

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
05~08~2021	25~08~2021

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The Hon'ble Mr. **Justice N. SATHISH KUMAR**

Writ Petition Nos.10364 of 2016 & 1298 of 2021
and W.M.P.Nos.1439, 5177 and 5175 of 2021

W.P.No.10364 of 2016

Mary Rajasekaran ... Petitioner

Vs

1. University of Madras,
Rep. by its Registrar,
Chennai – 600 005.
2. Loyola College,
Rep. by its Secretary,
Nungambakkam, Chennai – 600 034.
3. The Rector,
Loyola College,
Nungambakkam, Chennai – 600 034.
4. The Provincial Society of Jesus,
Madurai Jesuit Province,
Beschi Campus, Karur Road,
Dindigul – 624 001,

5. Rev. Fr. Xavier Alphonse SJ,
[former Director, Loyola College Alumni Association]
Co-ordinator, Higher Education,
St. Joseph's College, Tiruchirapalli. ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the second respondent to permit the petitioner to rejoin and continue her duties as Secretary to the Third Respondent and consequently direct the second respondent to pay full back wages and attendant benefits thereupon and to direct the second respondent to initiate an enquiry against the fifth respondent based on the complaint of the petitioner as mandated under the Sexual Harassment of Women at Workplace [Prevention, Prohibition and Redressal] Act, 2013 and consequently direct the second respondent to provide compensation to the petitioner.

For Petitioner ... Mrs.K.Aparnadevi
For Respondents ... Mr.L.P.Shanmugasundaram,
Standing Counsel [for R1]
Mr.Isaac Mohanlal, SC
for Isaac Chambers [for R2 to R5]

W.P.No.1298 of 2021

The Rector & Vice-President,
Loyola College Society,
Loyola College Campus,
Nungambakkam, Chennai – 600 034. ... Petitioner

.. Vs ..

1. The Tamil Nadu State Commission for Women,
Rep. by its Chairperson,
Kalasa Mahal, Chepauk, Chennai – 600 005.

2. The Director of Collegiate Education,
College Road, Chennai – 600 006.

3. Mrs.Mary Rajasekaran

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the impugned Order issued by the first respondent Commission dated 23.12.2020 and quash the same.

For Petitioner ... Mr.Isaac Mohanlal, SC
for Isaac Chambers

For Respondents ... Mr.V.Shanmugasundar,
Spl. Govt.Pleader [for R1 & R2]

Mrs.K.Aparnadevi – R3

COMMON ORDER

1.a. W.P.No.10364 of 2016 has been filed for a direction to the second respondent to permit the petitioner to rejoin and continue her duties as Secretary to the Third Respondent; to pay full back wages and attendant benefits; to initiate an enquiry against the fifth respondent based on the complaint of the petitioner and to provide compensation to the petitioner.

1.b. W.P.No.1298 of 2021 has been filed to quash the impugned

Order issued by the first respondent Commission dated 23.12.2020.

1.c. Since the parties and matter in both the writ petitions are same and interlinked, both the cases are taken up for final disposal in this common order.

2.a. It is the case of the Petitioner in W.P.No.10364 of 2016 that she was appointed as Administrator at the 2nd Respondent College. Her appointment was made on 1.7.2000 by the 2nd Respondent. Her duties included works relating to Loyola Development Office as well as the Alumni Association of the 2nd Respondent college. Reporting authorities were the Director, Loyola Development Office as well as Director Alumni Association. When she joined office as Administrator at the Second Respondent College, Rev.Fr.Cashmir Raj SJ, was the Director of the Alumni Association of the 2nd Respondent College. Thereafter 5th Respondent took over charge as Director of the Alumni Association in the year 2012.

2.b. After 5th Respondent took over charge, trouble started within six months, when the Writ Petitioner questioned certain misappropriation of amounts to the tune of Rs.1 Crore from the Alumni Association to a personal Trust run by 5th Respondent. Besides he also misused the scholarship scheme. The Petitioner brought these misappropriations to the notice of the management through email dated 21.08.2013. Thereafter, the financial powers of the 5th Respondent was regulated. Keeping in mind, 5th Respondent started harassing writ petitioner and abusing her at every possible instance and behaved in a manner unbecoming of a reverend priest. He has also attempted to even create a rift in her family. Despite the same was brought to the management of the 2nd Respondent College, they failed to take any meaningful action.

2.c When the matter stood thus in the year 2013 the Alumini Association of the 2nd Respondent organised Star Nite (Kalloori Padhai) inviting celebrities who were past students of the 2nd Respondent College. The Petitioner and her son being past students as well as the EC member of the Alumni Association, had put their efforts full and went out of their way

to bring various celebrities to participate in the programme. When the sponsors and donors for the said Star Nite came forward to make their payments, the 5th Respondent made them to draw the payment cheques in favour of his personal trust. All these misdeeds were reported to the management of the 2nd Respondent and she also sent an email dated 18.09.2013 to the 5th Respondent with copies to the top officials of the 2nd Respondent College. Thereafter, she was given a change of place of work and was attached to the 3rd Respondent's office as Secretary by order dated 20.02.2014.

2.d. However, 5th Respondent continuously harassed the Petitioner over phone as well as in person and whenever she brought the same to the knowledge of the management including 3rd Respondent, she was dissuaded by them from pursuing any action and informed her that steps are being taken to transfer the 5th Respondent. Further allegation is that at the instigation of the 5th Respondent a member of the Alumni Association initiated a false criminal complaint against her son. She sent a detailed email dated 14.06.2014 to the police commissioner. She has also indicated

about the sexual harassments meted out to her.

2.e. When the matter stood thus the 3rd Respondent during September 2014 asked the Petitioner to stop reporting to 2nd Respondent and informed her that her salary during the period will be paid immediately upon her reporting back for duty. The petitioner has informed the above facts to the Provincial Society of Jesus, Madurai Jesuit Province, the 4th Respondent herein. However without initiating action against 5th Respondent under the provision of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the 5th Respondent was moved to Joseph College, Trichy. The 4th Respondent has not taken any action or conducted any enquiry on the complaint of sexual harassment. On 18.12.2015 the petitioner went to the 2nd respondent college, met the Principal and enquired about her duties. But they did not respond properly. Hence it is the contention of the Petitioner that being a regular employee, without following due procedure she was terminated from Service and the 2nd Respondent has not taken any action against the 5th Respondent and violated the provisions of the Sexual Harassment of Women at Workplace

(Prevention, Prohibition and Redressal) Act, 2013. Hence she filed the writ petition.

3. The other Writ Petition No.1298 of 2021 has been filed by the Rector, Loyola College, who is third Respondent in W.P.No.10364 of 2016, challenging the order dated 23.12.2020 passed by the Tamil Nadu State Commission for Women.

4.a. 2nd Respondent filed a counter indicating that the 2nd Respondent college in Chennai is one among the several recognised educational institutions administered by the Loyola College Society formed by the members of the Congregation of Society of Jesus. It is the contention that the Petitioner was appointed as Administrator in the office of the Loyola Development Office and Alumni Association on contract basis with effect from 01.07.2010. The Loyola Development Office and Alumni Association function under the auspices of Loyola College Society. The Petitioner was paid a monthly salary of Rs.15,000/- from the Loyola Development Office and another Rs.15,000/- from the Alumni Association funds both managed

by the Loyola College Society. The nature of work is to provide Secretarial assistance to the Director of Loyola Development Office and Director of Alumni Association. Later, when the service was found not needed in the Loyola Development Office and Alumni Association, she was appointed as Secretary to Rev. Father Rector of Loyola Institutions who is the Vice President of Loyola College Society, Chennai with effect from 20.02.2014 on contract basis. She was paid a consolidated pay of Rs.30,000/- per month from the funds of the Society. As her service was no longer required, her contract was terminated with effect from 03.09.2014 and she was relieved from employment on the said date. The management offered a sum of Rs.50,000/- towards pay in lieu of notice period. She refused to receive the same. She stopped coming to college since then. After 1 ½ years she filed the present writ petition with false, malicious, vague and mischievous allegations and the allegations of misappropriation, harassment particularly sexual harassment pleaded in the petition denied as false, baseless and vexatious.

4.b. It is the contention that the petitioner did not prefer any such

complaint of sexual harassment to the Anti-Sexual Harassment Committee or Grievance Cell at any point of time. The allegation that she was not issued any termination order is denied. In fact she was served with a termination letter and with two months' salary for notice period, which she refused to receive by signing. There was no complaint of sexual harassment to any authorities by her at any point of time.

4.c. 5th Respondent also filed counter denying the entire allegations raised in the writ petition and reiterated that she was terminated from the contract service by the college. The alleged sexual harassment is completely mischievous and vexatious.

4.d. In the reply, the petitioner denied the allegation that she was served with notice of termination, The 5th Respondent was transferred to Trichy that itself indicate that the allegations raised by her are true and it is contented by the petitioner that complaint was communicated to the 3rd Respondent regarding sexual harassment by the 5th respondent. Respondents 2 to 4 have not forwarded the complaint to the Committee and

Vishaka guidelines have not been followed. Hence, they are liable to pay compensation for the damages caused to the Petitioner to the tune of Rs.23,40,000/- backwages and damages for mental agony to the tune of Rs.25 lakhs.

4.e. A rejoinder also filed by the 5th Respondent wherein he denied the reply of the petitioner.

5.a. W.P.No.1298 of 2021 filed by the Rector and Vice President of Loyola College Society, against the Tamil Nadu State Commission for Women, took cognizance of the same allegations which was subject matter of W.P.No.10364 of 2016. The Chairperson by letter dated 28.11.2020 informed the Writ Petitioner in W.P.No.1298 of 2021 that a complaint has been received from the Writ Petitioner in W.P.No.10364 of 2016, therefore, the Chairperson like to have discussion with the Writ Petitioner in W.P.No.1298 of 2021 on 07.12.2010. The above letter was received and responded by the writ petitioner in W.P.No.1298 of 2021 that they are prepared to have discussion through phone call or by video conferencing on

account of Covid 19 restrictions and also requested for copy of the complaint stated to have filed by the writ petitioner in W.P.No.10364 of 2016 before the Commission. Again on 5.12.2020 there was a phone call to the writ petitioner in W.P.No.1298 of 2021 from the officials of Commission that the writ petitioner should be present in person on 07.12.2020. Since the writ petitioner was not appeared before the Commission on 07.12.2020, Commission sent a communication calling for explanation vide letter dated 08.12.2020. On receipt of that notice by hand, the Petitioner replied that the same matter is ceased by the High Court and the same was posted before the High Court on 8.12.2020 for hearing. As the same being adjourned to 18.12.2020 and requested to take up the matter after the disposal of the case by the High Court. Thereafter, the Chairperson along with two members of the Commission visited the college and passed the impugned order dated 23.12.2020 as follows:

“(i) As per the rules, the College has to inform the Directorate of Collegiate Education whenever a staff of the College has been terminated and no such official communication has been sent to the Directorate of Collegiate Education and this is the

reason why the 3rd Respondent's claim for arrears of salary has not been considered.

(ii) The amount claimed by the 3rd Respondent as back wages was Rs.24,30,000/- from April 2014 i.e., Rs.30,000/- for 81 months.

(iii) The amount claimed by the 3rd Respondent for damages, for mental agony and unkind works of sexual harassment was Rs.25,00,000/-.

(iv) The amount claimed by the 3rd Respondent as compensation for filing false complaint was Rs.15,00,000/-.

(v) Therefore, all put together (Rs.24,30,000/- + Rs.25,00,000/- + Rs.15,00,000/-) a total sum of Rs.64,30,000/- has to be paid with interest without delay.

(vi) There was no reason to terminate the 3rd Respondent's service and the College abruptly stopped her from work deliberately.

(vii) For the kind of trauma, physical and sexual abuse she has been submitted to, she has to be adequately compensated.

(viii) The donations received from the old students should be accounted for in a separate Alumni Funds Account and an Association has to be registered under the Societies Act for this purpose.

(ix) The decision is taken by the Commission suo motu and it has to be implemented immediately.”

5.b. Hence it is the contention that such order passed by the Commission is not maintainable under law. The Commission has no such power to unilaterally decide service relating disputes, determine the quantum of damages and award Compensation. At the most the Commission as a body, can only take up cases of violations of the provisions of the Constitution and other laws relating to women to the authorities concerned. Hence, the order of the Commission is without jurisdiction, unconstitutional and void in law. The Act of Commission was highly arbitrary, capricious and bereft of any fair procedure in relation to

enquiries. The Commission has no power to pass such orders. Hence filed this petition for writ of certiorari to quash the impugned order passed by the Tamil Nadu State Commission for Women.

5.c. The Commission has filed counter stating that the Writ Petition is not maintainable. The Commission is constituted to address all the issues related to grievances of women and the State Women Commission was established for protecting interest and right of the aggrieved women viz.,

(i) to provide protection and ensure welfare of the women

(ii) to address the gender issues

(iii) to recommend to the Government to various issues related to women

(iv) adherence to the provisions and protections provided under the constitution and legislation for women are taken care of by the Commission.

(v) Report to Government when the protective measures for women are not effectively implemented by various agencies.

(vi) Recommends amendments in the provisions of law when it fails to impart justice to women

(vii) takes up issues related to violation of rights of women and follow-up action with the concerned authorities.

5.d. Therefore, State Women Commission is empowered to investigate specific problems of women and takes up studies related to women issues and their grievances. The Women Commission is also vested with sufficient powers to safeguard women's right and to ensure equality and protection for women against all form of harassment and problems faced by them in the community at large including the work place. The 1st Respondent Commission has denied the allegations made in the writ petition and took a stand that the Commission has jurisdiction to conduct enquiry relating to cruelty and sexual harassment meted out by the women employees in the workplace. Accordingly the Commission has conducted

an enquiry for the purpose of resolving the issues without going to the merit which is in the purview of the competent authority for adjudication. Therefore, writ petitioner is entitled to receive her emoluments till date of representation to the Commission.

5.e. 3rd Respondent filed counter pleading the same facts as raised in W.P.No.10364 of 2016. She is also not in a position to retrieve her certificates which are still held by the Writ Petitioner in W.P.No.1298 of 2021 only as a tactic to arm twist and choke the already burdened finances of 3^{re} Respondent. It is her contention that she continuous to be full-fledged employee on the roles of writ petitioner till date, though she has been restrained from performing duties from 2014. As a full-fledged employee which is her legal status she cannot be deprived of her right from receiving her monthly salary. Hence, prayed for dismissal of the writ petition No.1298 of 2021.

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6.a. Learned counsel appearing for the Writ Petitioner in W.P.No.10364 of 2016 submitted that the Petitioner was appointed as

Administrator of the Loyola Development Office and Alumni Association on 01.07.2010. Thereafter, when the 5th Respondent in the above writ petition joined as a Director of the Alumni Association. When she found out several misappropriations in funds and she complained against the 5th Respondent to the superiors she was subjected to harassment at the hands of the 5th Respondent. Despite several requests made by the writ petitioner to the college management about the harassment both physically and sexually, management has not taken any steps. Whereas she was given a different assignment as a secretary to the Father of Alumni Institutions with effect from 20.02.2014 on a monthly consolidated pay of Rs.30,000/- . Thereafter, she was asked not to come to the duty in the month of September 2014 and her contention is that when the serious allegations were made about the sexual harassment, the management ought to have constituted the internal committee and enquired about the harassment complaint made by the petitioner. Without following the Visaka guidelines at the relevant point of time the management abruptly sacked the petitioner from the duties. Hence her contention that the Management has in fact shielded the offenders and sacked the writ petitioner abruptly without any opportunity. Such

termination order is not valid in the eye of law. She was appointed as regular employee. Therefore, but for termination she would have continued to work as regular employee in the college. Therefore the writ petitioner is certainly entitled to relief prayed in the writ petition with back wages or compensation not only towards back wages but also for mental sufferings. Much reliance was also placed by the learned counsel for the writ petitioner in W.P.No.10364 of 2016 on the following judgments in support of her contention:

(i) *Visaka vs. State of Rajasthan* [1997 (6) SCC 241]

(ii) *Gayatri Balaswamy vs. ISG Novasoft Technologies Ltd., and others* [2015 (1) MLJ 5]

(iii) *Hindustan Tin Works Pvt. Ltd., vs. Employee Hindustan Tin Works Pvt. Ltd.,* [1979 AIR (SC) 75]

(iv) *The Manager, Govt. Branch Press vs. DB Belliappa* [1979 AIR (SC) 429]

(v) Samarth Shiksha Samtti and Another vs. Bir Bahadur Singh Rathour and others [(2009) 3 Supreme Court Cases 194]

(vi) R. Keerthivarman vs. The District Education Officer [2014 (1) CWC 841]

6.b. The learned counsel also submitted that the Women Commission also enquired the issue and passed an order. That itself substantiated the writ petitioner's contention. Hence prayed for allowing the Writ Petition in W.P.No.10364 of 2016 and prayed for dismissal of Writ Petition in W.P.No.1298 of 2021.

7.a. Whereas the learned counsel appearing for the College Management submitted that the Writ Petitioner was not appointed as regular employee. She was given a job in contract basis at the age of 60. The nature of her work as only to work in the Society of Alumni Association and Loyola Development Office and the consolidated pay was paid from the society. She was never appointed as regular employee at the age of 60. All

these facts have been suppressed in the writ petition. The alleged sexual harassment is nothing but story invented by her only after the police started investigating the crime against her son. There is no evidence whatsoever available on record to show that she ever raised any sexual allegation or complaint against the 5th Respondent. Only when she addressed email to the Police Commissioner with regard to the criminal investigation started against her son, she has just included only one word “sexually”. That allegation made only to blackmail the management. If really any such incident has taken place, the petitioner being an educated lady ought to have given a complaint. Whereas her own document clearly indicate that no such allegations were ever made. Her own document clearly indicate that she was terminated from the contractual service from September 2014 and she remained silent for more than 1 ½ years, thereafter filed the present writ petition. Hence, learned counsel submitted that there is no material to hold that the college has violated the Vishaka guidelines or the sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Hence prayed for dismissal of the W.P.No.10364 of 2016.

7.b. It is his further contention that as far as the W.P.No.1298 of 2021 is concerned, the Chairperson of the Commission said to have received the complaint and visited the college has unilaterally passed an order without any proper enquiry, particularly, when the matter has already been ceased by this Court. Despite the request made by the College as to the nature of complaint received by the Chairperson or Commission such complaint has not seen the light of the day. The Chairperson and others visited the college and directed the college to pay the huge compensation as if enquiry was conducted. At any event it is his contention that the regulations of National Commissions for Women (Procedure) Regulations, 2005 indicate that the commissions are not supposed to enquire matters already ceased by the Court of law. Tamil Nadu State Commission for Women Act, 2008 is pari materia of the National commission for women Act, 1990. Therefore, the regulations operating in the field is also apply to the Tamil Nadu State Commission for Women Act, 2008. At any event the Commission for Women constituted under Section 3 of the Tamil Nadu State Commission for Women Act, 2008, shall consist of a chairperson, and five members, apart from the Ex-officio member and member secretary.

Therefore chairperson alone cannot act unilaterally. At any event, any order of the commission is only in the nature of the recommendatory. Sub-Clause 3 of Section 7 of the Act clearly indicate that if the commission, after investigating any matter, is satisfied that there is a prima facie case, the Commission may refer the matter to the authority concerned, including the police, for taking appropriate action as per law. At any event, Order of Women Commission would be only recommendatory. Chairperson cannot pass orders directing the others to pay the amount. Hence, submitted that the order of the Women Commission is liable to be set aside.

8. Whereas learned counsel appearing for the Commission submitted that the source of power is from the Act. Therefore, the Commission has power to enquire into all the matters, particularly, violations of provisions of constitution and women laws. Hence submitted that Commissions power has been properly exercised.

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9. In the light of the above submissions, this Court perused the entire records and allegations. The main allegation in the W.P.No.10364 of 2016

is that the writ petitioner was sexually harassed by the 5th Respondent when she pointed out his misdeeds and mismanagement of the Society's fund. Despite her complaint from very beginning the college authorities have not taken any steps to take action against the 5th Respondent. On the contrary she was terminated from the regular post from the year 2014. Failure to follow Visaka guidelines or the provision under Act 14 of 2013 violates the rights of the writ petitioner guaranteed under constitution and other laws. Any consequential Act of termination is of bad in law and she is entitled to adequate compensation.

10. The main defence of the Respondent is that she has only appointed as contractual basis in the Administrative Office of the Alumni Association which is registered society. As her service is not needed in the year 2014 she was terminated by paying two months salary and with proper notice. All the allegation of sexual harassment was also denied. Before going to the merit of the decision of the Women Commission in this matter, this Court is first proceed to deal with the allegations raised in the W.P.No.10364 of 2016.

11. On 01.07.2010 the Petitioner was appointed as Administrator for the work relating to Loyola Development Office and Alumni Association. The appointment order indicate that terms and conditions are applicable to non-teaching staff in the Loyola College and she will be absorbed only after the period of one year probation and her performance will be evaluated after probation, thereafter she will be confirmed. The entire allegation in the writ petition indicate that after the 5th Respondent took over the charge of the Alumni Association as Director, the trouble started within six months. When she pointed out his misdeeds and mismanagement and misappropriation of funds, he has acted against her and also created rift in her family. In this regard the first email dated 21.08.2013 sent by her which is appended in the typed-set, wherein she has complained about the 5th Respondent, functioning as a Director of the Alumni Association. The main allegation raised in the email was only with regard to certain alleged loss of Rs.15,00,000/- while conducting function named as “Kalloori Paathai” with the Alumnus who later become celebrities. The entire complaint appears to be with regard to conducting functions in Alumni Association and

consequential financial loss. There is no whisper whatsoever made with regard to the so called sexual harassment. Above letter was in fact acknowledged by Father Antony Samy SJ. He assured that her views will be kept as confidential. The very first email dated 21.8.2013 did not contain any allegation of sexual harassment or physical abuse as pleaded in the Writ Petition. On September 18, 2013 the Writ Petitioner in W.P.No.10364 of 2016 has sent a letter raising certain allegations particularly the allegation relating to the conduct of the function at Alumni Association viz., “Kalloori Paathai”. It was her contention that she has initiated that function with the intention of raising funds for the purpose of building a 'commerce block' for the second respondent college. The entire allegations were with regard to the failure of the programme and failure of telecast by Sun TV.

12. The entire allegations in the complaint makes it clear that it was pertaining to the organising for functions and personal allegations of swindling of money by the 5th Respondent. It is also alleged that the 5th Respondent informed her son that the entire management is against the Writ Petitioner. On entire allegations found in this letter there is no allegation

with regard to the sexual harassment whatsoever. Whereas the allegations mainly targeted towards some administrative functions, conduct of functions in Alumni Association and keeping the writ petitioner away from the function and the 5th Respondent conducting it as his own family function, which resulted heavy loss to the college. There is no whisper whatsoever made with regard to any sexual harassment. Only on the first time when email copy addressed to the Police Commissioner on June 14, 2014 that too after certain complaint has been investigated by the police as against the Son of the writ petitioner. She made allegations that 5th Respondent harassed her mentally, emotionally and sexually. Whereas the entire allegations in the above email copy is read together, the same indicate that the main allegation relate to the conduct of Alumni functions. Further there is no details as to the alleged harassment i.e., sexual harassment or physical abuse. It is to be noted that the Writ Petitioner's categorical stand in the Writ Petition that when the 5th Respondent become Director in the year 2012, within six months she was subjected to sexual harassment. It is to be noted that no allegation of sexual harassment ever made to college administration. The email referred above makes it clear only at the first time

when her son was investigated by the police, copy has been sent to the Commissioner of Police, Coimbatore, stating that the 5th Respondent was harassing her “mentally, emotionally and sexually.” Except these three words all other allegations pertaining to the conduct of the function only.

13. It is to be noted that the petitioner is not rustic women. She has worked in Stella Maris college, one of the famous college, for more than ten years as per her own document i.e, email dated 14.6.2014. She had also worked in Apollo Hospitals and she had an opportunity to work with the then Chief Ministers Mr. M.G. Ramachandran and Madam Jayalalitha. Therefore, it cannot be said that the petitioner is not aware of procedure to make a complaint. Even in the copys sent to the Commissioner of Police through email dated 14.06.2014 except stating that she was harassed mentally and sexually she has never given specific instances and nature of allegations etc., Therefore, merely on the basis some personal feud between the 5th Respondent and her in some other transaction particularly with regard to the conduct of the functions and taking a credit in that function or because the petitioner was not getting well with the 5th

Respondent and she was not happy and kept away from the participation of the function and she was not given proper importance. Such misunderstandings or happening in the work place cannot be classified as sexual harassment.

14. Even before the Act came into force in *Visaka's case* (supra) the Apex Court has defined what is sexual harassment. As per the judgment of the Apex Court, the sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as :

- (a) physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually coloured remarks;
- (d) showing pornography
- (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

15. Such instances or such Acts brought within the purview of the sexual harassment. As per Act 14 of 2013 viz., the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013,

the definition of the sexual harassment, is as follows:

(n) “sexual harassment” includes any one or more of the following unwelcome acts or behavior (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;

16. Section 3 of the the Sexual Harassment of Women at Workplace

(Prevention, Prohibition and Redressal) Act, 2013 reads as follows:

3. Prevention of sexual harassment.—

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

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

(i) implied or explicit promise of preferential treatment in her employment; or

(ii) implied or explicit threat of detrimental treatment in her employment ; or

(iii) implied or explicit threat about her present or future employment status; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) humiliating treatment likely to affect her health or safety

17. A conjoint reading of the definition as well as Section 3 of the Act indicate that only when the circumstances narrated in the definition as well

as Section 3 is made out such act can be brought under the definition of sexual harassment. As indicated above, the entire allegations targeted towards the mismanagement by the 5th Respondent in swindling the money etc., and the main grievance appears to be with regard to keeping away the petitioner from the Alumni Association function organised with celebrities who were also past students of the same college. There is no material whatsoever available on record to show that she ever raised such allegations at any point of time to the college management, except a copy which was stated to have sent to the Police Commissioner, Coimbatore, that too after the criminal investigation has been commenced against her own son. Therefore, without showing any instances leading to sexual harassment merely on the basis of some misunderstandings in the work place between superior and thereafter she was changed to some other post in a consolidated pay, every such instance cannot be termed as sexual harassment. If really any complaint has been made to the College and the College is failed to enquire the matter then it can be said that the petitioner's grievance has not been looked into at all by the college management. Whereas her own document shows that she never raised any such complaint to the college

management. Therefore, the very allegation of the petitioner that she was subjected to sexual harassment at the hands of the 5th Respondent and which resulted her losing job is not at all made out.

18. No doubt a judgment has cited in *Gayatri Balaswamy's case* (supra) relied upon by the Petitioner. In the above case this Court while modifying the Arbitral Award by enhancing the compensation to the Petitioner, this Court recorded in the above case sexual harassment meted out by the women was reported to Board of Directors complaining about the inappropriate behaviour of the superior. But the company did not constitute the complaints committee as required by the law of the land. Despite the complaint made, company did not constitute any complaints committee, was taken note of by this Court. Therefore, the facts on that circumstances, the Court has view it seriously and awarded compensation to victim. But here in this case, as discussed above, no complaint whatsoever made alleging sexual harassment to the management at any point of time. The only reference to the harassment is made in the year 2014 that too after police complaint was lodged against her son. Petitioner made that complaint addressed to the police commissioner not even a management.

19. The other judgment reported in ***DB Belliappa's case*** (supra) wherein the Honourable Apex Court has held that termination without reasons discriminatory treatment in regular employee is bad in law.

20. It is to be noted that the alleged occurrence according to the petitioner started in the year 2012 and she was asked not to report duty from September 2014. From that onwards she has not reported. Only when the year 2015 she met one of the Reverent Father and came to know that she was terminated. Even in the letter dated 29.12.2015 addressed to Father Joseph Antony Samy SJ, Writ Petitioner's main grievance appears to be with regard to certain allegations circulated against her son pertaining to Alumni function. Prior to that, letter dated 13.09.2014 also indicate allegations only with regard to the mismanagement of the funds. There also she never stated any specific instances of alleged sexual harassment against the 5th Respondent. In the above letter she expressed her intention that she do not want work any more there. Above letter also shown that she was given a cheque for Rs.50,000/-. However, she did not accept the same.

Above letter clearly indicate that she has also aware of termination from the contract service and Rs.50,000/- cheque was issued by the Respondent.

21. It is to be noted that according to her she was terminated from 13.09.2014. Though she has not given a clear picture about service rules as well as age, it is to be noted that at the time of alleged termination she was already 60 years. While filing the Writ petition she was aged about 62 years as per her own affidavit. Therefore, her contention that she is a regular employee even after 60 years is quite improbable. Even a regular employee in Central Government or in the State Government will be superannuated at the age of 58 or 60 years. Therefore, appointing the writ petitioner as Regular Employee as a secretary to the office beyond 60 years is also highly improbable. In fact, it is probablise the respondent's contention that here employment was purely on contract basis and she has paid only a consolidated pay. The Petitioner herself already worked in Stella Maris College and Apollo Hospitals, if she had a regular employment consolidated payment would not have been paid. Therefore her contention that she was appointed as regular employee also not

established. On the other hand, in fact, the age factor and nature of appointment and consolidated pay probabalise the respondent's contention that it is only a contract service, she was terminated in view of the notice and Cheque for Rs.50,000/-, which was also refused by her.

22. Every stage the Petitioner has taken different stand. Her previous counsel was changed. Further one of the retired Judge of Bombay High Court has in fact prosecuting her claim and sent a letter dated 19.09.2020 claiming that she is entitled compensation not less than Rs.2 Crores and her son entitled compensation of Rs.10 Crores. In fact the writ petition was also expedited and posted as specially ordered cases since letter addressed by such Judge to to Hon'ble Chief Justice of this Court.

23. Be that as it may. As this Court found that her service was only contract basis which was terminated or she was discontinued in the year 2014. This Court holds that contract of personal service cannot be enforced in writ proceedings since the very employment itself is based on the personal contract service same cannot be enforced in writ proceedings.

Therefore, for relief for enforcement of compensation cannot be allowed in this petition.

24. In ***Samarth Shiksha Samiti's case*** (supra) the Apex Court has held as follows:

“36. In answer to the second question, it must, therefore, be held that the services of the Respondent No.1 would continue to be governed by the rules of the Samiti and not by the Delhi School Education Act, 1973 and the Rules framed thereunder, though the provisions of the rules may have been adopted by the Samiti for its employees.

37. Consequently, in answer to the third question posed in paragraph 8 hereinbefore, it must be held that the Respondent No.1 continued to be governed by the rules of the Samiti whether his services were placed at the disposal of the school or retained by the Samiti in its central office.

38. In our view, the reasoning of the Division Bench of the High Court was erroneous as it proceeded

on the premise that for all practical intents and purposes the Respondent No.1 was an employee of the school and that the provisions of the Delhi School Education Act, 1973 would, therefore, apply to him. The judgment and order of the Division Bench cannot, therefore, be sustained and is set aside and the judgment of the learned Single Judge is restored.”

The above judgment is very clear that when a person was appointed in a society the Rules of the Society will apply and not provisions of the Delhi School Education Rules.

25. In ***R. Keerthivarman vs. The District Education Officer [2014***

(1) CWC 841] Division Bench of this Court has held as follows:

“8. The appellant having been appointed in an un-sanctioned post, he cannot plead that the procedure contemplated under Section 22 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 should have been followed before terminating the service. If the argument of the appellant is to be accepted, as per the said Act, the appellant is not entitled to file writ petition and his remedy is to file an

appeal against the order of termination before the competent authority and thereafter, further appeal was provided before the Tribunal for Education cases and then only, he can approach this Court by filing writ petition. Hence, the issue raised by the appellant is answered against the appellant.”

26. In the given case, the main allegation of the sexual harassment itself appears to be after thought and raised at a later point of time. Further the conduct of the petitioner approaching the writ court after the alleged harassment and termination with delay of more than 1 ½ years also indicate that the entire allegation was pressed into service at a later point of time. Hence, this Court do not find any merits in the writ petition. Accordingly **W.P.No.10364 of 2016 is dismissed.**

27. With regard to the W.P.No.1298 of 2021 filed to quash the order of the Tamil Nadu State Commission for Women, it is to be noted that the Women Commission took cognizance of the complaint said to have given by the Writ Petitioner in W.P.No.10364 of 2016. First Notice was issued by the Commission on 28.11.2020 to the Rector, Jesuit Residence, Loyola

College Campus, Nungambakkam, Chennai. The letter show that the letter has been signed by the Chairperson. She has issued the letter indicating that she would like to have discussion with the College Rector on 7.12.2020. On 03.12.2020 a reply was sent by the Writ Petitioner in W.P.No.1298 of 2021 indicating their intention to discuss through phone call or video conferencing due to pandemic. Besides they have also requested to furnish a copy of the complaint received from Mrs. Mary Rajasekaran. Again College has addressed a letter dated 5.12.2020 informing the commission that the College may not be in a position to present on 7.10.2020 since Mrs. Mary Rajasekaran filed a Writ Petition in W.P.No.10364 of 2016 hence the matter was posted on 8.12.2020. Thereafter on 08.12.2020 Chairperson of Women Commission sent a notice requesting the Writ Petitioner to appear on 10.12.2020 at 11.00 a.m.without fail for which the college has sent a letter indicating that since the matter has been ceased by the High Court, the matter may be taken after the disposal of the case by the High Court. Thereafter, by letter dated 11.12.2020 the Chairperson of the Commission informed the college that the Commission will be visiting Loyola College on 15.12.2020 at 11.00 a.m. to discuss the grievance of Mrs. Mary

Rajasekaran on three main issues namely,

- (1) Her Salary arrears
- (2) Her Original Certificate to be returned and
- (3) Her termination of service letter.

28. On 15.12.2020 the Chairperson of the Commission appeared to have gone to the college and passed the following orders:

“Orders of the State Woman Commission on The Mary Rajasekaran’s case.

The first enquiry summon was sent to the Loyola college and Tmt.Mary Rajasekaran. Tmt. Rajasekaran was present; The college was ex-parte. The second summon was sent to the Rector and Tmt. Mary Rajasekaran to be present in person.

The Rector replied through mail stating he was running 68 years and due to the pandemic was unable to come.

So, on 15.12.2020, the Commission went to Loyola and due to the pandemic was unable to come.

So, on 15.12.20, the Commission went to Loyola after due intimation and held the enquiry.

The points were put forth and the following was directed by the commission.

Original certificate of Tmt. Mary Rajasekaran has not been returned to her.

The Rector replied that a search will be ordered and if not found. The Commission said that if not found before 18th of December, Tmt. Mary Rajasekaran can file a complaint of Certificate loss in the police station.

On 18th December, Rector was called by the college.

He replied that the Certificates were not to be found and may be they might have been submitted in the court by Loyola College.

This was informed to Tmt. Mary Rajasekaran.

Secondly, Tmt. Mary Rajasekaran, had stated before the

commission that she was not given a relieving order and there was no enquiry held for sexual harassment inspite of her asking, and she was asked orally to stay away from her work.

As per rules the college has to inform the Directorate of Collegiate Education that whenever a staff of the College has been terminated but no such official letter has been sent to the Directorate of Collegiate Education.

This is the reason why her claim for her arrears of salary has not been considered.

The amount claimed by her is:

*Back wages 30,000 Rs. For 81 months from April 2014
Rs.24,30,000*

Damage for mental agony and unkind words of sexual harassment Rs. 25,00,000

Compensation for filing false complaint Rs. 15,00,000

She has produced proof of her salary to the commission.

For the kind of trauma and physical and sexual abuse she has been submitted to she has to be adequately compensated, expeditiously.

There were other issues that surfaced during the enquiry.

One is the donation received from old students should be accounted for, in a separate Alumni Funds Accounts and the association has to be duly registered under the Society Act.

The Rector said that this is not done.

Instead of the old students funds comes under the Loyola college society.

Though the Loyola college society is registered, the funds collected from old students should find place in a separate account duly registered under the Societies Act.

Tmt. Mary Rajasekaran is subjected to intense suffering which must be alleviated immediately.

The commission hereby orders to pay back wages and

compensation with interest for harassment mentally of sexually.

The commission orders that the compensation has to be effected immediately failing which the matter will be taken up with the Directorate of Collegiate Education.”

29. It is to be noted that the Commission's Chairperson alone visited the College. There is no reference whatsoever to show that other members of the Commission were present. Whereas the chair person of the Commission visited the college and passed orders directing to pay back wages of Rs.24,30,000/- and damages of Rs.25,00,000/- and compensation for filing false complaint Rs.15,00,000/- thereby directing the college to pay a total sum of Rs.64,30,000/- with interest. This Court is at loss to understand how the commission has passed such order without proper enquiry and without evidence in this regard. Such conclusion was arrived on the basis of representation made by the writ Petitioner. The Commission has come to the conclusion that it is the sue motu decision taken by the Commission and hence the above decision has to be implemented immediately.

30. It is to be noted that the Tamil Nadu State Commission for Women constituted under Section 3 of the Tamil Nadu State Commission for Women Act, 2008. Section 3 of the Act reads as follows:

“3. Constitution of Commission:-

(1) The Government shall, by notification, constitute a body to be known as the Tamil Nadu State Commission for Women to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

(2) The Commission shall consist of-

(a) a Chairperson, who shall be an eminent woman committed to the cause of women to be nominated by the Government:

(b) five members to be nominated by the Government from amongst persons of ability and integrity, who have served the cause of women or have had sufficient knowledge and experience of law and legislation, administration of matters

concerning advancement of women or voluntary organization for women, or who have sufficient experience in working in the field of economic development, health or education

Provided that not less than three of the nominated members shall be women:

Provided further that at least one member shall be from amongst persons belonging to the Scheduled Castes and one member shall be from among persons belonging to the Scheduled Tribes;

(c) two members to be nominated by the Government from among the members of the Tamil Nadu Legislative Assembly:

Provided that a member of the Tamil Nadu Legislative Assembly shall cease to be a member of the Commission from the date on which he ceases to be a member of the Tamil Nadu Legislative Assembly,

(d) The Secretary to Government in-charge of

Social Welfare and Nutritious Meal Programme Department to be an Ex-Officio member, (e) a Member-Secretary to be appointed by the Government, who shall be an officer of the All India Service, not lower in rank than that of a Joint Secretary to Government.

31. Section 7 deals with Functions of the commission, which is as follows:

“ 7. Functions of the Commission:-

(1) Subject to the performance of the functions of the National Commission for Functions of Women under section 10 of the National Commission for Women Act, 1990, the the Commission shall perform all or any of the following functions, namely:-

(a) investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;

(b) present to the Government, annually and at such other times as the Commission may deem

fit, reports upon the working of those safeguards;

(c) make it such reports, recommendations for the effective implementation of those safeguards for improving the conditions of women by the Government;

(d) review, from time to time, the existing provisions of laws affecting women and recommend amendments thereto so as to provide for remedial legislative measures to meet any lacuna, inadequacies or shortcomings in such legislations;

(e) take up the cases of violation of the provisions of the Constitution and other laws relating to women with the concerned authorities;

(f) look into complaints and take suo-motu notice of matters relating to-

(i) non-implementation of any laws to

provide protection of women's right and also to achieve the objective of equality and development;

(ii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with concerned authorities;

(g) call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;

(h) undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and

occupational health hazards and for increasing their productivity;

(i) participate and advise on the planning process of socio-economic development of women;

j) evaluate the progress of the development of women;

(k) Inspect or cause to be inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise, and wherever necessary take up the matter with the concerned authorities for remedial action;

(l) implicate and fund litigation involving issues affecting women;

(m) make reports to the Government on any matter pertaining to women and in particular the difficulties under which women toil, from time to time.

(n) any oilier mailer which may be referred to it by the Government .

(2) The Commission shall, while investigating any matter referred to in clause (a) or sub-clause (I) of clause (f) of sub-section (I), have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and, in particular, 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 any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(3) if the Commission, after investigating any matter, is satisfied that there is a prima facie case, the Commission may refer the matter to the authority concerned, Including the police, and such authority shall take appropriate action as per law.

(4) The Commission may, for the purpose of making recommendations under sub-section (f), consider or adopt any suggestion or recommendation made by any Committee or any other body or organisation, which was formed by the Government before the date of commencement of this Act.

(5) The Government shall cause all the reports referred to in clause (b) of subsection (1) to be laid before the Legislative Assembly along with a Memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.”

32. Section 7 makes it very clear that functions of the commission under Section 7 of the Act is subject to the performance of the functions of the National Commission for Women under Section 10 of the National Commission for Women Act, 1990. Sub-Clause 2 indicate that the Commission is having all the powers of a civil court. Sub-Clause 3 indicates that if the Commission satisfies after thorough investigation and there is a *prima facie* case may refer the matter to the authority for appropriate action as per law. Sub-Section 4 deals with recommendations that may be made by the commission.

33. The primary function of the Commission is to find out the *prima facie* case after thorough investigation. Investigation cannot be merely on the basis of submissions of the complaint alone. Only after proper discovery of facts on evidence and records etc.,

34. Whereas in this case, the Chairperson alone visited, there is no evidence that the other members have accompanied and they have participated. The Chairperson on the same day, just accepted the case of the complainant and gave direction. Such direction to comply the order of the Commission is contrary to Sub-Clause 3 of Section 7. The power of the

Commission is only to refer the matter to the concerned authority including the police to take appropriate action as per law, if any *prima facie* case is made out. Otherwise, the powers of the Commissioner is only in the nature of recommendations. Commission cannot direct the implementation of the orders to implement the orders passed by it.

35. As indicated above, Tamil Nadu Act is *pari materia* of the National Commission for women Act, 1990. Regulations are issued under National Commission for Women (Procedure) Regulation, 2005 – Part II. Further no such regulation is issued under Tamil Nadu Act. Whereas the regulations of 2005 issued under the National Commission for Women Act stipulate the nature of the complaints entertainable by the Commission. Procedure for dealing with the complaint has been brought out under the Regulation. Sub-Clause 2 of the Procedure for dealing with complaints reads as follows:

“2. Complaints not ordinarily entertainable

The Commission may summarily dismiss complaints of the following nature:

i) Complaints illegible or vague, anonymous or pseudonymous; or

ii) The issue raised relates to civil dispute, between the parties such as contractual rights obligations and the like;

iii) The issue raised relates to service matters not involving any deprivation of women's rights;

iv) The issue raised relates to labour/industrial disputes not involving any deprivation of women's rights;

v) Matter is sub judice before a Court/Tribunal;

vi) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

vii) Matter already decided by the Commission

viii) Matter is outside the purview of the Commission on any other ground;”

36. The above regulations make it clear that when the matter is sub judice before a court, or issue relates to labour / industrial dispute or any issue raised relates to service matters not involving any deprivation of women's rights, the Women Commission cannot entertain the complaint.

37. At any event, the very conduct of the procedure by the Chairperson alone without the body of members constituted as Commission itself against the provision of the Act. Besides as indicated above Sub-Clause 3 of 7 of the Tamil Nadu State Commission for Women Act, 2008 makes it clear that the Commission can only recommend to the appropriate authority or police when the *prima facie* case is made out for appropriate action. Such being the position, the Order directing the College to pay huge compensation certainly liable to be interfered and not maintainable and such order is definitely against the very statute under which the Commission

was constituted. Therefore, the Order of the Women Commission is necessarily to be set aside. Despite the Regulations under the Central Act for entertaining the complaint when same is already ceased by the Court of law. The Commission ought not have entertained the complaint independently and passed such order. The manner in which the findings have been recorded is also not based on proper evidence. At any event, the very Order is against the Statue. In such view of the matter Order dated 23.12.2020 passed by the 1st Respondent in W.P.No.1298 of 2021 is set aside. Accordingly, Writ Petition in **W.P.No.1298 of 2021 is allowed.**

38. In the result, Writ Petition No.10364 of 2016 is dismissed and Writ Petition No.1298 of 2021 is allowed. No costs. Consequently connected Miscellaneous Petitions are closed.

सत्यमेव जयते

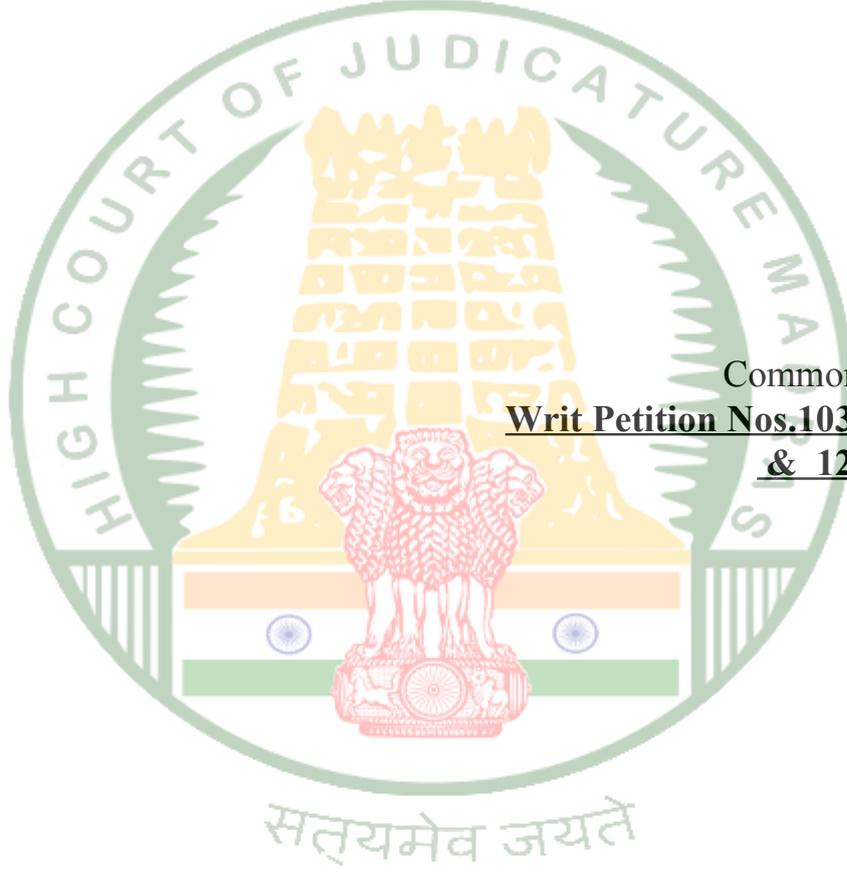
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N. SATHISH KUMAR, J.

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Common Order in:
Writ Petition Nos.10364 of 2016
& 1298 of 2021

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