority and discharging responsibility, the Research Guide/ Professor had struck out that attendance and had called for an explanation. It was an exercise in adherence of the rules governing the student. If the student was present, she can mark the attendance and if not present, then the attendance should reflect that she was absent.

45. The learned Senior Counsel then took the Court through the trail of the electronic messages exchanged between the Research Scholar and the Research Guide/ Professor and pointed out that the messages were not sent at 12.00 in the midnight but were only replies to the messages sent by the Research Scholar. He stated that the complaint had been lodged only when the Research Guide/ Professor had sought an explanation. The fact that an explanation was sought had been admitted by the Research Scholar, though in her counter affidavit in the Writ Petition, she had complained that it was ante dated.

46. The learned Senior Counsel pointed out that the complaint dated 06.12.2018 was not served on the Research Guide/ Professor. He stated that the Research Scholar had joined the Institution on 09.12.2017



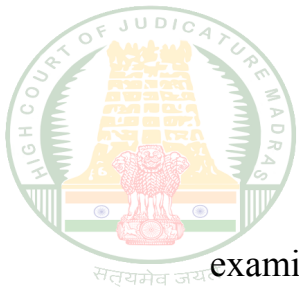
and had been working till 06.12.2018 and there was no record of harassment during that one year period.

47. The further allegations relating to arranging a chair inside the chamber of the Research Guide/ Professor were rejected by the learned Senior Counsel as being vague, since specific dates had not been given.

48. He further pointed out the constitution of the Members of the Committee and stated that the stipulation that at least two members should have legal knowledge was not satisfied as none of the members had any knowledge of law.

49. The learned Senior Counsel stated that when there was a conflict between the UGC Regulations and the Law as laid down by the Parliament then the plenary legislation would prevail. The inclusion of Research Scholars in the Committee was not a stipulation provided under the Act.

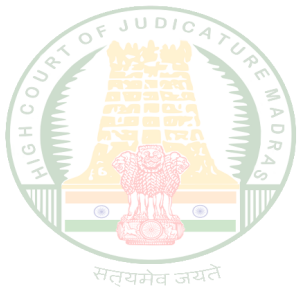
50. He pointed out that the enquiry was conducted in the absence of the Research Guide/ Professor. There was no opportunity to cross



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examine the witnesses. The evidence collected was not analysed in a professional manner. Opportunity was not granted to the Research Guide/ Professor to confront the witness regarding the statements made by them. He pointed out that the Research Guide/ Professor was present only on two hearing dates during the entire proceedings. He further pointed out that the findings of the Committee cannot be contrary to the statements recorded. He further pointed out with respect to the Audio recording, that a translation was sought from Kerala and though an opinion was received stating that the recordings did not reveal any threat of sexual harassment, the Committee did not wait for the opinion to be received, but proceeded to pass the order impugned in the Writ Petition. He assailed the impugned order and the findings of the ICC as being perverse and based on no evidence. He strongly urged that the Writ Appeals should be dismissed.

51. We have carefully considered the arguments advanced and perused the materials available on records.

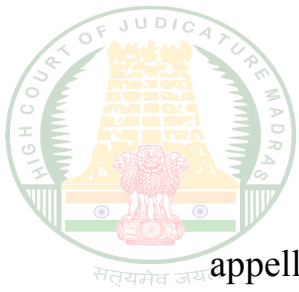


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52. We hasten to add that though the learned Senior Counsels referred to decisions of the Hon'ble Supreme Court and the High Courts, we have not stated them while reducing the arguments but would be examining them in the course of our discussion.

53. We have in the course of this narration not referred to the parties by their normal nomenclature as writ petitioner or respondents in the Writ Petition or appellants or respondents in the Writ Appeals but have taken a conscious decision to refer to them as Research Scholar, Research Guide/ Professor and the University.

54. We are convinced that the privacy of the parties to the litigation should be respected. It is for that purpose we had directed the Registry to place a copy of this Judgment before the Hon'ble The Chief Justice to ensure that Practice Directions are issued and a Standard Operating Protocol is formulated in matters where there are allegations of sexual or even mental and emotional harassments. We would however clarify that the writ petition in W.P.(MD).No. 19440 of 2019 had been filed by the Research Guide/ Professor. In that Writ Petition, the

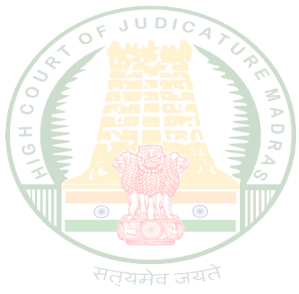


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appellants in W.A.(MD).No. 414 of 2020 whom we have termed as Officials of the University were the first and third to fifth respondents. The appellant in W.A.(MD).No. 413 of 2020, whom we have referred as Research Scholar was the second respondent. In effect, W.A.(MD).No. 413 of 2020 had been filed by the Research Scholar and W.A.(MD).No. 414 of 2020 have been filed by the Registrar and other Officials of the University. The first respondent in both the Writ Appeals is the Research Guide/ Professor. We would in the course of this narration continue to refer to the parties only as Research Scholar (Appellant in W.A.(MD).No. 413 of 2020), Research Guide/ Professor (Writ petitioner and the first respondent in the two Writ Appeals) and the University, (Writ Appellant in W.A.(MD).No. 414 of 2020).

Discussion:

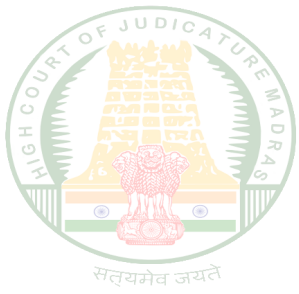
55. The Research Guide/ Professor had filed W.P.(MD).No. 19440 of 2019 in the nature of a Certiorified Mandamus calling for the records relating to an order of the Registrar of the University dated 22.08.2019 discharging him from service, and quash the same on the ground that it was arbitrary, illegal and passed without any legal basis and to direct the Registrar to reinstate him as Professor.



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56. In the affidavit filed in support of the Writ Petition, the Research Guide/ Professor had stated that the Research Scholar had been allotted to his supervision to do full time research in Journalism and Communication by a communication dated 09.10.2017. She joined the full time research programme on 23.10.2017.

57. The Research Guide/Professor contended that on 02.11.2018, she did not turn up in the Centre. It was found that she had however signed the attendance register. In effect, he alleged that she had signed the attendance register on an earlier date and was actually absent on 02.11.2018. He tried to contact her through telephone at around 03.00 P.M, and also communicated messages of absence through SMS/ Whatsapp/ E-mail. The Research Scholar replied that she had actually come to the Centre but had left early due to illness and had gone to the hostel. The Research Guide/ Professor then made enquiries in the hostel and came to understand that she was not marked as present even in the hostel attendance.



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58. Thereafter, on 03.12.2018, she reported to the centre after completing her research study in Kerala. She had sent an E-mail about rejoining. The Research Guide/ Professor was on duty leave on that date. A pre Ph.D viva was conducted for another scholar on 04.12.2018. After that assignment, the Research Guide/ Professor issued a letter to the Research Scholar seeking explanation for her unauthorised absence on 02.11.2018 and for providing a false claim of attendance. He then came to know that on 06.12.2018 she had filed a complaint against him raising allegations of

- (i) inappropriate comments for sexual favour
- (ii) arranging table invading her privacy; and
- (iii) demand of bribe of Rs.2,00,000/- for processing the sanction of admission.

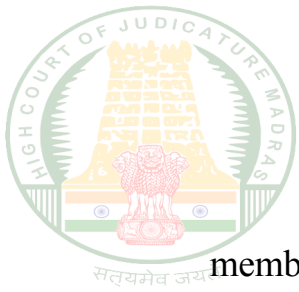
59. In the affidavit filed in support of the Writ Petition, the Research Guide/ Professor stated that the University had then constituted an Internal Complaints Committee to enquire into the said complaint. It was contended that the constitution of the Committee was against the



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regulations of the UGC and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It was further stated that an audio record was presented as evidence during the enquiry which was in Malayalam language. The Committee had taken a decision to get a report from a professor at Thiruchur University, Kerala. It was further stated that the expert opined that the Research Scholar had actually stated that she was very particular to undergo Ph.D under the Research Guide/ Professor. The opinion concluded that there was no element of misconduct during the conversation. It was thus contended by the Research Guide/ Professor in his affidavit that the complaint of the Research Scholar did not fall under the definition of Section 2(n) of the Act.

60. The Research Guide/ Professor further stated in the affidavit that the Presiding Officer of the Internal Complaints Committee and one of the members acted with bias. It was contended that they were both Heads of Department and therefore, should not have been chosen to be members of the Committee. It was further contended that one another member was also a Head of Department, but not on the list of ICC



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members available in the protocol of the University.

61. It was stated that the Committee had recommended punishment without verifying the correct facts. He further stated that he was called for enquiry only on two occasions, on 12.12.2018 and on 21.01.2019 and though he had given written replies pleading innocence, the same was over looked. It was also stated that the Research Scholar did not produce the original recorded conversation before the Committee but had produced a doctored compact disk.

62. It was further alleged that the principles of natural justice had been violated. The copies of the complaint or the report were not provided and when requested were given at a later time. It was also stated that he was issued with a Show Cause Notice asking to reply to the punishment proposed to be imposed on him. He had given a reply through a counsel on 25.06.2019. He had also sought time to respond further to the Show Cause Notice.

63. He had earlier filed W.P.(MD).No. 14845 of 2019 seeking a copy of the Show Cause Notice. He complained that neither the copy of



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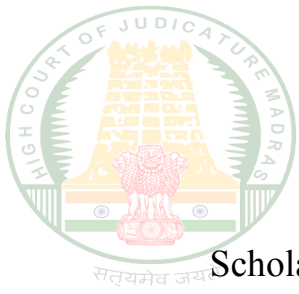
the complaint nor the remit of the Committee were served on him. He finally alleged that the impugned order by which he had been terminated from service was borne out of malafide and was without any legal basis.

64. A counter had been filed denying and disputing all these contentions.

65. The learned Single Judge in the order dated 24.01.2020 held that the constitution of the Committee was within the rules but that the Committee had violated principles of natural justice. It was also held that only 50% of the charges had been proved. It was opined that imposition of punishment of removal from service was disproportionate. The Writ Petition was allowed and the findings of the report and also the punishment were set aside. A direction was issued to reinstate the Research Guide/ Professor.

Constitution of the International Complaints Committee:

66. The present Writ Appeals have been filed by the Research



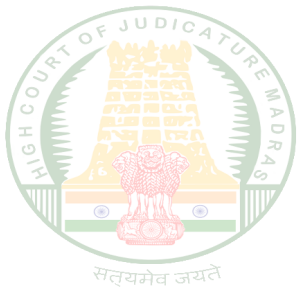
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Scholar and the University questioning the decision of the learned Single Judge.

67. One of the primary contentions raised by the learned Senior Counsel on behalf of the Research Guide / Professor is that the constitution of the Committee by the University was not in accordance with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter called as Act).

68. The Internal Complaints Committee had been constituted under the provisions of the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015.

69. The thrust of the argument of the learned Senior Counsel on behalf of the Research Guide / Professor is that, the Regulations are subordinate legislation and therefore, the provisions of the Act alone will prevail.



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70. Section 4 of the Act falling under Chapter – II relating to Constitution of Internal Complaints Committee provides for Constitution of an Internal complaints Committee. Section 4(2) provides for the members who could be nominated by the employer to the Internal Complaints Committee. Section 4(2) is as follows:

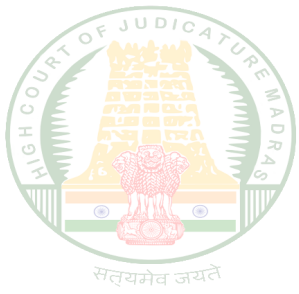
“4. Constitution of Internal Complaints Committee.—

(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely:

—

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees: Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1): Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(b) not less than two Members from amongst



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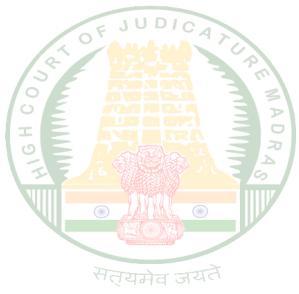
employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment: Provided that at least one-half of the total Members so nominated shall be women.

71. A careful perusal of the above shows that the Presiding Officer shall be a woman employed at a senior level at workplace from amongst the employees and if such senior level woman employee is not available, she shall be nominated from other offices or administrative units, and if still not available, she could be nominated from any other workplace of the same employer or other department or organization.

72. Regulation No.4 of the University Grants Commission Regulation, 2015 provides for constitution of a Grievance Redressal Mechanism and more particularly of an Internal Complaints Committee (ICC). Regulation 4 is as follows:

“4. Grievance redressal mechanism.—(1) Every



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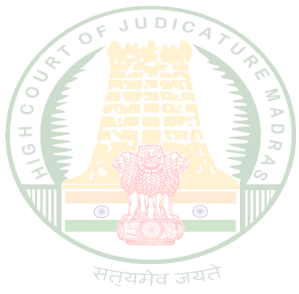
Executive Authority shall constitute an Internal Complaints Committee (ICC) with an inbuilt mechanism for gender sensitization against sexual harassment. The ICC shall have the following composition:-

(a) A Presiding Officer who shall be a woman faculty member employed at a senior level (not below a Professor in case of a university, and not below an Associate Professor or Reader in case of a college) at the educational institution, nominated by the Executive Authority; Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section 2(o); Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;”

(b) two faculty members and two non-teaching employees, preferably committed to the cause of women or who have had experience in social work or have legal knowledge, nominated by the Executive Authority;

(c) Three students, if the matter involves students, who shall be enrolled at the undergraduate, master’s, and research scholar levels respectively, elected through transparent democratic procedure;

(d) one member from amongst non-government

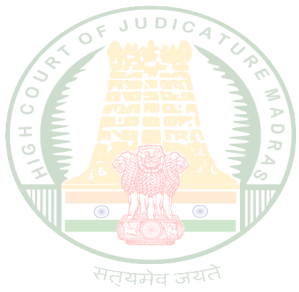


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organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, nominated by the Executive Authority."

73. The provision relating to nomination of a Presiding Officer is more or less similar to the stipulations given under Section 4 of the Act. There is one distinguishing factor between Section 4 and Regulation 4 and that is in regulation 4(c). The Committee must also include three students, if the matter involves students, who shall be enrolled under the Under Graduate or Master or Research Scholar Levels.

74. Mr.V. Prakash, learned Senior Counsel for the Research Guide / Professor pointed out that in the instant case, the Presiding Officer was also the Head of Department holding the same status as the Presiding Officer and therefore argued that she stood disqualified from being nominated as Presiding Officer. The learned Single Judge had however, upheld the constitution of the Committee.

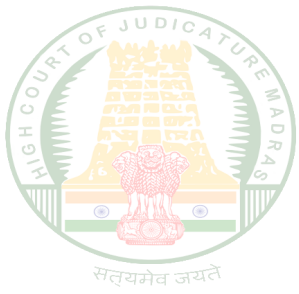


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75. Mr.V. Prakash, learned Senior Counsel still reiterated that he could argue that the said reasoning of the learned Single Judge is not correct and should be re-examined by this Court. According to him, the words *senior level* would indicate what the two words mean namely, must be *senior in level* to the post held by the Research Guide / Professor.

76. In the instant case, he pointed out that both the Presiding Officer and the Research Guide / Professor were Heads of Department of two separate Departments and therefore of the same status. The Presiding Officer could not therefore be termed to be holding a post senior in level to that of the Research Guide / Professor.

77. The University has, however, justified nomination of the Presiding Officer by stating that she was *senior by experience* owing to the period of service discharged as Head of Department when compared with the Research Guide / Professor and therefore, her eligibility could not be questioned by the Research Guide / Professor.

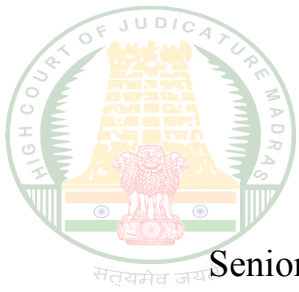


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78. A perusal of the records show that the Presiding Officer had been appointed as Head of Department in the year 2013 and the Research Guide / Professor had been appointed as Head of Department much later in the year 2017. They may both have the same qualification namely, Doctorates in their respective fields. They both may be the senior most professors within their Department. But when the overall combined seniority of the faculty members of the University, particularly, among Professors / Heads of Departments are examined, we hold that the Presiding Officer would certainly be ranked higher in seniority than the Research Guide / Professor.

79. The learned Senior Counsel however, insisted that both the Act and the Regulations also provide for appointment of a Presiding Officer from any other Department within the University or from any other organization. He therefore, questioned the appointment of the Presiding Officer by limiting the choice to professors in the University and not seeking nomination from any other organization or department.

80. We do not agree with the said contention of the learned



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Senior Counsel. The words *senior level* indicates, holding a post senior to that of the Research Guide / Professor. When the overall combined seniority of the faculty members of the University is taken into consideration, the Presiding Officer nominated in the instant case, was certainly senior to the Research Guide / Professor. If the two of them were otherwise equal on merits and if a choice were to be made between the two of them to be promoted to a higher post and if seniority was one of the conditions to be so considered for such promotion to the higher post, then all other factors been equal, the Presiding Officer having been appointed as Head of Department a clear four years earlier than the Research Guide / Professor would certainly be considered for such promotion ahead of the Research Guide / Professor.

81. In view of this reasoning we hold that the nomination of the Presiding Officer was in conformity with the regulations.

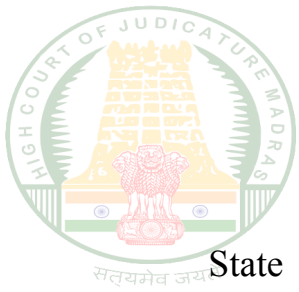
82. The second ground under which the Constitution of the Committee was challenged very seriously by Mr.V.Prakash, learned Senior Counsel is the nomination of three students as members of the



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Committee. The learned Senior Counsel pointed out that the Research Guide / Professor stood trial before the students and pointed out the ignominy of such a situation faced by the Research Guide / Professor. He very specifically pointed out that Section 4 of the Act does not provide for nomination of students in the Committee and therefore argued that since the University Grants Commission guidelines were subordinate legislation, and subordinate to the Act, which had been passed by the Parliament, the constitution of the Committee seriously prejudiced the Research Guide / Professor and it should be held by this Court that the constitution was not in accordance with the statute.

83. The binding nature of the University Grants Commission Regulations had been examined by the Hon'ble Supreme Court in ***Gambhirdan K. Gadhvi V. State of Gujarat and Others*** reported in **2022 5 SCC 179**. That case was with respect to appointment of a Vice Chancellor. It was held that the appointment of a Vice Chancellor cannot be made dehors the applicable UGC Regulations even if the State Act concerned prescribed diluted eligibility criteria vis-a-vis the criteria prescribed in applicable UGC Regulations. It was further held that if the

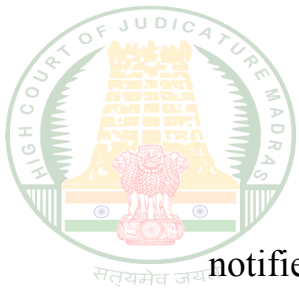


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State Act was not in conformity with the UGC Regulations, then an amendment must be brought in the State Act to bring it on par with applicable UGC Regulations. In effect, the binding nature of the UGC Regulations was upheld by the Hon'ble Supreme Court.

84. Even before proceeding with the ratio laid down by the Hon'ble Supreme Court, it must be stated that the University Grants Commission Act, 1956 grants the power to make Regulations by the University Grants Commission. These Regulations have been termed by the Hon'ble Supreme Court to be part of the Act and in cases where there was conflict between the State legislation and Central legislation, the applicable UGC Regulations were elevated to the status of the Central legislation and it was held that UGC Regulations shall prevail by applying the Principle of Repugnancy since under Article 254 of the Constitution the subject “*Education*” is in the Concurrent List, Schedule – VII of the Constitution.

85. The University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 was



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notified by the Ministry of Human Resource Development by notification dated 02.05.2016. The Regulations were made in exercise of the powers conferred by Section 26(i)(g) of the University Grants Commission Act, 1956 r/w Section 20(i) of the said Act.

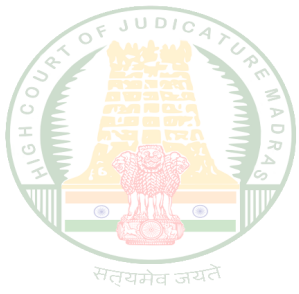
86. Section 26 of the said Act gives power to the Commission to make Regulations consistent with the Act (UGC Act, 1956) and the Rules made thereunder. It must also be mentioned that Section 25 of the said Act gives power to the Central Government to make Rules to carry out the purpose of the Act by notification in the Official Gazette.

87. No arguments had been advanced by Mr.V.Prakash, learned Senior Counsel that the UGC Regulations had not been properly notified.

88. Section 26(i)(g) of the Act is as follows:

“26.Power to make regulations-

(1)The Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder-



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(a).....

(b).....

(c).....

(d).....

(e).....

(f).....

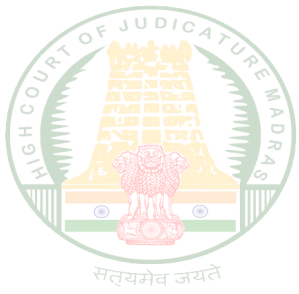
(g) *Regulate the maintenance of standards and the co-ordination of work or facilities in Universities.*

89. It is seen that the Commission has power to make Regulations to regulate the maintenance of standards and the coordination of work, or facilities in Universities. The maintenance of standards would also include abhorring mental, emotional or sexual harassment and providing remedial steps for aggrieved students and to provide a platform to express their grievances and seek justice.

90. Section 20(1) of the UGC Act is as follows:

“20.Directions by the Central Government –

(1)In the discharge of its functions under this Act, the Commission shall be guided by such directions on questions of policy relating to national purposes and may be given to it by the Central Government.”



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91. A joint reading of Sections 26 and 20 would indicate that the Commission, by notification in the Official Gazette is empowered to make Regulations to regulate the maintenance of standards and co-ordination of work or facilities in Universities and the discharge of its function shall be guided by directions on questions of policy relating to national purpose as may be given by the Central Government.

92. The Government will have to abide by the Constitution and protect the Fundamental Rights of every citizen. Article 14 of the Constitution ensures equality before law and equal protection of the law within the territory of this Country. Such equality and equal protection should not be denied by the State to any person. Article 16 provides for equal opportunity in matters of public employment and very specifically provides that no citizen shall be discriminated on the ground of sex / gender. Article 21 protects personal liberty. This would also include the right to dignity by every person while professing their work or education. The argument that UGC Regulations are subordinate legislation and should subserve to plenary legislation is rejected by us even at the

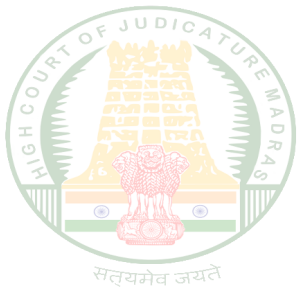


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outset since the Regulations have been framed on authority granted to the Committee by the UGC Act and had been duly notified as stipulated.

93. In *Gambhirdan K. Gadhvi V. State of Gujarat and Others* reported in (2022) 5 SCC 179 , the Hon'ble Supreme Court in para 50 while examining the binding nature of the UGC Regulations had stated as follows:

“50. It cannot be disputed that the UGC Regulations are enacted by the UGC in exercise of powers under Sections 26(1)(e) and 26(1)(g) of the UGC Act, 1956. Even as per the UGC Act every rule and regulation made under the said Act, shall be laid before each House of Parliament. Therefore, being a subordinate legislation, UGC Regulations becomes part of the Act. In case of any conflict between the State legislation and the Central legislation, Central legislation shall prevail by applying the rule/principle of repugnancy as enunciated in Article 254 of the Constitution as the subject “education” is in the Concurrent List (List III) of the Seventh Schedule to the Constitution. Therefore, any appointment as a Vice-Chancellor contrary to the provisions of the UGC Regulations can be said to be in violation of the statutory provisions, warranting a writ of quo warranto.”

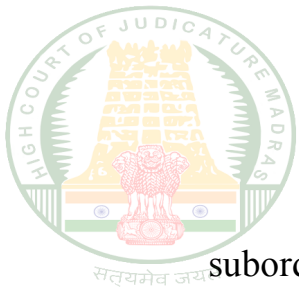


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94. This view had been further expanded in paragraph 20.2, which is as follows:

“20.2. The UGC Act, 1956 was enacted to make provision for the coordination and determination of standards in universities and for that purpose, to establish a University Grants Commission. Section 12 deals with “Functions of the Commission”, while Section 14 speaks of “Consequences of failure of universities to comply with recommendations of the Commission”. Section 26 deals with “Power to make regulations”. As per Section 28 the rules and regulations framed under the UGC Act are required to be laid before each House of Parliament and when both the Houses agree then rules and regulations can be given effect with such modification as may be made by Parliament. Therefore, any regulation enacted in exercise of powers under Section 26 can be said to be subordinate legislation.”

95. Mr.V.Prakash, learned Senior Counsel placed reliance on the judgments of the Hon'ble Supreme Court reported in ***(1985) 1 SCC 641, Indian Express Newspapers (Bombay) Private Ltd. and Others Vs. Union of India and others*** and in ***(2000) 4 SCC 57, DAI-ICHI KARKARIA Ltd., V. Union of India and others*** for the proposition that a



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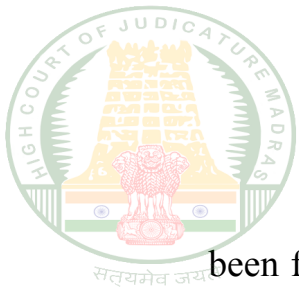
subordinate legislation would have to bow down to a plenary legislation.

But the answer is the judgment cited by us in ***Gambhirdan K. Gadhvi***, (referred *supra*), (2022) 5 SCC 179 , wherein very specifically the binding nature of the UGC regulations had been discussed by the Hon'ble Supreme Court.

96. It is thus seen that the argument of Mr.V.Prakash, learned Senior Counsel on behalf of the Research Guide / Professor that the provisions of Act would prevail over the UGC regulations will have to be necessarily rejected.

97. In the instant case, the Research Scholar was pursuing a Doctorate in the University. The University is bound to abide by the Rules and Regulations of the University Grants Commission.

98. In exercise of the powers under Sections 26(1)(g) and 20 of the UGC Act, the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 had



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been framed. These Regulations apply not only to women employees but also to students.

99. A 'student' had been defined under Regulation 2(l) as follows:

2. *Definitions.—In these regulations, unless the context otherwise requires,-*

(l) “student” means a person duly admitted and pursuing a programme of study either through regular mode or distance mode, including short-term training programmes in a HEI; Provided that a student who is in the process of taking admission in HEIs campus, although not yet admitted, shall be treated, for the purposes of these regulations, as a student of that HEI, where any incident of sexual harassment takes place against such student; Provided that a student who is a participant in any of the activities in a HEI other than the HEI where such student is enrolled shall be treated, for the purposes of these regulations, as a student of that HEI where any incident of sexual harassment takes place against such student;



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100. In the instant case, the Research Scholar had been pursuing a programme of studies through regular mode.

101. '*Sexual Harassment*' had been defined in Regulation 2(k) of UGC and is as follows:

“2(k) “sexual harassment” means-

(i) “An unwanted conduct with sexual undertones if it occurs or which is persistent and which demeans, humiliates or creates a hostile and intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and includes any one or more or all of the following unwelcome acts or behaviour (whether directly or by implication), namely;-

(a) any unwelcome physical, verbal or non verbal conduct of sexual nature;

(b) demand or request for sexual favours;

(c) making sexually coloured remarks

(d) physical contact and advances; or

(e) showing pornography”

(ii) any one (or more than one or all) of the following circumstances, if it occurs or is present in relation or connected with any behaviour that has explicit or implicit sexual undertones-



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(a) *implied or explicit promise of preferential*

treatment as quid pro quo for sexual favours;

(b) *implied or explicit threat of detrimental treatment in the conduct of work;*

(c) *implied or explicit threat about the present or future status of the person concerned;*

(d) *creating an intimidating offensive or hostile learning environment;*

(e) *humiliating treatment likely to affect the health, safety dignity or physical integrity of the person concerned;”*

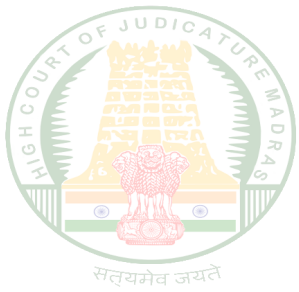
102. Regulation 2(n) of UGC defines '*Victimisation*', which is as follows:

“2(n). “Victimisation” means any unfavourable treatment meted out to a person with an implicit or explicit intention to obtain sexual favour.”

103. Regulation 2(o) of UGC defines '*workplace*'. Regulation 2(o)(a) of UGC is as follows:

“2(o). “workplace” means the campus of a HEI including-

(a) Any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit



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which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate HEIs;

104. Regulation 3 of UGC provides for responsibility of the 'Higher Educational Institution'. Regulation 3(1)(d) & (m) are as follows:

“3. Responsibilities of the Higher Educational Institution- (1) Every HEI shall,-

.....

.....

(d) act decisively against all gender based violence perpetrated against employees and students of all sexes recognising that primarily women employees and students and some male students and students of the third gender are vulnerable to many forms of sexual harassment and humiliation and exploitation.

.....

(m) treat sexual harassment as a misconduct under service rules and initiate action for misconduct if the perpetrator is an employee.”

105. The above provisions stipulate that sexual harassment is a



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misconduct under the service rules and action must be initiated for such misconduct if the perpetrator is an employee.

106. There cannot be any denial or dispute over the fact that the Research Guide / Professor was an employee, at the relevant point of time, under the University.

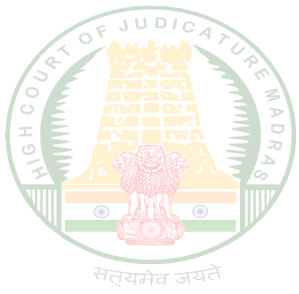
107. Further, Regulation 3.2 of UGC provides supportive measures to be provided. Regulation 3.2(4) of UGC is as follows:

“3.2 Supportive measures.—

.....
.....

(4) Since research students and doctoral candidates are particularly vulnerable the HEIs must ensure that the guidelines for ethics for Research Supervision are put in place.”

108. The above provision very specifically relates to Research Students and doctoral candidates who are recognized as being particularly vulnerable. It had been stated that guidelines for ethics for Research Supervision must be put in place.



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109. It is thus seen that the University Grants Commission Regulations had taken under its ambit the vulnerability of doctoral candidates who are forced to have a continuous one to one interaction with the Research Guide / Professor. Unless the Research Guide / Professor certifies to the thesis or doctoral presentation of the Research Scholar, the dreams of getting a Doctorate would evaporate. Very clearly, the Research Guide / Professor is in a position of influence over the Research Scholar.

110. The Research Scholar must have toiled hard to come to that stage of her educational career after years of studying in the Undergraduate, Postgraduate courses which are often non-professional courses and therefore, if the Doctorate degree is denied, it would indicate the end of the road of all future prospects. Every dream nurtured would be shattered. The Research Scholar would have only two choices to either compromise and bow down to the whims and franchise of the Research Guide / Professor or to stand up and assert her right to dignity.

111. The Regulations also provide a window to address the

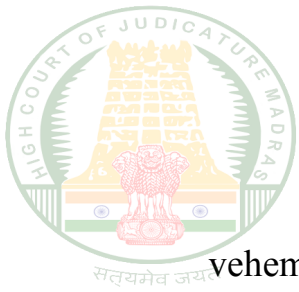


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grievances. These Regulations are unique and tailor made to express grievances by doctoral candidates who are recognized to be particularly vulnerable in Higher Educational Institutions. The necessity for guidelines to be framed for ethics for research supervision have been stressed but very rarely followed or adopted. It is only the students who would understand the plight of a victim student. It is for that reason that the Regulations provide for three Research Scholars to be part of the Committee. Their presence will inspire confidence to the victim to speak up. We therefore hold, that the constitution of the Committee with three students as members was in accordance with the UGC Regulations, which Regulations are in conformity with the UGC Act, 1956 and which Act had been promulgated by the Parliament in its wisdom to address the vulnerability of doctoral candidates by notifying the Regulations. **We therefore reject all arguments questioning constitution of the Committee.**

Procedure adopted during inquiry:

112. Mr.V.Prakash, learned Senior Counsel then undertook a



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vehement attack on the procedure adopted by the Committee during the enquiry. The learned Senior Counsel pointed out that the fact that the Committee had been constituted was informed to the Research Guide / Professor only after the Committee had been formed. The views of the Research Guide/ Professor had not been sought.

113. We disagree with the contention that the view of the Research Guide / Professor should have been sought. Formation of the committee lay within the exclusive domain of the University.

114. The learned Senior Counsel pointed out that statements were recorded behind the back of the Research Guide / Professor and that he had no opportunity to cross-examine the witnesses. It was argued that he never even knew the contents of the statements made by the witnesses during their enquiry. The learned Senior Counsel in this regard fell back to the provisions stipulated in the Act / The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

115. But, as stated, the UGC Regulations are alone applicable



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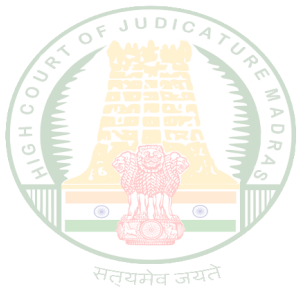
in complaints by Doctoral candidates of sexual or mental or emotional harassment. The process of conducting as inquiry had been provided in Regulations 8(1)(2) and (3) of UGC Regulations which are as follows:

“8. Process of conducting Inquiry- (1) The ICC shall, upon receipt of the complaint, send one copy of the complaint to the respondent within a period of seven days of such receipt.

(2) Upon receipt of the copy of the complaint, the respondent shall file his or her reply to the complaint along with the list of documents, and names and addresses of witnesses within a period of ten days.

(3) The inquiry has to be completed within a period of ninety days from the receipt of the complaint. The inquiry report, with recommendations, if any, has to be submitted within ten days from the completion of the inquiry to the Executive Authority of the HEI. Copy of the findings or recommendations shall also be served on both parties to the complaint.”

116. An obligation is placed on the Executive Authority under Regulation 8(4) of UGC to act on the recommendations of the Committee unless an appeal is filed against the findings.



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117. The provision of an appeal is very specifically provided in Regulation 8(5) of UGC which is as follows:

(5) An appeal against the findings or /recommendations of the ICC may be filed by either party before the Executive Authority of the HEI within a period of thirty days from the date of the recommendations.

118. When there is an alternate remedy available and unless there is a ground urged that such alternate remedy is not efficacious, a writ petition is not normally maintainable.

119. In the instant case, the Research Guide / Professor had not whispered any reason, as to why, he had not preferred an appeal though the Regulations specifically provide for the same.

120. The process of conducting enquiry will have to be only in accordance with the UGC Regulations. It is a fact finding Committee.



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There is no requirement for the members to have knowledge of law. They are concerned with the vulnerability of the victim and on examining the bonafide of the complaint.

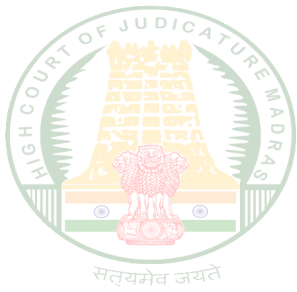
121. The provision of punishment and compensation is very specifically provided in Regulation 10(1) of UGC which is as follows:

“10. Punishment and compensation-

(1) Anyone found guilty of sexual harassment shall be punished in accordance with the service rules of the HEI, if the offender is an employee.”

122. It is thus seen that if found guilty of sexual harassment, the person found guilty shall be punished in accordance with the service rules of the Higher Educational Institution. We have already pointed out the nature of allegations raised by the Research Scholar against the Research Guide / Professor. For the sake of convenience we reduce them again:

1. Non-Allocation of sitting place for



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*the first six months even after continuous insistence. Later, she was allocated a chair direct opposite to the research supervisor, ***, though *** expressed her uncomfortable state, she was made to sit in the same way.*

*2. Threat of cancellation of Ph.D of ***.*

*3. She has given sum of two lakhs as bribe to *** for her Ph.D registration process as demanded by her guide ***.*

4. Seeking of sexual favours.

5. Unauthorised academic assignments to the complainant, including handling of entire three papers in different semesters, question setting and evaluation of internal test.

6. Physically touched her hands in name of palmistry.

7. Frequently calling her to accompany him in the car and to use his car.

8. Unwelcome invites for dinner frequently.



9. *Personal comments praising her physical appearance like praising her nose ring and fair complexion.*

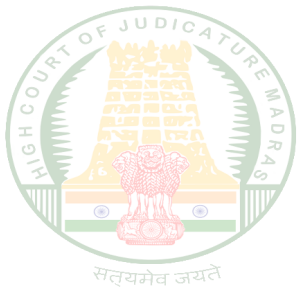
10. *Offering gifts.”*

123. These allegations will have to be viewed from the eyes of Research Scholar. She was the victim. It is not on an overture for sexual favour but continuous mental and emotional harassment, which in equal measure, more often than not, would break down any individual.

124. We did some research on harassments faced by Doctoral candidates and our research pointed out that harassment is prevalent wide across Higher Educational Institutions. Some of the instances are as follows:

“1. Menial Chores to Sexual Harassment—Phd Scholars trapped in toxic relationship with Guides

Her guide sent her 'lewd' videos, a co-author was added to her thesis and IISER-Pune's PoSH committee dismissed her allegations, saying he crossed ethical, not sexual boundaries.



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<https://theprint.in/ground-reports/menial-chores-to-sexual-harassment-phd-scholars-trapped-in-toxic-relationship-with-guides/1686463/>

2. Phd Scholar accuses Dean of sexual harassment, GBU says ICC probe on

<https://timesofindia.indiatimes.com/city/noida/phd-scholar-accuses-dean-of-sexual-harassment-gbu-says-icc-probe-on/articleshow/113468887.cms>

3. AIIMA Phd student attempts suicide, alleges mental harassment by Supervisor

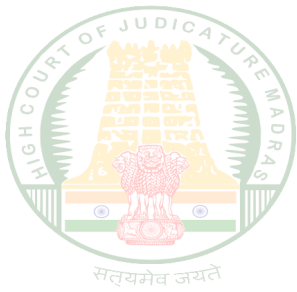
https://www.business-standard.com/article/pti-stories/aiims-phd-student-attempts-suicide-alleges-mental-harassment-by-supervisor_118032601135_1.html

4. “Habitual Harasser”: Three women scholars allege sexual harassment by Professor at JMI University

<https://maktoobmedia.com/features/habitual-harasser-three-women-scholars-allege-sexual-harassment-by-professor-at-jmi-university/>

5. Woman student alleges sexual harassment by Assistant Professor at Odisha’s Utkal University, accused suspended

The woman alleged that she had gone to collect a book when



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the professor asked her to sit close to him and touched her inappropriately. When she protested “with all my effort”, he allegedly “held my waist tightly” and continued touching her.

<https://indianexpress.com/article/india/woman-student-alleges-sexual-harassment-assistant-professor-odisha-utkal-university-9574578/>

6.Ph.d student alleges harassment by Professor at Pune University

While the university officials refuse to divulge exact details about her complaint, sources said that the complaint initially pertained to mental harassment, which the student had complained at the department level.

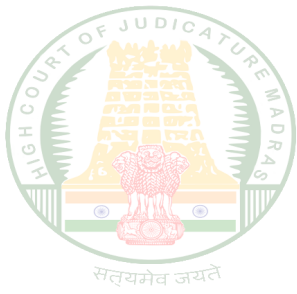
<https://indianexpress.com/article/cities/pune/phd-student-alleges-harassment-by-professor-at-pune-university-2786786/>

7.Ph.d student’s harassment plaint against IISER guide under probe

<https://timesofindia.indiatimes.com/city/chandigarh/phd-students-harassment-plaint-against-iiser-guide-under-probe/articleshow/70198481.cms>

8.Ph.d student accuses guide of harassment; Chemistry Head reacts: ‘Save our image, beta’

Female PhD student accuses Prof Bhatt of sexual and mental harassment; complains to head of Chemistry department, who asks her to ‘save the image of the department if possible’; after students’ union raises issue, GU sends prof on forced leave, institutes inquiry.



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<https://www.ahmedabadmirror.com/phd-student-accuses-guide-of-harassment-chem-head-reacts-save-our-image-beta/68570310.html>

9. The dark side of Academia

With the release of the Hema Committee report, the Malayalam film industry is witnessing another #MeToo movement. However, workplace harassment, sexual abuse and rampant misogyny are not limited to the tinsel town, but also to the field of academic.

<https://www.newindianexpress.com/cities/kochi/2024/Aug/29/the-dark-side-of-academia>

10. Workplace harassment not to be shrugged off

<https://law.asia/india-workplace-harassment/>

125. It is thus seen that this case cannot be viewed as a stand alone case but, one among many and one among many reported wherein complaints had been lodged, enquired and punishment imposed. We wonder at the number of unreported instances.

126. The learned Senior Counsel placed reliance on the judgment of the Hon'ble Supreme Court reported in **2016 (12) SCC 204**,



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Chamoli District Co-operative Bank Ltd., through its Secretary /

Mahaprandhak and Another and specifically placed reliance on paragraph Nos.19 to 21 with respect to the non compliance of principles of natural justice in domestic, disciplinary enquiry. The said paragraphs are as follows:-

*“19. The compliance with natural justice in domestic/disciplinary inquiry is necessary has long been established. This Court has held that even there are no specific statutory rules requiring observance of natural justice, the compliance of natural justice is necessary. Certain ingredients have been held to be constituting integral part of holding of an inquiry. The Apex Court in **Sur Enamel and Stamping Works Ltd. v. Workmen [Sur Enamel and Stamping Works Ltd. v. Workmen, AIR 1963 SC 1914 : (1964) 3 SCR 616]** has laid down the following: (AIR p. 1916, para 4)*

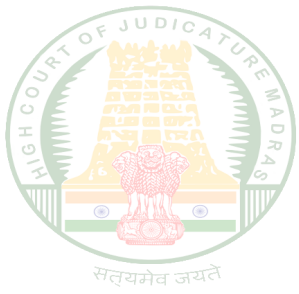
“4. ... An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses



are examined—ordinarily in the presence of the employee—in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report.”

20. The Apex Court again in *SBI v. R.K. Jain* [*SBI v. R.K. Jain*, (1972) 4 SCC 304] held that if an inquiry is vitiated by violation of principles of natural justice or if no reasonable opportunity was provided to the delinquent to place his defence, it cannot be characterised as a proper domestic inquiry held in accordance with the rules of natural justice. In para 23, the following was laid down: (SCC pp. 316-17)

“23. ... As emphasised by this Court in *Ananda Bazar Patrika (P) Ltd. v. Workmen* [*Ananda Bazar Patrika (P) Ltd. v. Workmen*, AIR 1964 SC 339 : (1964) 3 SCR 601], the termination of an employee's service must be preceded by a proper domestic inquiry held in accordance with the rules of natural justice.



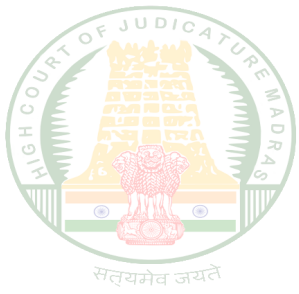
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Therefore, it is evident that if the inquiry is vitiated by violation of the principles of natural justice or if no reasonable opportunity was provided to a delinquent to place his defence, it cannot be characterised as a proper domestic inquiry held in accordance with the rules of natural justice.”

21 [Ed.: Para 21 corrected vide Official Corrigendum No. F.3/Ed.B.J./70/2016 dated 16-2-2017.] . The Apex Court in *State of Uttaranchal v. Kharak Singh* [State of Uttaranchal v. Kharak Singh, (2008) 8 SCC 236 : (2008) 2 SCC (L&S) 698] had occasion to examine various contours of natural justice which need to be specified in a departmental inquiry. The Apex Court noticed earlier judgments where principles were laid down as to how inquiry is to be conducted. It is useful to refer paras 9, 10, 11, 12, 13 and 15, which are to the following effect: (SCC pp. 240-44)

“9. Before analysing the correctness of the above submissions, it is useful to refer various principles laid down by this Court as to how enquiry is to be conducted and which procedures are to be followed.

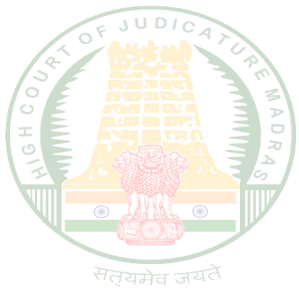


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10. The following observations and principles laid down by this Court in ***Associated Cement Companies Ltd. v. Workmen [Associated Cement Companies Ltd. v. Workmen, (1964) 3 SCR 652]*** are relevant: (SCR pp. 659-61)

‘... In the present case, the first serious infirmity from which the enquiry suffers proceeds from the fact that the three enquiry officers claimed that they themselves had witnessed the alleged misconduct of Malak Ram. Mr Kolah contends that if the Manager and the other officers saw Malak Ram committing the act of misconduct, that itself would not disqualify them from holding the domestic enquiry. We are not prepared to accept this argument. If an officer himself sees the misconduct of a workman, it is desirable that the enquiry should be left to be held by some other person who does not claim to be an eyewitness of the impugned incident. As we have repeatedly emphasised, domestic enquiries must be conducted honestly and bona fide with a view to determine whether the charge framed against a particular employee is proved or not, and so, care must be taken to see that these enquiries do not become empty formalities. If an officer claims that he had himself seen the misconduct alleged

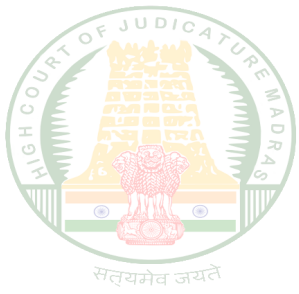


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against an employee, in fairness steps should be taken to see that the task of holding an enquiry is assigned to some other officer. How the knowledge claimed by the enquiry officer can vitiate the entire proceedings of the enquiry is illustrated by the present enquiry itself. ...

... It is necessary to emphasise that in domestic enquiries, the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings. Therefore, we are satisfied that Mr Sule is right in contending that the course



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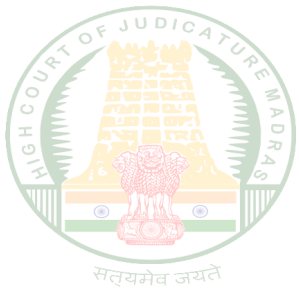


adopted in the present enquiry proceedings by which Malak Ram was elaborately cross-examined at the outset constitutes another infirmity in this enquiry.'

11. In *ECIL v. B. Karunakar* [*ECIL v. B. Karunakar*, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , it was held: (SCC pp. 728f-729c & 730a-d)

'(1) Where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached.

While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz. before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed



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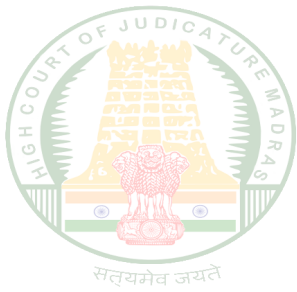


belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment. The second stage consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz. the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be



imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence in respect of the charges.

Article 311(2) says that the employee shall be given a 'reasonable opportunity of being heard in respect of the charges against him'. The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. The proviso to Article 311(2) in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's



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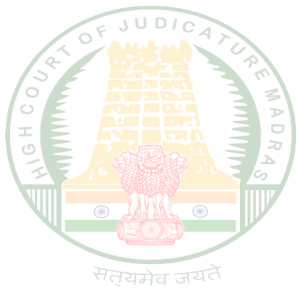


reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry.

Hence, when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.'

12. In Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd. [Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd., (1999) 2 SCC 21 : 1999 SCC (L&S) 439] , it was held: (SCC p. 36, para 34)

'34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a



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definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee—even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases.'

13. In *Syndicate Bank v. Venkatesh Gururao Kurati* [*Syndicate Bank v. Venkatesh Gururao Kurati*, (2006) 3 SCC 150 : 2006 SCC (L&S) 487] the following conclusion is relevant: (SCC p. 159, para 18)



‘18. In our view, non-supply of documents on which the enquiry officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the enquiry officer to arrive at his conclusion, the non-supply of which would cause prejudice, being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of the delinquent officer must be established by the delinquent officer. It is well-settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice.’

15. From the above decisions, the following principles would emerge:

- (i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.*
- (ii) If an officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the*



enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.”

(emphasis in original)

127. In the instant case, it must be kept in mind that ICC was enquiring into a complaint of mental, emotional and sexual harassment alleged by the Research Scholar against her Research Guide / Professor.



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She was directly under his control and supervision. The demands were significant. Viewed from her eyes they terrorised her and affected her mental health. She lived in fear. In one of the letters he had stated that he would ensure that her Ph.d Registration is cancelled. Those who had given evidence or were enquired by the Committee were also students and naturally, the nature of enquiry conducted will have to be moulded according to the nature of the complaint, the complainant, the witnesses and more importantly the perpetrator.

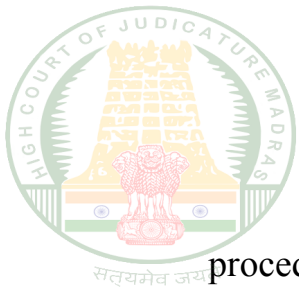
128. In the instant case, the perpetrator held a position of dominance. He had held out threat that he would ensure cancellation of her Ph.d Registration. The other students who had deposed may not be confident enough to state in his presence what they wanted to state and if they were compelled to face the rigours of a formal inquiry. We hold that the learned Single Judge had grossly failed to understand the sensitivity of the entire issue. The Court should keep in mind the fact that the victim had already been harassed. Putting her to further harassment, by going through the rigours of an adversarial trial process during the inquiry would defeat the purposes of the UGC Regulations and to a larger extent



the Act and would be extremely unjust.

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129. The Regulations recognize that a doctoral student is vulnerable. We cannot bury our heads in the sand like the proverbial ostrich and be oblivious of the reality of the harassments caused by an adversarial trial process, with the victim being subjected to hours and hours of cross-examination attacking not only the allegations made in her complaint but her very conduct and dignity. We appreciate the Committee for having taken efforts to protect her dignity. The Research Guide / Professor was aware of the nature of the complaint. He was asked to give his explanation. It is not his grievance that his version was not even received by the Committee. They gave him fair opportunity. They enquired into the issue in the manner which the Committee felt appropriate. The Court cannot step into the shoes of the Committee and dictate the manner in which the inquiry should be conducted. Leverage should be given to protect the privacy of the individual and understand the emotional stress of a trial process. The Court must also understand that if the Research Guide / Professor had deliberately evaded effective participation then, he cannot turn around and complain about the



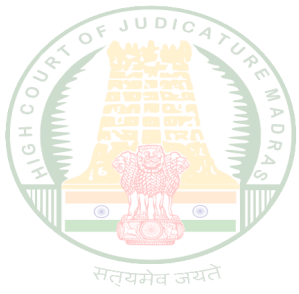
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procedure adopted. Opportunities can only be afforded. The onus was always on the Research Guide / Professor to take up the opportunity and participate in the enquiry.

130. Ms.R.Vaigai, learned Senior Counsel for the Research Scholar had taken the Court through the proceedings of the Committee. The learned Senior Counsel placed reliance on the judgment reported in ***(2013) 1 SCC 297, Medha Kotwal Lele and others V. Union of India and others*** with specific reference to paragraph Nos.44 and 44.1, which are as follows:

“44. In what we have discussed above, we are of the considered view that guidelines in Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place:

44.1. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (by whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints

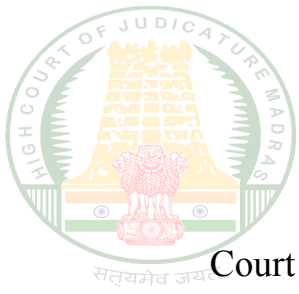


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Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings, etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.”

131. It had been very specifically held by the Hon'ble Supreme Court that the disciplinary authority shall treat the findings of the Complaints Committee as the findings in the disciplinary enquiry and shall act on such report accordingly. It had been very specifically held that the finding and report should not be treated as a mere preliminary investigation. The ratio is binding. We therefore hold that the findings of the Committee in the instant case, are final and binding on all the parties.

132. Ms.R.Vaigai, learned Senior Counsel for the Research Scholar also placed reliance on the judgment of the Hon'ble Supreme



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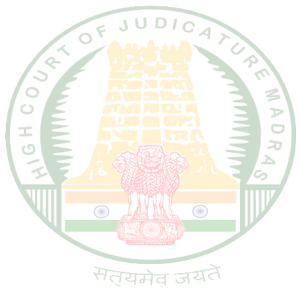
Court reported in (2024) 1 SCC 632, *Aureliano Fernandes Vs. State of Goa and others*, which was actually also cited by Mr.S.R.Rajagopalan, learned Senior Counsel for the University, with specific reference to paragraph Nos.85 and 86, which are as follows:

“85. It is often seen that when women face sexual harassment at the workplace, they are reluctant to report such misconduct. Many of them even drop out from their job. One of the reasons for this reluctance to report is that there is an uncertainty about who to approach under the Act for redressal of their grievance. Another is the lack of confidence in the process and its outcome. This social malady needs urgent amelioration through robust and efficient implementation of the Act. To achieve this, it is imperative to educate the complainant victim about the import and working of the Act. They must be made aware of how a complaint can be registered, the procedure that would be adopted to process the complaint, the objective manner in which the ICC/LC/IC is expected to function under the Statute, the nature of consequences that the delinquent employee can be visited with if the complaint is found to be true, the result of lodging a false or a malicious complaint and the remedies that may be available to a complainant if dissatisfied with the Report of the ICC/LC/IC, etc.



86. *However salutary this enactment may be, it will never succeed in providing dignity and respect that women deserve at the workplace unless and until there is strict adherence to the enforcement regime and a proactive approach by all the State and non-State actors. If the working environment continues to remain hostile, insensitive and unresponsive to the needs of women employees, then the Act will remain an empty formality. If the authorities/managements/employers cannot assure them a safe and secure workplace, they will fear stepping out of their homes to make a dignified living and exploit their talent and skills to the hilt. It is, therefore, time for the Union Government and the State Governments to take affirmative action and make sure that the altruistic object behind enacting the PoSH Act is achieved in real terms.”*

133. The judgment referred to the provisions under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The UGC guidelines extracted above go a step further in recognising the vulnerability of doctoral candidates at the hands of a Research Guide / Professor.



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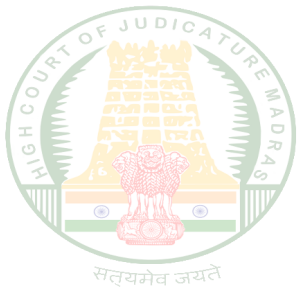
134. Ms.R.Vaigai, learned Senior Counsel for the Research Scholar also placed reliance on the judgment of the Hon'ble Supreme Court reported in *(1996) 3 SCC 364, State Bank of Patiala and Others Vs. S.K.Sharma*, with specific reference to paragraph Nos.33, which is as follows:

“33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

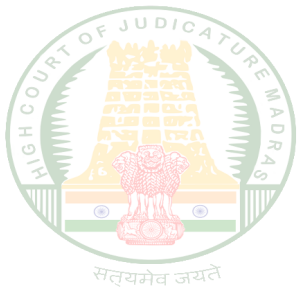
(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are



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generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — “no notice”, “no opportunity” and “no hearing” categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident.

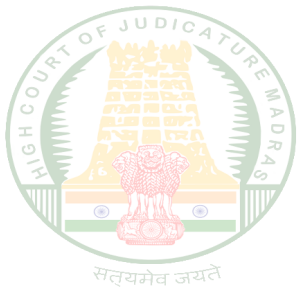


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No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that



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the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] . The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between “no opportunity” and no adequate opportunity, i.e., between “no notice”/“no hearing” and “no fair hearing”. (a) In the case of former, the order passed would undoubtedly be invalid (one may call it ‘void’ or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi



alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

135. It has to be examined whether the alleged violation of principles of natural justice was of substantive nature or of procedure. It



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had been held that if it was only relating to procedure then it cannot be said to automatically vitiate the enquiry held.

136. In the instant case, complaints had been raised only on procedural violations and not on substantive violations. **We therefore hold that more than sufficient opportunity had been granted to the Research Guide / Professor and he had deliberately chosen not to avail them.**

Further discussion:

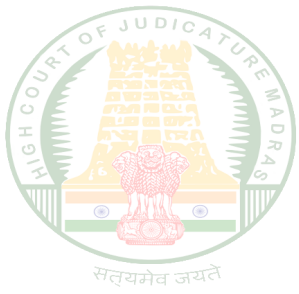
137. The learned Single Judge, in the course of the order, had stated that only 50% of the charges had been proved. We are not able to understand that observation. Even if there is a slight indication or even if there is intention to commit sexual or mental or emotional harassment and the said allegation is made out, the perpetrator, must be punished. Harassment is a deeply sensitive issue and touches the heart and soul of the person who suffers in silence. That individual, in this case the



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Research Scholar had left her place of security and joined an alien institution to pursue her dreams. She had trusted that she would be treated with equality and her dignity would be respected. When inroads are made by a person having influence and power to shatter her trust and her dreams of obtaining a doctorate degree, naturally, she would not come forward openly to give a complaint. It would take sustained harassment to force a victim to come out and lodge a complaint. It takes courage to stand up against a foe. It would take greater courage to stand up against a person who ostensibly extends trust, but with malice.

138. In the instant case, it had been stated by the learned Senior Counsel for the Research Guide / Professor that the complaint was not lodged before the Committee but before the Registrar. We do not find any infirmity in that aspect. The Registrar is an integral officer of the University and for all practical purposes, the face of the University, so far as the students are concerned. Therefore, we hold that no procedural irregularity was committed by the Research Scholar in lodging the complaint before the Registrar of the University.



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139. We have consciously not examined whether the allegations stood proved or disproved. We have not stepped into the shoes of the Committee. We have only examined whether the grievances raised by the Research Guide / Professor regarding the procedure adopted by the Committee are substantive in nature or procedural in nature. Harassment affects the mental health of every student. We placed ourselves in a position to understand that harassment. It would have caused significant pain to the Research Scholar. She would have dreamt to come out of the University with a Doctorate Degree, but midway through, she had been practically reduced to a vegetative state. The Courts have to understand the plea for justice by a victim of emotional / mental and sexual harassment.

140. We hold that the learned Single Judge had erred in proceeding to appreciate the report on technicalities and then interfering with the findings of the Committee and with the impugned order. The University had a duty to uphold its reputation. As stated in the UGC Regulations, ethics is fundamental for a Research Guide or a Professor. If there is failure to uphold ethics and if there is a corresponding intention



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to take advantage of the vulnerability of a student, then the perpetrator will have to face the consequences.

141. We are of the firm view that the learned Single Judge had unfortunately not appreciated the facts and circumstances in their proper perspective. We are convinced that since the 1st respondent had also not filed an appeal against the findings of the Committee, when such provision was specifically available, we cannot sit as an Appellate Authority to re-examine the statements to determine whether the Research Scholar suffered harassment. We hold that the order impugned in the writ petition had been passed after giving fair opportunity to the Research Guide / Professor.

Conclusion:

142. We hold that the learned Single Judge had erred in with the order impugned in the Writ Petition. We set aside the order of the learned Single Judge and dismiss the Writ Petition. The Writ Appeals are allowed. The impugned order is restored to file. We direct the University



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to act in accordance with the impugned order in Ref.No.MKU/SO/ICC/CRS/2019 dated 22.08.2019 within a period of five working days from this date.

143. We further hold that the Research Scholar is entitled for costs. No young student can be viewed as an object to be crumbled at will. Her confidence has to be restored. There should be zero tolerance of any form of mental / emotional / sexual harassment in any University.

144. In the result,

(i).The order dated 24.01.2020 of the learned Single Judge in W.P (MD) No.19440 of 2019 is set aside.

(ii).W.P (MD) No.19440 of 2019 is dismissed.

(iii).W.A.(MD) No.413 of 2020 is allowed with costs of Rs. 50,000/- (Rupees Fifty Thousand only) to be paid by the Research Guide / Professor to the Research Scholar for the harassment meted out to her



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and suffered by her. Costs to be paid directly within a period of four weeks, failing which, the University may take steps to recover the same in manner known to law from the Research Guide / Professor.

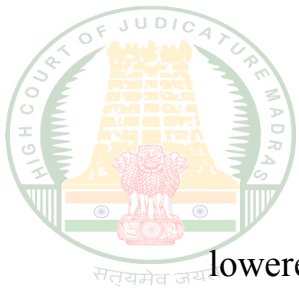
(iv).W.A.(MD) No.414 of 2020 is allowed, however, without costs.

(v) The order impugned in the Writ Petition dated 22.08.2019 is directed to be put into effect within 5 (five) working days from this date.

PER:- R. POORNIMA, J.

145. I had the benefit of perusing the judgment of my learned brother and I agree with the reasons stated and the conclusion given.

146. I would only like to add that harassment of women taking advantage of their vulnerability in academic institutions has increased. This is particularly because, practically every educational institutions is male dominated. It is not just students who suffer in silence, but also women faculty who are also subjected to emotional and sexual harassment by co-faculty members and also by non-teaching staff. This leads to anxiety, depression, sleep disorder, weight loss or gain, nausea,



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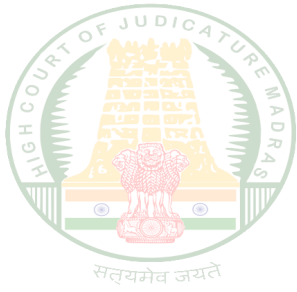
lowered self esteem or sometimes even sexual dis-function. It also leads to failure or poor performance in assignments and examinations. There are also instances of students dropping out midway from courses which they had strived hard to join. The students also fear to report such harassment owing to the possibility of complaints not addressed with due consideration and more importantly also, out of fear of retaliation. Those who suffer rarely perform well in academics and this leads to further emotional breakdown, which is a serious mental health issue.

147. I agree that costs have to be imposed against the Research Guide / Professor to set an example that no form of harassment would be tolerated in any educational institution in this Country. I also agree that the Writ Petition should be dismissed and that the Writ Appeals should be allowed and within the timeline fixed, put into effect the order impugned in the Writ Petition, as held by my learned brother.

[C.V.K., J.] & [R.P., J.]

04.12.2024

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C.V.KARTHIKEYAN, J.
And
R.POORNIMA, J.

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Pre-Delivery Common Judgment made in
W.A.(MD).Nos. 413 & 414 of 2020

04.12.2024