

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**WRIT PETITION NO.24885 OF 2020**

**ORDER:**

This writ petition is filed under Article 226 of the Constitution of India questioning the action of the first respondent in issuing G.O.Rt.No.1567 General Administration (SEB.I) Department dated 12.10.2020, thereby suspending the petitioner basing on the report of the fifth respondent as illegal, arbitrary and contrary to the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short 'the Act') and consequently suspend G.O.Rt.No.1567 dated 12.10.2020 issued by the first respondent.

The factual matrix of the case is as follows:

The petitioner while working as Enforcement Superintendent in Special Enforcement Bureau, Guntur Division, Guntur District , seized Non-Duty Paid Liquor which was being transported illegally. The petitioner holds recognition for detecting 177 cases, arrest of 401 accused, seizing 12939 bottles of liquor and 139 vehicles including lorries and four wheelers, to show that he worked with sincerity and honesty in his duties. The contention of the petitioner is that, having an evil eye on his sincerity, few political leaders and his colleagues hatched a plan to frame him and published a news article in the month of July, 2020 stating that one higher official in Special Enforcement Bureau Wing is harassing women. On the anonymous complaint, a belt case was registered at Special Enforcement Bureau Station, Pedakurapadu on 07.09.2020.

During investigation, on 10.09.2020, a cell phone belonging to one Brahman, salesman of government retail outlet of Lemalle village was handed over to one Ch. Geetha, Sub-Inspector, Pedakurapadu (henceforth referred as 'victim') through Assistant Excise Superintendent as part of duty.

The petitioner, being a superior officer, instructed the Sub-Inspector to send the screenshots of the liquor bottles, content in the cell phone and copy the same into a compact disk. It is alleged that the content in the cell phone contained explicit sexual photos and videos of women. The victim was disturbed on seeing the content in the mobile. Thereupon, she lodged a complaint to the second respondent through her husband on 11.09.2020 on the ground of sexual harassment, stating that the content which was required to be copied from the cell phone of salesman – Brahman was objectionable and it amounts to sexual harassment. It is stated that the petitioner was not provided with a copy of complaint in the enquiry process, as mandated under Rule 7 of the Rules. The petitioner pointed out that, under Section 9(1) of the Act, only the aggrieved woman has to file a complaint and in case of her physical or mental incapacity or death, the family members can make a complaint.

Basing on the complaint, the petitioner was relieved from duties on the same day i.e. 11.09.220 and attached to second respondent/Commissioner, Special Enforcement Bureau. The second respondent constituted a three member committee, which is allegedly contrary to the provisions of the Act. The said committee submitted a report to the second respondent, which was

in-turn forwarded to the first respondent for necessary action. Basing on the said report, the first respondent placed the petitioner under suspension without considering several representations of the petitioner.

The petitioner alleges that the enquiry which is conducted by the Special Committee is contrary to the provisions of the Act, since it is constituted specially for the purpose of enquiry against this petitioner. It is submitted that, as per G.O.Rt.No.1530 dated 12.07.2018, Internal Complaints Committee is formed under the Act in respect of General Administration Department and as per proceedings in Rc.No.81/2018/A1 dated 19.04.2018, Internal Complaints Committee is constituted in Prohibition and Excise Department. The term of these committees is three years and they still exist. The petitioner contends that, when the two committees are officially formed and existing, formation of another Special Committee for the purpose of this petitioner is bad in law. It is further contended that, the enquiry is to be conducted either by third respondent or fourth respondent, which are the two committees referred above, but not by the fifth respondent.

The petitioner alleges that the Special Committee constituted consists of three members viz., Smt. A. Rama Devi, Presiding Officer, Ch. Lavanya and Vivek. Among them, the Presiding Officer is facing allegations of harassing Scheduled Castes, thus she is disqualified from conducting an enquiry. The petitioner also putforth his grievance that all the members in Special Committee are equal to his cadre and he contends that, to conduct an enquiry, the officers in the Committee shall be of higher cadre than

the petitioner. This apart, the petitioner contended that, as required under Section 4 of the Act, one member amongst Non-Governmental Organization or association committed to the cause of women or a person familiar with the issues related to sexual harassment shall be nominated and there cannot be any special committee for each case, thereby, the enquiry is vitiated.

Apart from the above grounds, the petitioner raised the following additional grounds and they are extracted hereunder:

1. Whether there can be a Special Committee constituted by the 2<sup>nd</sup> respondent overriding the Internal Complaints Committee constituted by the 1<sup>st</sup> respondent by G.O.Rt.No.1530 dated 12.07.2018.
2. When the Internal Complaints Committee constituted by G.O.Rt.No.1530 dated 12.07.2018 is in force, can there be a special committee for each case.
3. The 2<sup>nd</sup> respondent did not refer the case of the petitioner either to the 3<sup>rd</sup> respondent or to the 4<sup>th</sup> respondent which is the parent department ICC and specially constituted a committee for the purpose of the case. Thus it is bad in law.
4. Whether the Special Committee constituted by the 2<sup>nd</sup> respondent complied with Section 4 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, since no member from NGO is present.
5. Since Rule 7(1) requires the aggrieved woman shall make a complaint to the Internal Complaints Committee, whether the enquiry conducted by the 5<sup>th</sup> respondent bad in law?
6. Since Rule 7(2) requires the Complaints Committee to furnish the copy of the complaint to the petitioner herein, whether the same is bad in law and violative of principles of natural justice and law.
7. Whether the present case deserves a re-enquiry, since no complaint copy is served on the petitioner herein and the procedure established under the Act is not followed?
8. Since the committee which conducted enquiry is not competent and does not have jurisdiction, does the suspension orders suffer illegality and irregularity and the same needs to be set aside.

9. Since the illegality and irregularity are from the inception of the formation of the 5<sup>th</sup> respondent committee, how far can the report of the 5<sup>th</sup> respondent committee be considered and can suspension be set aside.
10. When Section 11(1) is clear that Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 that an inquiry as against employee of the department shall be made in accordance with the Service Rules applicable to him, when such is the case, is the petitioner not entitled for a copy of a complaint.
11. Whether any inquiry related to service matter, can be conducted without providing any complaint copy to the employee who is facing allegation?
12. Whether as a part of duty, directing an office who is somewhere else to a copy a content to CD amounts to sexual harassment, since there is no knowledge of what is in the mobile? If so to what extent, whether suspension is bad to that extent?
13. Whether the constitution of India provides for conviction of a person without hearing and whether the same is in violation of Articles 14 and 21 of the Constitution of India.
14. When G.O.Ms.No.134 dated 15.05.2020 Revenue (Excise-I) Department clearly speaks that cadre management shall continue to be exercised by Revenue Excise Department in public interest in order to protect seniority, promotions, and welfare of the personnel, can the Special Enforcement Bureau Act contrary to the same without any jurisdiction and when the petitioner is drawing salary from the Revenue Department?

On the basis of above grounds and additional grounds, the petitioner requested to declare the action of the first respondent in issuing G.O.Rt.No.1567 General Administration (SEB.I) Department dated 12.10.2020 suspending the petitioner from service, with a consequential direction to set-aside the same.

The first respondent filed counter affidavit, denying material allegations, while admitting about passing the impugned order, placing this petitioner under suspension based on the report submitted by the Committee, while contending that the Internal

Complaints Committee constituted under the Act is only for the employees working under the respective departments. The Special Enforcement Bureau (SEB) is newly established wing under General Administration Department. As SEB is new department, the Internal Complaints Committee is yet to be constituted, meanwhile to redress the grievance of the complainant (on behalf of victim), a Preliminary Enquiry Team was constituted to ensure justice. It is submitted that, the petitioner violated APCS (Conduct) Rules, therefore, the competent authority is vested with power under Rule 8(1)(a) of the CCA Rules to place this petitioner under suspension during pendency of regular enquiry or contemplated enquiry. Therefore, on the ground that, constitution of Special Committee when Statutory Committee is existing and without entrusting the same to the existing committee has no substance and the same is liable to be rejected.

It is submitted that, the second respondent vide Ref.C.No.90/2020/SEB/B1 dated 11.09.2020 has constituted an Enquiry Team to conduct preliminary enquiry (fact finding enquiry). The Enquiry Team in its report submitted that, on 10.09.2020 by taking the mobile of the informer cum salesman, the petitioner and Sri Chandra Sekhar Reddy, Assistant Enforcement Superintendent have seen the obscene videos and audios in the mobile of the informant. The same has been admitted by the petitioner before the Enquiry Team that he has observed the content in the mobile of the informant. However, the petitioner has still ordered the victim to download all the obscene videos, private chats and audios contained in the mobile phone into Compact Disk and return to him. After the victim has gone through few of

the videos in that phone, she made a phone call to the petitioner and stated that she could not download such videos into compact disk, as those were very obscene. Even then the petitioner insisted forcefully that she should get those videos to him. On that, the victim, being a lady, suffered with mental distress and attempted suicide. Hence, it is prima facie proved that the petitioner sexually harassed the victim. To redress the grievance of the complainant (on behalf of the victim), as the act of the petitioner is in violation of Rule 3(c) of APCS (Conduct) Rules, 1964, a preliminary Enquiry Team was constituted.

The first respondent further submitted that, the technical grounds invented by the petitioner will not stand to any legal scrutiny, as there is material against this petitioner, for his serious misconduct.

It is also submitted that, the alleged violation of Sections 4, 7(1) and 7(2) of the Act is neither true nor correct and they are not relevant for deciding the issue. In so far as G.O.Ms.No.134 Revenue (Excise.I) Department dated 15.05.2020 is concerned with regard to the allocation of employees and cadre strength between SEB and the Excise Departments is of no use. It is also submitted that, Section 11(1) of the Act is also not applicable to the present facts of the case and therefore, the grounds urged by the petitioner are not substantiated by any material.

It is further contended that, the petitioner being an employee of disciplinary force, cannot misbehave or indulge in any such misconduct of sexual harassment of another employee at the work place. The action of the second respondent in placing this

petitioner under suspension is not a unilateral decision, since there was a preliminary enquiry to find out the genuineness of the allegations made in the complaint submitted by the husband of the victim and based on the enquiry report, found that there is material prima facie against this petitioner and consequently the petitioner was placed under suspension in the contemplated regular departmental enquiry and that there are no illegalities or irregularities in the order impugned in the writ petition and requested to dismiss the writ petition.

The petitioner filed reply to the counter affidavit, reiterating the contentions while denying the procedure followed by the respondents in placing this petitioner under suspension and he further contended that the cell phone handed over to the Sub-Inspector of Police is a part of investigation and not otherwise.

During hearing, learned counsel for the petitioner placed on record the additional material papers after serving notice on the respondents and on the basis of the material on record, while reiterating the contentions urged in the affidavit, in the report, the Special Committee constituted found that this petitioner is guilty for one charge while holding the other charges are not proved. But, still, the second respondent placed this petitioner under suspension and there is no prima facie material against this petitioner to conclude that the petitioner is guilty of misconduct.

Whereas, learned Government Pleader for Services-I supported the action of Respondent Nos. 1 & 2, as regular departmental enquiry is proposed against this petitioner and requested to dismiss the writ petition.



Considering rival contentions, perusing the material available on record, the sole point that arises for consideration is:

***“Whether the impugned order placing this petitioner under suspension is in accordance with the provisions of The sexual harassment of women at workplace (Prevention, Prohibition, and Redressal) Act, 2013 and Rules framed thereunder. Whether the report submitted by the Committee is a report within Rule 3(d) of A.P. Civil Services Conduct Rules. If so, whether the proposed regular departmental enquiry is in accordance with law. Otherwise, the order of suspension impugned in this writ petition is liable to be set-aside?”***

**P O I N T:**

Undisputedly, the petitioner was working as Superintendent in Special Enforcement Branch at Guntur. His duty is to prevent certain crimes, more particularly, offences relating to NDPL. The petitioner undisputedly found a salesman indulging in transportation of non-paid duty liquor at Lemalle village. During investigation, the cell phone of the salesman was seized and handed over to one Sub-Inspector of Police/victim, through Assistant Superintendent of Police with a direction to get the screen shots and copy the content in the cell phone to a compact disc. Therefore, handing over cell phone of salesman to Sub-Inspector of Police/victim which was seized as a part of investigation is not in dispute.

The main grievance of Respondent Nos. 1 and 2 is that, despite knowing that the cell phone contains sexually explicit material, asking the alleged victim/Sub-Inspector of Police in the unit of Special Enforcement Bureau amounts to sexual harassment of women at work place. It is irrelevant whether the

petitioner has seen the sexually explicit material contained in the cell phone of the salesman who was nabbed during investigation. Collection of material during investigation is a part of duty of the Excise officials while working in Special Enforcement Bureau. Seizure of cell phone of the salesman and getting the contents copied to compact disk is part of investigation, being the investigating agency. Therefore, such act would constitute sexual harassment at work place or not is a question to be decided *prima facie*.

The word "sexual harassment" is defined under Section 2(n) of the Act as follows:

*'sexual harassment' includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:*

- (i) physical contact and advances; or*
- (ii) a demand or request for sexual favours; or*
- (iii) making sexually coloured remarks; or*
- (iv) showing pornography; or*
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;*

Keeping in view of the definition of sexual harassment, it is necessary to examine whether asking the victim to take screenshots and copy the content from the cell phone to compact disk from the cell phone of the salesman who is an accused in crime would fall within the definition of sexual harassment.

The allegations do not attract clause (i) to (iv) of Section 2(n) of the Act. But, with regard to clause (v) of Section 2(n), it is a non-verbal conduct of sexual nature. It is a part of investigation done by the petitioner being a police officer while discharging her duties. Whether or not, the petitioner is aware about the contents, the victim/woman employee is bound to take screenshots and copy the

content from the cell phone, as directed by her superior officer/petitioner herein, as it is part of her duty or entrust to any other competent employee to get the screenshots and content from the cell phone of the accused. Merely because the petitioner asked the victim to discharge her duties as part of investigation, it would not *prima facie* amount to subjecting the victim to sexual harassment at work place. But, this finding it is for limited purpose of deciding the present writ petition and it will not operate as precedent in any subsequent matter.

The main grievance of this petitioner is that, the complaint was given by the husband of the alleged victim and he is incompetent to make such complaint.

Chapter IV of the Act deals with 'Complaint'. Section 9 deals with complaint of sexual harassment. Complaint means and includes,

*(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:*

*Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:*

*Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.*

*(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section."*

Thus, Section 9 of the Act not only deals with competency of the person as to make complaint, but also specified time limit for

making such complaint. As such, the section provides for making of complaint of sexual harassment by aggrieved woman only by making complaint in writing of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee if an Internal Committee is not constituted. But here, in this case, husband of the victim woman employee lodged a complaint and consequently it is not in compliance of Section 9 of the Act, taking cognizance of such complaint made by an incompetent person when the victim woman is able to make such complaint is a serious illegality and contrary to the provisions of the Act. On this ground, the enquiry conducted by the Special Committee appointed by the second respondent is liable to be set-aside, as husband of the victim has no *locus standi* to lodge such complaint.

The other contention is that, when a committee is constituted in the Excise Department before its bifurcation, the same can be treated as Local Committee after bifurcation. But, constitution of Special Committee for the purpose of enquiry of this petitioner is an illegality.

Chapter II of the Act deals with Constitution of Internal Complaints Committee. Section 4 of the Act reads as under:

*(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee"*

*Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.*

*(2) The Internal Committee 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 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.*

*(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.*

*(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.*

*(5) Where the Presiding Officer or any Member of the Internal Committee,-*

*(a) contravenes the provisions of section 16; or*

*(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or*

*(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or*

*(d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case maybe, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.*

In the present case, the explanation of the respondents is that, since the Special Enforcement Directorate for the State is recently established, thereby no such Committee as required under Section 4 is constituted. Therefore, a Special Committee was constituted for the purpose of enquiry. No doubt, this committee is constituted newly and no Internal Complaint Committee was constituted as contemplated under Section 4 of the Act. In the absence of any Internal Complaint Committee, a complaint can be

made to Local Complaint Committee, as prescribed under Section 5 of the Act.

Section 6 deals with Constitution and jurisdiction of Local Complaints Committee, it reads as under –

*(1) Every District Officer shall constitute in the district concerned, a committee to be known as the "Local Complaints Committee" to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.*

*(2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Complaints Committee within a period of seven days.*

*(3) The jurisdiction of the Local Complaints Committee shall extend to the areas of the district where it is constituted.*

Section 7 deals with Composition, tenure and other terms and conditions of Local Complaints Committee. According to it:

*“(1) The Local Complaints Committee shall consist of the following members to be nominated by the District Officer, namely:*

*(a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;*

*(b) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;*

*(c) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:*

*Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:*

*Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;*

*(d) the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio.*

*(2) The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.*

*(3) Where the Chairperson or any Member of the Local Complaints Committee*

- (a) contravenes the provisions of section 16; or*
  - (b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or*
  - (c) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or*
  - (d) has so abused his position as to render his continuance in office pre-judicial to the public interest, such Chairperson or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.*
- (4) The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.”*

A bare look at the provisions of the Act, more particularly, Sections 4 to 7, in the absence of Internal Complaint Committee, a Local Committee is competent to act on a complaint of sexual harassment at work place. But here, for different reasons known to Respondent Nos. 1 and 2, a Special Committee was constituted without referring the complaint of the victim to the Local Committee. Therefore, it is another illegality committed by the respondents. Even assuming for a moment that the Special Committee is constituted for the purpose of enquiring into the alleged act of sexual harassment of victim by this petitioner; such Committee is deemed to be an Enquiry Committee as per Rule 3(d) of Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short 'APCS (CCA) Rules) and such report can be taken as an Enquiry Report. But, for the reasons best known to Respondent Nos. 1 and 2, a Committee consisting of officers of same rank/lower rank was constituted to inquire into and submit a report. If, it is a Committee constituted to enquire into the complaints of sexual harassments at work place, then the Committee, necessarily consist officers of higher rank than the

persons who is facing the enquiry for the alleged act of sexual harassment.

When a Special Committee constituted by Respondent Nos. 1 and 2 is deemed to be a Committee under Rule 3(d) of APCS (CCA) Rules, the report submitted by the Committee is deemed to be an Enquiry Report and a copy of the Enquiry Report placed on record by the learned counsel for the petitioner where the Committee after elaborate consideration of material and imputations made therein, would disclose the same. The findings of the Enquiry Report are extracted hereunder:

1. *Once while conducting route watch, E.S. Balakrishnan has called Sri Nagesh's wife Smt. Ch. Geeta, SI, Pedakurapadu aside and spoke to her for hours together by using obscene language – NOT CONCLUSIVELY PROVED*
2. *E.S. Bala Krishnan has called Nagesh's wife Smt. Chunduru Geeta, SI, Pedakurapadu in to a room on the pretext of work and harassed her sexually. As part of this E.S. Bala Krishnaiah commented his wife that don't you go to your husband if your CI does not say so. But we bear it all with pain – NOT CONCLUSIVELY PROVED.*
3. *On 10.09.2020 by taking the mobile of an informer cum sales man, E.S. Balakrsihnan and A.E.S Chandra Sekhar Reddy have seen the personal videos and audios of informant. Moreover without bothering that his wife is a 'lady', E.S. Balakrishnan has ordered his wife to download all the Blue Films, private chats and audios contained in the mobile phone into a C.D form and give it to him. On that his wife Geeta suffered with mental distress and attempted suicide. E.S. Balakrishnan has been wontedly harassing his wife sexually - PROVED*

Even if this finding is taken into consideration, it is only asking the victim woman to take screenshots and copy the content in the cell phone is a part of investigation while discharging duty by the woman police officer. Ordering enquiry based on the complaint having no *locus standi* and constitution of Special Committee, treating the report of the Special Committee as a fact finding/preliminary enquiry report is contrary to Rule 3(d) of APCS



(CCA) Rules. On this ground also, the order placing this petitioner under suspension is vitiated by serious irregularity.

Yet, another contention of the petitioner before this Court is that, the Internal Complaints Committee must consist of several persons, as specified under Rule 4 of the Rules, one member amongst Non-Governmental Organization or association committed to the cause of women or a person familiar with the issues related to sexual harassment shall be nominated, as such, no person was included in the Committee as required under Section 4(2)(c) of the Act.

No doubt, the Committee consists of three officials and none of them is a member of non-governmental organization or association committed to the cause of women. Therefore, this is also a minor irregularity.

Section 11 of the Act deals with Inquiry into the complaint, it reads as follows:

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

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

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

*(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is*

*convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.*

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

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents; and*
- (c) any other matter which may be prescribed.*

*(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.*

Therefore, specific procedure is contemplated to inquire into the complaint under Section 11 of the Act and the manner of Inquiry is dealt in Rule 7 of the Rules. According to it:

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

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

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

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

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

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

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

Thus, the procedure prescribed under Rule 7 of the Rules, coupled with Section 11 of the Act has to be strictly adhered to.

However, the learned Government Pleader for Services-I contended that, the procedure contemplated under Section 11 of the Act and Rule 7 of the Rules is required to be complied with during final inquiry. In fact, no preliminary enquiry is contemplated under the Act. But, if the complaint received by the Committee feels that there exists prima facie case, then the Committee can proceed to inquire into the matter strictly adhering to the procedure under Section 11 of the Act read with Rule 7 of the Rules. But, in the present case, undisputedly the complaint copy was not sent to this petitioner and the contention of the learned Government Pleader for Services-I that, it is not a final enquiry and the procedure is not required to be complied with is to be rejected, since a Committee constituted to inquire into the sexual harassment of a woman employee at working place is deemed to be a Enquiry Committee under Rule 3(d) of APCS (CCA) Rules and the report shall be deemed to be a final enquiry report under Rule 3(d) of APCS (CCA) Rules. But, the inquiry allegedly conducted by the Committee is totally in violation of Rule 7 of the Rules framed under the Act.

When the inquiry was conducted and report is submitted, Respondent Nos. 1 and 2 intended to act upon the report, more particularly, when such report is deemed to be an enquiry report under Rule 3(d) of APCS (CCA) Rules. It is a final report for all practical purposes and question of ordering a final enquiry or contemplated enquiry by Respondent Nos. 1 & 2 against this petitioner cannot be accepted and at best, Respondent Nos. 1 & 2 may impose penalty in terms of APCS (CCA) Rules.

Yet another lacuna in the procedure followed by the respondents is, non-compliance of Rule 7(1) i.e. lodging a report with the police for registration of crime punishable under Section 509 I.P.C. This is also another lacuna in the procedure followed by the respondents. Therefore, the entire impugned proceedings are vitiated by several irregularities.

It appears from the record that the petitioner being a government servant in the higher cadre is investigating into several crimes involving kith and kin of political leaders, the petitioner was made as a scapegoat implicating him in such heinous act of misconduct. It appears that, it is only to prevent the petitioner from proceeding with the investigation in the cases registered against such persons who are kith and kin of bigwigs in the society. When the alleged sexual harassment is used as a tool to oppress the senior most government servant, it is difficult for any officer to discharge his duties without fear or favour.

The procedure adopted by the respondent to place the officer under suspension is intended to snub/crush the career of the senior most officer, preventing him from discharging his duty without fear or favour and to bring him to their terms and work under their thumb by adopting arm twisting method, to mar his future career being most police officer.

If the woman employee stooped to such an extent of making complaint of sexual harassment against higher officer, while declining to discharge her duty as a part of investigation or assist the investigating officer, being a subordinate officer in the investigation, it would lead to serious consequences in discharging

duties by the officer in conducting investigation. Sometimes, the police or excise officials or some other department officials have to investigate into several offences involving acts of sexual harassment. If such act is described as a sexual harassment at work place, it is difficult to discharge their duties at work place. Take for instance, a Judicial Officer while dictating judgment to a lady Stenographer or lady Court Master in a case where such sexual explicit material is recorded in the First Information Report or in the evidence, the officer has to dictate the same to the Stenographer or Court Master. Such dictation is undoubtedly a sexual explicit material. If it is described as a sexual harassment at work place, it is difficult for any Judicial Officer to discharge his/her duty, so also by the Stenographer. Therefore, the act complained against this petitioner by a person who has no *locus standi* in terms of Section 9 of the Act is illegal. Hence, I find that the procedure followed by the respondents while passing impugned order of suspension placing this petitioner under suspension is totally contrary to the provisions of the Act and Rules framed thereunder; including Rule 3(d) of APCS (CCA) Rules. On this ground alone, the impugned order is liable to be set-aside.

An order of interim suspension can be passed against the employee while an inquiry/investigation is pending against him, and thereby disabling him from performing the duties of his office on the basis that the contract is subsisting, is always an implied term in every contract of service. When an officer is suspended in this sense it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till such time, the officer is legally dismissed, he must not do anything in

the discharge of the duties of his office. In other words, the employer is regarded as issuing an order to the employee which, because the contract is subsisting, the employee must obey. Where the power to suspend is provided for either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay his full salary and allowances.

If the order of suspension is a valid order, it has suspended the contract of service and the government servant is entitled to receive only such subsistence allowance as might be payable under the rules and regulations governing his terms and conditions of service. As an employer can suspend an employee pending an inquiry into his conduct, the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is a provision in the Rules providing for the scale of payment during suspension, the payment would be in accordance therewith. On general principles, therefore, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental inquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental inquiry against him.

An order of suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority should also keep in mind the public interest, the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a

criminal charge. The importance and necessity of proper disciplinary action being taken against government servants for inefficiency, dishonesty or other suitable reasons, cannot be over emphasized. While such action may be against the immediate interest of the government servant, yet it is absolutely necessary in the interests of the general public for serving whose interests the government machinery exists and functions. Suspension of a government servant pending an enquiry is a necessary part of the procedure for taking disciplinary action against him. (***Khem Chand v. Union of India***<sup>1</sup>).

Ordinarily, a government servant is placed under suspension to restrain him from availing the further opportunity to perpetrate the alleged misconduct or to scuttle the inquiry or investigation or to win over the witnesses or to impede the progress of the investigation or inquiry, etc. It would also remove the impression, among members of the service that dereliction of duty would pay. When serious allegations of misconduct are imputed against a member of a service, normally it would not be desirable to allow him to continue in the post where he is functioning. The government may rightly take the view that an officer, against whom serious imputations are made, should not be allowed to function anywhere before the matter has been finally set at rest after proper scrutiny and holding of departmental proceedings. The purpose of suspension is generally to facilitate a departmental enquiry and to ensure that, while such enquiry is going on-it may relate to serious lapses on the part of a public servant-, he is not in a position to

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<sup>1</sup> 1963 AIR 687

misuse his authority in the same way in which he might have been charged to have done so in the enquiry.

The effect on public interest, due to the employee's continuation in office, is also a relevant and determining factor. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. At this stage, it is not desirable for the court to find out as to which version is true when there are claims and counterclaims on factual issues. No conclusion can be arrived at without examining the entire record. It is always advisable to allow disciplinary proceedings to continue unhindered, and the concerned employee kept out of the mischiefs range. If he is exonerated, he would then be entitled to all the benefits from the date of the order of suspension. The usual ground for suspension, pending a criminal proceeding, is that the charge is connected with his position as a government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. In such a case a public servant may be suspended pending investigation, enquiry or trial relating to a criminal charge.

The power of suspension should, however, not be exercised in an arbitrary manner and without any reasonable ground or as a vindictive misuse of power. A suspension order cannot be actuated by *mala fides*, arbitrariness, or be passed for an ulterior purpose. (**Ashok Kumar Aggarwal's case** (referred supra)). An order of



suspension should not be passed in a perfunctory or in a routine and casual manner but with due care and caution after taking all factors into account. (***Union of India v. Ashok Kumar Aggarwal***<sup>2</sup>). It should be made after consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The authority should also take into account all available material as to whether, in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry. (***Ashok Kumar Aggarwal's case***). Ordinarily, an order of suspension is passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated, and the nature of the evidence placed before it, on application of mind by the disciplinary authority.

Whether the employee should or should not continue in office during the period of inquiry is a matter to be assessed by the concerned authority. Ordinarily, the Court should not interfere with orders of suspension unless they are passed *mala fide* and without there being even *prima facie* evidence on record connecting the employee with the misconduct in question. The court cannot act as if it is an appellate forum de hors the power of judicial review. The Court or the Tribunal must consider each case on its own facts and no general law or formula of universal application can be laid down in this regard. Each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry

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<sup>2</sup> (2013) 16 SCC 147

or contemplated inquiry or investigation. The authority should also keep in mind the public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.

Even if the present case is examined based on the law referred above, the Court must be slow in interfering with such suspension orders. When the competent authority recorded its satisfaction based on the material placed before him along with the complaint that itself suffice to place a Government servant under suspension. Though the effect of suspension is serious on the career of the employee but debarring him from discharging his duties temporarily is only to avoid his interference or continuously indulging in such activities prejudicial to the interest of the state. Normally, an appointing authority or disciplinary authority seeks to suspend an employee pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission. The order of suspension would be passed after taking into consideration of the gravity of the misconduct sought to be enquired into or investigated and the nature of evidence placed before the appointing authority and on application of mind by the disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court

or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words, it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by *mala fides*, arbitrary or for ulterior purpose, the suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.

In view of the law declared by the Apex Court in various judgments referred supra, the Court can interfere with such order of suspension when the order of suspension is tainted by malafides and contrary to the principles prescribed under law. Here, it is evident that the impugned order is vitiated by serious irregularities which I pointed out in the earlier paragraphs. But, so far as

malafides are concerned, it is a question of fact to be decided. However, it is tainted by malice in law, though not malice in fact. Therefore, the order impugned in the writ petition is liable to be set-aside. However, this order will not preclude Respondent Nos. 1 and 2 to take appropriate action against the petitioner, strictly adhering to the provisions of the Act and Rules framed therein, coupled with APCS (CCA) Rules.

In the result, writ petition is allowed, setting aside G.O.Rt.No.1567 General Administration (SEB.I) Department dated 12.10.2020. No costs.

Consequently, miscellaneous applications pending if any, shall stand closed.

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**JUSTICE M. SATYANARAYANA MURTHY**

Date:23.03.2021

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