

Writ Petition Nos.17338 of 2014, 3109 of 2025,  
37290 of 2004 and 3071 of 2005

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**ORDERS RESERVED ON:19.01.2026**

**ORDERS PRONOUNCED ON:10.02.2026**

**CORAM :**

**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

Writ Petition Nos.17338 of 2014, 3109 of 2025, 37290 of 2004 and 3071 of 2005  
& M.P. No.2 of 2014, W.P.M.P.Nos. 44749 of 2004, 2061 of 2007,  
2059 of 2007 and 3453 of 2005

**Writ Petition No. 17338 of 2014:**

The Railway Employees Cooperative Credit Society Ltd,  
Rep.by the Chief Executive  
Old Zoo Road, Ashok Vihar Complex  
Chennai – 600 003.

.. **Petitioner**

**Vs.**

1.The Appellate Authority  
Tamil Nadu Payment of Subsistence Allowance Act, 1981  
Deputy Commissioner of Labour I  
Office of the Deputy Commissioner of Labour I  
Chennai – 6.

2.The Assistant Commissioner of Labour  
Office of the Deputy Commissioner of Labour I  
(Authority under TNSA Act, 1981)  
Teynampet, Chennai – 6.

3.D.~~Srinivas~~  
D/o K.V.Damodaran  
No.58, Dorairaj Street, Thirunagar  
Chennai – 87.

.. **Respondents**



Writ Petition Nos.17338 of 2014, 3109 of 2025,  
37290 of 2004 and 3071 of 2005

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India seeking  
a Writ of Certiorari to call for the records of the 2<sup>nd</sup> respondent dated 07.01.2013  
and order dated 24.09.2013 both passed in PSA No.48 of 2012 and the order  
dated 16.05.2014 passed in PSA (A) 4/2013 by the 1<sup>st</sup> respondent, quash the  
impugned orders dated 07.01.2013, 24.09.2013 and 16.05.2014 and pass such  
further or other orders.

For the Petitioner : Mr.G.Anand Gopalan  
for Mr.A.Jenasenan

For the Respondents : Mr.A.M.Ayyadurai  
Government Advocate for RR1 &2  
Ms.D.Nagasaila for R3

**Writ Petition No.3109 of 2025:**

D. Srikatha

.. **Petitioner**

**Vs.**

1. The Railway Employees' Cooperative Credit Society Ltd,  
Rep.by the Chief Executive  
Chennai – 3.

2.The Central Registrar of Co-operative Societies  
Ministry of Co-operation  
New Delhi.

.. **Respondents**

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India seeking  
a Writ of Mandamus, directing the respondents to treat the entire period of  
suspension as on duty as the disciplinary proceedings vide Charge Memos



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No.2/2003 dated 06.06.2003, No.3/2003 dated 23.06.2003, No.4/2003 dated 15.07/2003 and No.1/2004 dated 12.03.2004 have lapsed, pay arrears of salary and allowances during the period of suspension from 12.03.2004 upto the date of superannuation viz., 31.05.2023 after deducting the suspension allowance paid to her for the said period and also to pay the petitioner, all the retiral benefits otherwise payable to her as if there had been no disciplinary enquiries and pass such further or other orders.

For the Petitioner : Ms.D.Nagasaila  
For the Respondents : Mr.G.Anand Gopalan  
for Mr.A.Jenasenan for R1  
Mr.G.Venkatesan  
CGSC for R2

**Writ Petition No.37290 of 2004:**

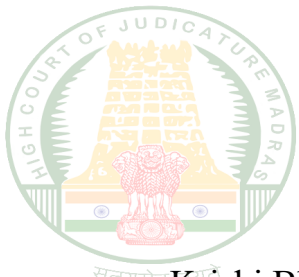
~~D.Sylota~~  
No.58, Dorairaj Street, Thirunagar  
Valasaravakkam  
Chennai – 600 087.

.. **Petitioner**

**Vs.**

1.The Secretary  
The Railway Employees Co-operative Credit Society Ltd,  
Southern Railway Office  
Chennai – 600 003.  
2.The Joint Registrar of Co-operative Societies  
91, St.Mary's Road, Abiramapuram, Chennai – 600 018.  
3.The Central Registrar  
Ministry of Agriculture and Co-operation

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Krishi Bhavan  
New Delhi – 110 001.

4.D.Dorairajan  
Advocate/the 4<sup>th</sup> respondent  
No.6 (New No.11), Sripuram 1<sup>st</sup> street  
Royapettah, Chennai – 600 014.

5.National Commission for Women  
Rep.by its Chairperson  
No.4, Deen Dayal Upadhyaya Way  
New Delhi – 110 002.

6. J.Nagakesari  
No.6, Abirami Street, Teacher Build Colony  
Villivakkam, Chennai – 49.

(RR5 and 6 are impleaded as per the order  
of this Court dated 15.04.2005 in W.M.P.No.46213 of 2004)

.. **Respondents**

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, directing the respondents to implement the recommendations in the report dated 19.08.2004 passed by the National Commission for Women and pass such further or other orders.

For the Petitioner : Ms.D.Nagasaila  
For the Respondents : Mr.G.Anand Gopalan  
for Mr.A.Jenasenan for R1  
Mr.A.M.Ayyadurai  
Government Advocate for R2  
Mr.G.Venkatesan  
CGSC for R3  
Mr.D.Dorairajan for R4  
For R5 – Not ready in notice  
For R6 – Mr.V.Karthikeyan

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**Writ Petition No.3071 of 2005 :**

The Railway Employees' Co-operative Credit Society Ltd,  
Rep.by its Secretary  
Southern Railway Offices  
Park Town, Chennai – 600 003.

.. **Petitioner**

**Vs.**

1.The National Commission for Women  
Rep.by its Chairperson  
New Delhi.  
2.The Central Registrar of Co-op Societies  
Ministry of Agriculture & Co-operation  
Krishi Bhavan, New Delhi – 110 001.  
3.D.~~Srikatha~~  
No.58, Dorairaj Street, Thirunagar  
Valasaravakkam  
Chennai – 600 087.

.. **Respondents**

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the proceedings of the first respondent made in letter No.8/5259/03-NCW/MK/NS/183 dated 09 August 2004 and quash the same.

For the Petitioner : Mr.G.Anand Gopalan  
for Mr.A.Jenasenan

For the Respondents : Ms.D.Nagasaila for R3  
Mr.G.Venkatesan  
CGSC for RR1 & 2



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## **COMMON ORDER**

### **A.The Writ Petitions:**

The Writ Petition No.37290 of 2004 is filed by *D. ~~Srikanth~~* (hereinafter referred to as 'the employee') for a Writ of Mandamus, directing the respondents viz., the Railway Employees Co-operative Credit Society Limited (hereinafter referred to as 'the Management') and the Joint Registrar of Co-operative Societies, the Central Registrar of Co-operative Societies to implement the recommendations of the National Commission for Women issued vide report dated 19.08.2004.

1.1. The Management had filed Writ Petition No.3071 of 2005 for a Writ of Certiorari calling for the records relating to the proceedings of the above mentioned report of the National Commission for Women, communicated vide letter dated 09.08.2004 and to quash the same.

1.2. Writ Petition No.17338 of 2014 is filed by the Management for a Writ

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of Certiorari calling for the records on the file of the Assistant Commissioner of

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Labour – Authority under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 dated 07.01.2013 and the order of the Appellate Authority and the Deputy Commissioner of Labour – I under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 dated 24.09.2013, whereby the Management was directed to pay the subsistence allowance of Rs.3,80,732/- till February 2013.

1.3. Writ Petition No.3109 of 2025 is filed by the employee to direct the Management to treat the entire period of suspension as on duty as the disciplinary proceedings vide charge memorandum No.2/2003 dated 06.06.2003, No.3/2003 dated 23.06.2003, No.4/2003 dated 15.07/2003 and No.1/2004 dated 12.03.2004 have lapsed, pay arrears of salary and allowances during the period of suspension from 12.03.2004 upto the date of superannuation viz., 31.05.2023 after deducting the subsistence allowance paid to her for the said period and also to pay the petitioner, all the retiral benefits otherwise due to the employee.

1.4. Since all the four Writ Petitions are connected to each other, they are



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taken up and disposed of by this common order.

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**B.Facts in Brief :**

2. The case of the employee is that she is working in the Management from the year 1994. In the year 1998, one J.Nagakesari joined the Management as Assistant Secretary. He transferred the employee to the establishment section, directly under his control. He used to call the employee to his cabin to take notes, asking her to sit close to him. He started behaving indecently and started passing indecent comments and his manners and behavior were fraught with evil designs. He made the employee to sit for late hours on the pretext of urgent work and used to stand behind her seat and passed rude comments. He warned the employee against speaking to other lady staff and prevented her from having lunch with them and isolated her. He has been making repeated calls to the telephone at her residence and chatted unnecessarily. He directed the employee to accompany him to holiday resorts outside Chennai. Though the employee resisted the advances of the said Nagakesari, since he was vested with lot of administrative powers, she was frightened to make a complaint against him.





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2.1. While so, in the second week of April 2001, his harassment became unbearable, the employee shouted at him and left the office, after availing four days leave. She preferred oral complaint against the said Nagakesari, to the Chairman of the Management. The Chairman conducted an enquiry and in the enquiry, Nagakesari confessed of his misdeeds. Immediately, the Chairman took away all the administrative powers of Nagakesari and also severely reprimanded him and ordered that no lady staff should enter into the cabin of Nagakesari. The employee was also transferred to SPO section, to keep her out of control of the said Nagakesari. However, shortly after two months, during July 2001 again all the administrative powers were vested back to Nagakesari and the employee was made to face a hostile work environment.

2.2. When she joined duty after sick leave, she was shifted to another section and she faced a hostile atmosphere and was not given a chair to sit. Under the circumstances, on account of unbearable pain, after standing for long time, when she sat on the chair of the Section Officer, when he was away, the said Nagakesari along with the Section Officer – Ramamurthy and other employees

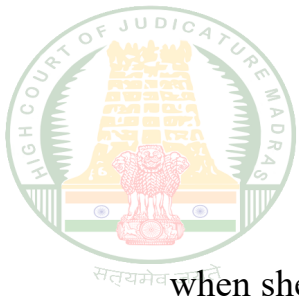


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rushed near to her and questioned as if she had done an unpardonable crime and humiliated her. On 20.11.2001, the employee was suspended from service, without stating any reason. On 04.12.2001 the suspension was revoked.

2.3. Under the said circumstances, the employee preferred complaints to the State Human Rights Commission, National Human Rights Commission, Tamil Nadu Chief Minister Cell, National Commission for Women, Tamil Nadu State Commission for Women, Commissioner of Police, General Manager of Railways and several other authorities. On 19.11.2001, the said Nagakesari had also made a counter complaint against the employee that she had lodged a false complaint. Only after the complaint of the employee to the National Human Rights Commission and other authorities, on 01.03.2002, she was directed to attend an enquiry in the Secretary's cabin. The employee sent a reply requesting to furnish the charges on which the enquiry was called for. When the enquiry was conducted on 07.03.2002, the employee alone was let in inside the cabin of the Secretary, while her counsel was not permitted and she was shocked to note that two other male members were present in the cabin, about which she was never informed. The enquiry proceeded in a very threatening manner, full of men and



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when she gave a letter that she cannot participate as the same is not proceeded in

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a fair manner, that letter was pulled by Mr.Padmanabhan, who was part of the enquiry committee and it was torn into pieces. Feeling intimidated and humiliated, the employee gave all these in writing on 08.03.2003 to the Chairman of the Management.

2.4. Once again on 02.04.2002, the re-constituted enquiry committee issued notice to the employee for an enquiry on 03.04.2002. On 03.04.2002, the employee wrote back to Mrs.S.Indumathy, the Chairperson, Complaints Committee stating that she was the counsel for the Society in some cases and therefore, she should not conduct the enquiry. On 05.04.2002, the Secretary issued a letter stating that the said Indumathy resigned from the post of Chairperson, Complaints Committee, on the objection raised by the employee. On 05.04.2002, once again the Management re-constituted the enquiry committee and issued a communication to the employee. Thereafter, the new committee proposed to conduct an enquiry on 10.04.2002. Once again, the employee opposed to the said committee as the new Chairperson of the Committee – Renuka Lakshmi was the one who presided over the first committee



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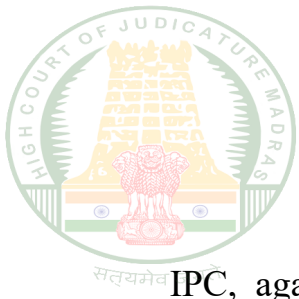
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and already she made allegations against her that she behaved rudely during the proceedings. On 09.04.2002, the very committee again wrote to the employee to attend the enquiry on 10.04.2002. On 10.04.2002, the employee submitted her representation before the Committee by enclosing a detailed representation about her harassment and also requesting for the transfer of said Nagakesari. On 20.04.2002, the employee also wrote to the National Human Rights Commission holding that the Management is not conducting the enquiry as per the dictum of the Hon'ble Supreme Court of India in the case of *Vishaka and Others Vs. State of Rajasthan and Others*<sup>1</sup>.

2.5. On 06.05.2002, once again, the enquiry committee wrote to the employee to attend the enquiry on 20.05.2002. On 07.05.2002, the enquiry committee further wrote that the employee can bring her counsel and also the witnesses. On 20.12.2002, the employee submitted a complaint to the Chairperson, Tamil Nadu State Commission for Women about the improper action by the police and also the hostile environment in the office. On 09.04.2003, the First Information Report was registered by the C-1 Flower Bazaar Police Station for the alleged offenses under Section 354 and 506 (i) of

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<sup>1</sup> (1997) 6 SCC 241



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IPC, against the said J.Nagakesari. On 16.04.2003, the employee received a communication from the Tamil Nadu State Commission for Women, where the photocopies of the enquiry report of the third committee constituted by the Management was enclosed, whereby it was stated by the Enquiry Officer that the employee did not cooperate with the enquiry committee for enquiry. The employee submitted her detailed explanation on 24.04.2003 to the Tamil Nadu State Commission for Women, bringing to light as to how the third committee had not considered her statements and the affidavits filed. Thereafter, the employee wrote to the Chairman, National Human Rights Commission on 02.06.2003.

2.6. Under the circumstances on 06.06.2003, a charge memorandum bearing Reference. Major Penalty 2/2003 was issued to the employee. The charge memorandum contained seven charges. The first charge is that the employee abused one Kathirvelu, Head Clerk, by using unparliamentary words on 05.08.2002. The second charge was that on the same day, she abused one Porselvan and threatened him. The third charge is that on 24.02.2003, she left her section without the permission of the section officer, without valid reasons and

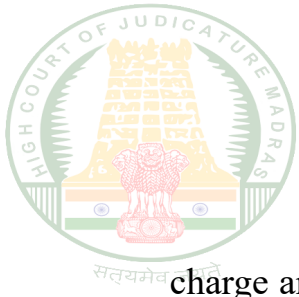


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did not discharge the duty allotted for the rest of the day. The fourth charge is that on the same day, she had come to the general section and prevented Mr.Parthasarathy, in discharging his lawful duties and abused him in filthy words. The fifth charge is that the employee was creating unnecessary commotion and unrest in the general section. The sixth charge is that, she failed to discharge her allotted job of re-conciliation work pertaining to the ledgers for the period 01.07.2002 to 31.12.2002. The seventh charge is that she is in the habit of evading her responsibility in discharging her allotted work, by often proceeding on sick leave or other kinds of leave. The employee submitted her explanation to the charges denying the same and offering her explanation by her representation dated 21.06.2003.

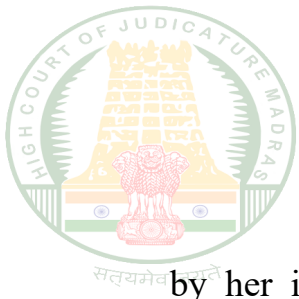
2.7. On 23.06.2003, another charge memorandum bearing reference.Major Penalty No.3/2003 was issued to her. It contained a charge that the employee while working at miscellaneous section as ledger clerk was allotted six ledgers, she should have reconciled all the ledgers on or before 06.06.2003, whereas she has failed and neglected to reconcile all the ledgers even after 10 days after the expiry of the target date. The employee submitted her explanation denying the



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charge and stating that the Management is finding reasons to issue memos to her and that she had already completed the work as per the circular dated 07.05.2003, before the last date of 25.06.2003 within the stipulated time. On 15.07.2003, another charge memorandum bearing Reference No.Major Penalty No.4/2003 was issued containing five charges. The first charge is that the employee failed and neglected to perform her duty of issuing short recovery notice and non recovery notice to the members and failed to make entries in the ledgers under her control. The second charge is that on account of her failure to issue short recovery notice, she has caused financial loss to the Society. The third charge is that she had failed and neglected to attend the grievance letters received from the members from January 2003 to June 2003 and failed to perform her primary duties in helping and solving the grievances of the members of the Society. The fourth charge is that she had failed and neglected to post the recoveries for the period August 2002 to January 2003 received from the members pertaining to the ledgers under her control, which is one of her most important duties. The fifth charge is that she is in the habit of not performing her duty to the fullest satisfaction of the Society. The employee submitted her explanation on 24.07.2003 denying all the charges. She submitted the details of the notices sent



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by her in respect of the charge No.1 and referred to the concerned ledgers.

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Therefore, she denied that any financial loss on account of her act with reference to grievance letter and she already prepared RC cards. The charge itself was issued only on the pressure of Nagakesari. With reference to charge Nos.4 and 5, she explained that the posting of recoveries were made by one B.Narasimhalu and unnecessarily the work is now being changed on her, to harrass her.

2.8. On 28.07.2003, the employee wrote back to the Tamil Nadu State Commission for Women stating the names and addresses of the witnesses, she proposes to examine on her behalf. On 08.08.2003 and 30.09.2003, the Management proposed to conduct further enquiry on the charge memo Nos.2 and 4 issued to the employee. On 06.10.2003, on the complaint of the employee, a case in Crime No.456 of 2003 was registered against one M.D.Ramamurthy, Parthasarathy and Paramasivam and also the other employees for the alleged offences under Section 385, 294 (b) and 506 (i) of IPC. The employee also wrote to the National Human Rights Commission on 14.10.2003 of the developments and stated that the Management is bent on sending her away from service. On 03.11.2003, the employee wrote a follow up complaint to the National





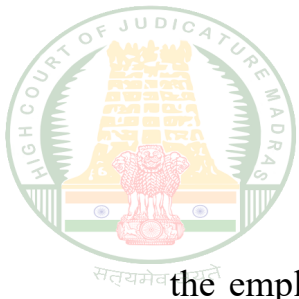
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Commission for Women in which she mentioned about the enquiry that was

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conducted by the State Commission. On 12.12.2003, the Management submitted a detailed reply to the Tamil Nadu State Commission for Women strongly refuting the charges of the employee and conclusively supporting the said Nagakesari and held that the charges made by the employee are baseless and praying for the enquiry be closed.

2.9. In the meanwhile, with reference to the charge memorandum No.3/2003, the employee was directed to appear before one Durairajan, Advocate who was appointed as the Enquiry Officer. On 05.01.2004, the employee again made a reminder complaint to one of the members of the National Commission for Women. The domestic enquiry, in the meanwhile started proceeding. On 12.03.2004, another charge memorandum bearing reference No.Major Penalty 1/2004 was issued to the employee, which contained eleven charges. The eleven charges are eleven instances where the employee in the earlier explanation to the charge memorandum mentioned that she had made entries in the ledger after performing the task, however, it was mentioned that as on the date of issue of charge memorandum a photo copy was taken from the ledger and subsequently,

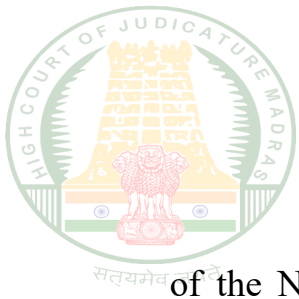


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the employee has made false entries in the ledger, by mentioning as if she had made the entries within the last date and thereby created false evidence in order to escape from punishment. The folio numbers, etc, of the particular ledgers in which entries are made are given in each of the charge and the statement of imputation of misconduct. On the strength of the same, once again the employee was suspended from service on 12.03.2004. The employee made a representation on 15.03.2004 requesting the copies of such documents and she also wrote to the Central Registrar, detailing about the entire episode by her representation dated 27.03.2004. In respect of the fourth charge memorandum, again the employee was directed to appear for domestic enquiry before Mr.Durairajan. Thereafter, while the domestic enquiry was proceeding with reference to the charge memoranda, the National Commission for Women took up the complaint of the employee for enquiry.

2.10. The National Commission for Women decided to investigate into the matter in detail and an enquiry committee was set up under the powers conferred under Section 8 (1), (2) and (3) and Section 10 (1) and (4) of National Commission for Women Act, 1990, and the committee consisted of the Member



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of the National Commission for Women (Smt.Nirmala Sitaraman, the Hon'ble

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Finance Minister, as she then was), a Hon'ble retired Judge of this Court (Hon'ble Mr.Justice K.Sampath), a retired police personnel (Mr.Rajagopal, former DGP, Tamil Nadu) and an independent women Member (Dr.Kannammal Roosevelt, Senior Civil Assistant Surgeon (Retd), Chennai). The Committee examined a total of 21 witnesses including the employee – ~~Sriyatha~~ and the said Nagakesari and exhibits 1 to 36 were also marked in the enquiry.

2.11. The National Commission for Women after detailed appraisal of the oral and documentary evidence found that there was sexual harassment of the employee by the said Nagakesari, at the workplace and that she has been deprived of her rights as a woman. The Committee further found that the employer has not followed the guidelines set out in ***Vishaka's case*** (cited *supra*). The National Commission for Women found that the enquiry committee constituted by the employer was not competent to enquire into the issue and in any event it has not discharged its duty in a fair and just manner and it made the following seven recommendations,

“1. Appropriate departmental action is to be taken against the opposite party. He should be suspended forthwith.



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2. Any more of further enquiries on the sexual harassment complaints should be stopped. Several in-house / departmental enquiries are serving more as means to harass a lady complainant rather than "searching for truth". In spite of knocking at several doors the lady complainant has had no relief. The Hon'ble Supreme Court has recently given a pronouncement that after the Complaints' Committee's (if set up as per Visakha Judgement) 4 enquiry a further departmental enquiry is not necessary.
3. The lady should be restored to her due place and treated equal. It is advised that the administration provide her a non-threatening, equal and a positive work atmosphere.
4. The Society should immediately set up a Complaints Committee as per the Supreme Court's guidelines and report to the National Commission for Women the complete details of its members.
5. The Society should take affirmative action such that all its staff particularly its women staff are clear on their job description, rights and role in the office. Ambiguity in roles and duties should be clearly avoided.
6. On all other cases which the complainant feels are a fall-out of her "daring to file a sexual harassment" complaint a fresh review to judge "prime-facie" should be done with experts from outside.
7. The police shall pursue the criminal case registered against the opposite party with alacrity and vigour and bring it to its logical conclusion

2.12. Thereafter, the employee requested the implementation of the Commission's report by her representation dated 26.11.2004. An order was passed on 29.11.2004 stating that the enquiry in the above cases will not stop. The employee again submitted a reminder to the National Commission for Women on 01.12.2004 and to the Secretary, Department of Women and Child Development. It is stated that thereafter the Writ Petition for implementing the

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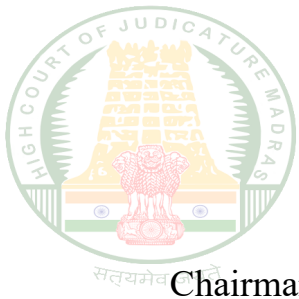
National Commission's Report and challenging the National Commission's

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Report was filed and there were interim orders enabling the Management to proceed with the enquiry, however, not to pass any final orders. It can be seen that the enquiry has been proceeded with, in respect of the charge memoranda. Subsequently, with reference to the non-payment of subsistence allowance, the employee had approached the appropriate authority under the Act, in which the order was passed and it was confirmed in appeal as against which the third Writ Petition is filed in W.P.No.17338 of 2014. The fourth Writ Petition is filed on the ground that the employee has attained the age of superannuation and there is no specific rule enabling the Management to proceed further with the enquiry and all the charge memoranda have lapsed and to pay all the retiral benefits. The Writ Petitions filed by the employee and the Management are resisted by the opposite side by filing counter affidavits.

### **C. The Arguments for Petitioner:**

3. On behalf of the employee, I have heard Ms. Nagasaila, the learned counsel. The crux of the submissions made by the learned counsel for the employee is that when the employee made a complaint of sexual harassment, the

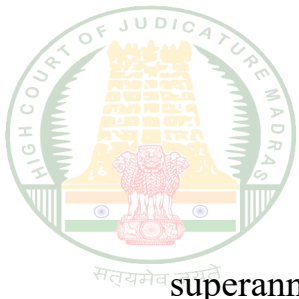


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Chairman treated the same in a casual and cavalier manner by orally reprimanding the delinquent and providing comfort for only a month and again the harassment started. Absolutely no complaint was entertained against the person for his predatory behaviour and all along it is for the victim who was put to trial, harassed and victimised, merely because, she stood up to her rights. The National Commission for Women conducted a detailed enquiry and had come to a conclusion on the basis of an evidence on record. Even in the Criminal case, the Trial Court after the trial, convicted the said Nagakesari. The Appellate Court by an erroneous finding acquitted him. A revision was filed on behalf of the victim, however, pending the revision, the said Nagakesari died.

3.1. All the charge memoranda are a direct fall out of the action that was taken by the victim – employee and nothing else. There was no occasion for the employer to have taken the photocopy of the ledgers and thereafter issued charge memoranda and the said conduct itself would show that there is an attempt to victimise the employee in a pre-planned manner. As far as the charge memoranda are concerned, in any event, since the employee has now reached the age of superannuation and there being no express rule to continue the enquiry after



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superannuation, the proceedings have to be treated as lapsed.

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3.2 The learned counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Union of India Vs. Rajendra N.Shah and another***<sup>2</sup> where the Hon'ble Supreme Court of India dealt with the *vires* of the constitution (97<sup>th</sup> Amendment Act, 2011) which *inter-alia* introduced part IX-B under the Chapter heading (Co-operative Societies), whereby it held that Article 243 ZR, 243 ZS are unconstitutional, in as much as they relate to the co-operative societies registered under the State enactments and without breathing life into these articles, there is no severability with reference to the other articles and therefore, held that the entire chapter as unconstitutional in as much as they deal with the co-operative societies registered under the various State enactments, however, upholding the provisions in so far as it concerns multi State co-operative societies both within the various States and in the Union Territories of India. Therefore, the learned counsel would submit that the Management being the multi State Co-operative Society is now an other authority mentioned in Chapter IX – B of the Constitution of India and as such would be a State against which the Writ Petitions are maintainable. This argument was made in reply to

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<sup>2</sup> (2022) 19 SCC 520



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the objection as to the maintainability of the Writ Petition made by the learned  
counsel for the respondent.

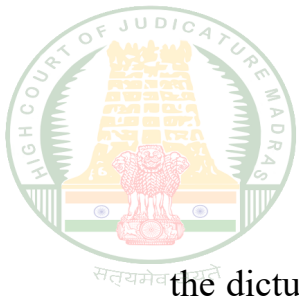
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3.3. *Ms.Nagasaila*, the learned counsel for the employee would also rely upon the Division Bench Judgment in ***GVK Emergency Management and Research Institute Vs. Shenbagamoorthi and Others*** (W.A.(MD).No.380 of 2016) where the Court held that the Writ Petitions against the Co-operative Societies as maintainable by following the Judgment of the Hon'ble Gujarat High Court in ***Haresh Jadavbhai Solanki Vs. State of Gujarat and Others***<sup>3</sup>. Thereafter, another Division Bench of this Court in ***C.Jayaraman Vs. The Special Officer*** (W.A.No.116 of 2015) has categorically held that since the Constitution has given a special status to the Co-operative Societies, by inserting Chapter IX – B by the Constitution 97<sup>th</sup> Amendment Act, 2011, the earlier view that the Writ Petition is not maintainable is no more a good law and held that the Writ Petition is maintainable.

3.4. Another Division Bench of this Court in ***N.Krishnasamy Vs. The Registrar of Co-operative Societies*** (W.A.(MD) No.1581 of 2018) considered

<sup>3</sup> (2010) SCC OnLine Guj 10098





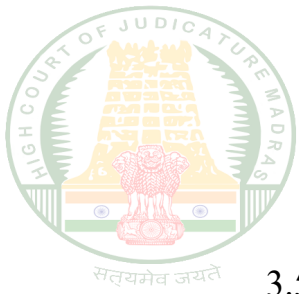
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the dictum laid down by this Court in ***K.Marappan Vs. Deputy Registrar of Co-operative Societies, Namakkal***<sup>4</sup> and after referring to the constitutional amendment the ratio laid down in ***Marappan's case*** was held to be no longer binding and the Writ Petition was held maintainable. The learned Single Judge in ***S.Sethu Vs. Deputy Registrar of Co-operative Societies*** (W.P.(MD) No.14702 of 2014) also held that the Writ Petition is maintainable. Thereafter, in ***P.Manimaran Vs. Joint Registrar and Another*** (W.A.(MD) No.431 of 2011) another Hon'ble Division Bench of this Court considered all these earlier Judgments and considered the dictum of the Hon'ble Supreme Court of India striking down the constitutional validity of the 97<sup>th</sup> amendment and held that in view of the pronouncement, except in cases of Multi State Co-operative Societies, no ground existed to render the larger Bench Judgment's in ***Marappan's case*** (cited *supra*) as no longer good law and held that in view of the pronouncement, the position prevailed as on the date of the Larger Bench stood restored, except with reference to the Multi State Co-operative Societies. Therefore, the learned counsel would submit that the Writ Petition is very much maintainable.

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<sup>4</sup> (2006) 4 CTC 689  
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3.5. The learned counsel would argue that even otherwise sexual harassment is a very serious offence, touching upon the right to life of a woman employee. Therefore, in view of the monstrosity of the situation, whenever such acts are brought to the notice of this Court under Article 226 of the Constitution of India, the cases have to be dealt with on merits and the powers have to be exercised. The learned counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in *Rohtas Industries Vs. Rohtas Industries Staff Union*<sup>5</sup> (paragraph No.9); *Marianandham Vs. Government of Tamil Nadu*<sup>6</sup> (paragraph No.11); *Rinchu Vs. Government of NCT, Delhi*<sup>7</sup> (paragraph No.25) in this regard.

3.6. *Ms.Nagasaila*, the learned counsel would also argue that the law has been laid down that in cases of sexual harassment at workplace Writ Petitions are entertain-able, even as against the private employer. In this regard, the learned counsel would rely upon the Judgment in *Apparel Export Promotion Council Vs. A.K.Chopra*<sup>8</sup> (paragraph Nos.24 to 27); *Vishaka Vs. State of Rajasthan*<sup>9</sup>

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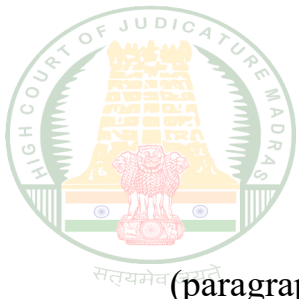
<sup>5</sup> (1976) 2 SCC 82

<sup>6</sup> (1989) 1 LLJ 269

<sup>7</sup> (2006) 6 SCC OnLine Delhi 1372

<sup>8</sup> (1991) 1 SCC 759

<sup>9</sup> (1997) 6 SCC 241



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(paragraph Nos.3,5,8,10,11 to 14); ***Medha Kotwal Lele Vs. Union of India***<sup>10</sup>

(paragraph Nos.43, 44, 44.4); ***Union of India Vs. Mudrika Singh***<sup>11</sup> (paragraph  
Nos.44 and 45); ***Aureliono Fernandes Vs. State of Goa and Others***<sup>12</sup> (paragraph  
Nos.83 to 86).

3.7. In support of her proposition that the disciplinary proceedings cannot  
continue after retirement, the learned counsel would rely upon the Judgment in  
***Dev Prakash Tewari Vs. UP Co-operative Institutional Board***<sup>13</sup> (paragraph  
Nos.6, 7 and 8 to 10); ***S.Andiyannan Vs. Joint Registrar***<sup>14</sup> (paragraph Nos.29  
and 30); ***P.K.Selvaraj Vs. Managing Director, Tamil Nadu Cooperative Milk  
Producers Federation***<sup>15</sup> (paragraph Nos. 9 to 15).

#### **D. The Arguments for the Management:**

4. *Per contra*, Mr. Anand Gopalan, the learned counsel appearing on  
behalf of the Management would rely upon the enquiry proceedings. Firstly, with  
reference to sexual harassment, the learned counsel would submit that it is not as

<sup>10</sup> (2013) 1 SCC 297

<sup>11</sup> (2022) 16 SCC 456

<sup>12</sup> (2024) 1 SCC 632

<sup>13</sup> (2014) 7 SCC 260

<sup>14</sup> (2015) 3 LW 513

<sup>15</sup> (2023) SCC OnLine Mad 7061



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if without any basis whatsoever, the Management did not take action against the said Nagakesari. When allegations were made by the employee, the first enquiry committee was constituted. When the employee objected to the same, second enquiry committee was constituted, even that when the employee objected to the same, third committee was constituted. Before the third committee also, the employee did not cooperate, however, the third committee still chose to examine some of the employees and found that no other female employees had any problems and the complainant-employee is also not cooperating and not giving any statement and therefore, concluded that the allegations made against J.Nagakesari is not substantiated by any evidence and the allegations appear to be cooked up only to harass J.Nagakesari. The said report was dated 26.05.2002. In the wake of such a report by the enquiry committee, there was no occasion for the Management to have taken action against the said Nagakesari. As far as the criminal case is concerned, the Trial Court convicted him, the Appellate Court acquitted the said Nagakesari and pending the revision, Nagakesari died. Therefore, today the allegations of sexual harassment complaint cannot be proceeded with. That part of the directions by the National Commission have since become infructuous, in view of the death of the alleged delinquent.

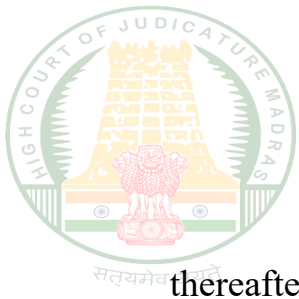


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4.1 As far as the other directions of the National Commission for Women, it is stated that out of the four charge memoranda, proceedings are dropped, in respect of the first charge memorandum and in respect of the other three charge memoranda, the domestic enquiry is complete and the enquiry can proceed from that stage. The argument that the employee had attained the age of superannuation cannot be countenanced, because it is the employee, who filed the Writ Petition and obtained an interim order not to pass final orders in the enquiry and the matter is pending from the year 2004, till date. Therefore, no party can be put to prejudice merely on account of the interim order of the Court, pending disposal of the main cases. In view of the fact that for the past 21 years enquiry was stalled, at the behest of the employee, the rule cannot be applied in the instant case and the employee continues to be placed under suspension and therefore, the authorities should be permitted to take the enquiry to its logical course.

4.2. The findings of the National Commission in this regard are factually perverse. By relying upon the photocopy that is taken from the ledgers and

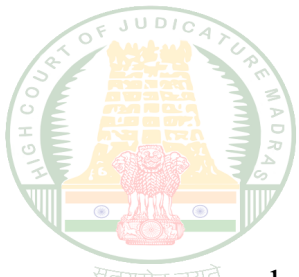


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thereafter the columns being filled up by making pre-dated endorsements to claim that she had made the entries in the register well within time, it can be seen that the employee had indulged in serious offence of creating false document which would even amount to the criminal offence of forgery. When an employee in order to escape from punishment, indulges in such a misconduct, the action of the employer issuing a charge memorandum and conducting an enquiry cannot be termed as a fall out of the sexual harassment complaint. Even the charges originally levied against the employee relate to her lapses and can never be connected to the allegations of sexual harassment and therefore, the finding in this regard by the National Commission is perverse in nature. Secondly, the National Commission had exceeded its jurisdiction in making those remarks.

4.3. More importantly, the learned counsel would contend that the Management is only a Co-operative Society, though Multi State Co-operative Society, it is constituted of the members of the Society and there is no deep and pervasive control by the Government. It is a Co-operative Credit Society of the employees of the Railways and the functions are also not of public in nature, exercisable by the State or the other authorities. It's business also not affect the



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general public at large. Under the said circumstances, the Society cannot be held

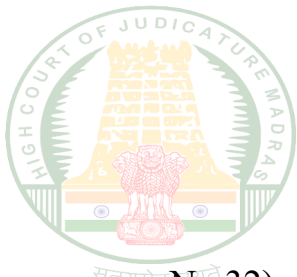
to be a State and the Writ Petitions are not maintainable.

4.4. The learned counsel would rely upon the Judgment of the Hon'ble Division Bench of this Court in ***L.Arputha Raj Vs. Joint Secretary and CVO & Others*** (W.P.(MD) No.26969 of 2019) (paragraph No.10); and the Judgment in ***Railway Employees Co-operative Society Staff Union and Others Vs. The Government of India and Others*** (W.P.No.30412 of 2012) (which is in respect of the very same Management), in support of his proposition that the petitioner – Society is not a State under Article 12 of the Constitution of India. Further, in support of his proposition that there is no public duty involved and therefore, the Writ Petition under Article 226 of the Constitution of India is not maintainable against a private body, the learned counsel would rely upon the paragraph No.42 of the Judgment in ***Sushil Kumar Vs. Central Registrar of Co-operative Society and Others***<sup>16</sup> and the Judgment in ***Praveen Kumar Sharma Vs. Central Registrar Multi State Cooperative Societies and Others***<sup>17</sup>; ***K.K.Saksena Vs. International Commission on Irrigation and Drainage and Others***<sup>18</sup> (paragraph

<sup>16</sup> (2022) SCC OnLine Del 2088

<sup>17</sup> (2023) SCC OnLine Del 2597

<sup>18</sup> (2015) 4 SCC 670



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No.32); ***St.Mary's Education Society and Another Vs. Rajendra Prasad Bhargava and Others***<sup>19</sup> (paragraph Nos.66 and 73).

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4.5. With reference to the recommendations of the National Commission for Women, the learned counsel would take this Court in detail through the Division Judgment of the Hon'ble Bombay High Court in ***KPMG India Pvt. Ltd and Another Vs. National Commission for Women (NCW) and Another***<sup>20</sup> to demonstrate that the National Commission is not empowered to make any final adjudication on the factual issues and to impose or make recommendations to impose punishment. When the matter is subjudice before the Criminal Court and the appropriate committee constituted by the National Commission ought not to have interfered in the issue. Paragraph Nos. 47, 53, 55 to 59 of the said Judgment are relied upon.

### **E. The Questions:**

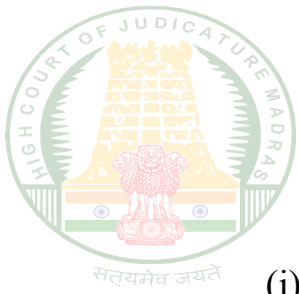
5. After considering the submissions made on either side, the following questions arose for consideration in the instant case,

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<sup>19</sup> (2023) 4 SCC 498

<sup>20</sup> (2014) SCC OnLine Bom 4825





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(i) Whether the Writ Petitions against the Management being a Multi State Co-operative Society is maintainable ?

(ii) Whether the findings of the National Commission that there is sexual harassment at workplace affecting the employee is in order ?

(iii) Whether the directions of the National Commission for Women with reference to the disciplinary proceedings against the employee are in order ?

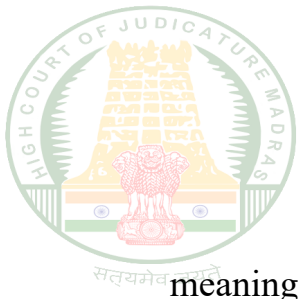
(iv) Whether the disciplinary proceedings against the employee can be proceeded further and to what relief, the parties are entitled to ?

**F. Question No. (i) :**

6. As far as the maintainability of the Writ Petitions are concerned, originally the Larger (Five Judge) Bench of this Court in ***Thanikachalam and Others Vs. Maduranthakam Agricultural Producers Cooperative Marketing Society and Others***<sup>21</sup> had held that the Cooperative Society is not an instrumentality of the State within the meaning of Article 12 of the Constitution of India and therefore, no Writ Petition will lie against the Cooperative Society. Thereafter, a Division Bench held that there can be two kinds of Cooperative Societies, one, which can be regarded as an instrumentality of a State within the

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<sup>21</sup> (2000) SCC OnLine Mad 687  
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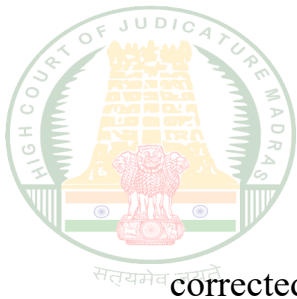
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meaning of Article 12 of the Constitution of India and the other is not an instrumentality of the State and therefore, felt that it cannot be laid down as a universal proposition that no Writ Petition can ever lie against a Cooperative Society and referred the matter to be considered by the larger Bench, in view of the Judgment of the Hon'ble Supreme Court in *Pradeep Kumar Biswas Vs. Indian Institute of Chemical Technology and Others*<sup>22</sup>. The Larger(Seven Judge) Bench in *Marappan's case* (cited *supra*) considered the issue. The tests laid down in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*<sup>23</sup> and reiterated in *Pradeep Kumar Biswas's case* (cited *supra*) was considered. It held that the six tests that are laid down in *Ajay Hasia's case* (cited *supra*) would govern the issue and if any one of the test is satisfied then the Cooperative Society will be a State within the meaning of Article 12. Against those Cooperative Societies, Writ Petitions will be maintainable, while in respect of others, it would not. The Larger Bench has specifically held that if the Cooperative Society is characterized as a State, then it would also be an authority within the meaning and purpose of Article 226 of the Constitution of India. In such a situation, even if an order is passed in violation of the bye-laws, it can be

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<sup>22</sup> (2002) 5 SCC 111

<sup>23</sup> (1981) 1 SCC 722



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corrected by way of a Writ Petition. The six tests laid down in *Ajay Hasia's case*

(cited *supra*) were enumerated. The operative portion of the Judgment of the

Larger Bench in *Marappan's case* (cited *supra*) paragraph No.21 is extracted

hereunder for ready reference,

“21. From the above discussion, the following propositions emerge:-

(i) If a particular co-operative society can be characterised as a State within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be an authority within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of writ petition.

(ii) Applying the tests in *Ajay Hasia* it is held that the respondent society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 of the Constitution.

(iii) Even if a society cannot be characterised as a State within the meaning of Article 12 of the Constitution, even so a writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a person or an authority within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv) A society, which is not a State would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.



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(v) Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a State a writ would lie when the case falls under Clauses (iii) and (iv) above.

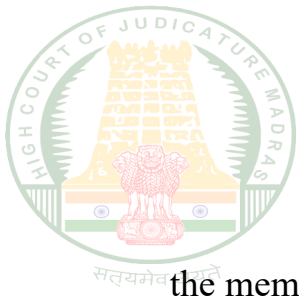
(vi) The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a State, the service conditions of its employees governed by its bye-laws cannot be enforced through a writ petition.

(vii) In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.

(viii) The decision in *M.Thanikkachalam v. Madhuranthagam Agricultural Co-operative Society*, 2000 (4) CTC 556 is no longer good law, in view of the decision of the seven-Judge Bench of the Supreme Court in *Pradeep Kumar Biswas* case and the other decisions referred to here before.

The reference is answered accordingly. Registry is directed to place the paper before the appropriate bench for its disposal.”

6.1. Thereafter, the Constitution of India was amended by the 97<sup>th</sup> Amendment Act, 2011 and *inter-alia* Chapter IX – B was introduced. Under the Chapter – heading – the Cooperative Societies, whereby Articles 243 ZH to 243 ZT came into force. Article 243 ZH consists of the definitions, including the definition of Cooperative Society, Multi State Cooperative Society, etc.,. Article 243 ZI enables the State legislature by law to make provisions with reference to incorporation, regulation and winding up of a Cooperative society based on principles of voluntary formation, democratic member control, member economic participation and autonomous functioning. The maximum number of



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the members of the Board and its office bearers were provided under Article 243

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ZJ. Article 243 ZK provided that notwithstanding any law made by the State legislature, the election should be conducted before the expiry of the term of the Board. Similarly, Article 243 ZL contains provisions for Supersession and suspension of the Board of interim Management.

6.2. The grounds on which the Board can be kept under default are all mentioned. Article 243 ZM provides for audit of accounts of the Cooperative Societies thereby directing the State legislature to make law providing for certain aspects mentioned therein. Article 243 ZN also mandates the law of the legislature to make provisions for convening of the general body. Article 243 ZO grants right to every member of the Cooperative Society to get information with reference to the books, information and accounts of the Cooperative Society and mandates that the legislature should provide for the same. It also mandates the right of the members to participate in the Management of the Society and mandates the law to provide for cooperate education and training for its members. Article 243 ZP provides for furnishing of returns within six months of the close of every financial year to the authority designated by the State



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Government, in respect of the matters mentioned in Sub clause (a) to (f) therein.

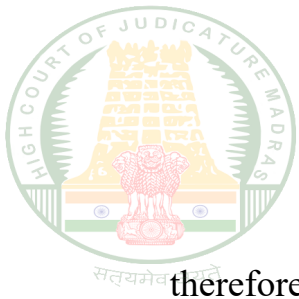
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Article 243 ZQ also mandated to make provisions of certain offenses relating to Cooperative Society and certain specific offenses were also enumerated in 243 ZQ (a) to (e). Article 243 ZR made the provisions applicable to the Multi State Cooperative Society subject to modification as the reference to the legislature to refer to Parliament and refer to the Act as the Central Act and the reference to the State Government as the Central Government. Article 243 ZS also applied the provisions to Union Territories and Article 243 ZT provided for the continuance of the existing laws, in so far as they are inconsistent with the provisions made in the Constitution of India.

6.3. The constitutional validity of these provisions came to be challenged before the Hon'ble Supreme Court of India in ***Rajendra N.Shah's case*** (cited *supra*) and the Hon'ble Supreme Court of India found that in the absence of the ratification from the States, the 97<sup>th</sup> Amendment of Constitution falls foul of the Basic structure doctrine as laid down in ***Kesavananda Bharati Vs. State of Kerala and Another***<sup>24</sup>. However, the same provisions in as much as they deal with the Multi State Cooperative Society would not require the ratification and

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<sup>24</sup> (1973) 4 SCC 225



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therefore, to that extent applying the principles of severability upheld the provisions vis-a-vis Multi State Cooperative Societies and consequently held that Part IX – B of the Constitution of India is operative only in so far as the Multi State Cooperative Societies.

6.4 Under the said circumstances, originally the Division Bench in ***GVK Emergency Management and Research Institute's case*** (cited *supra*) held that in view of the constitutional status conferred on the Cooperative Societies as observed by the Hon'ble Supreme Court in ***Vipulbhai M. Chaudhary Vs. Gujarat Cooperative Milk Marketing Federation Limited and Others***<sup>25</sup>, held that the Writ Petition as against the Cooperative Societies will be maintainable. It is essential to extract paragraph No.7 of the said Judgment,

“7.The Honourable Supreme Court of India in the decision reported in 2015 (8) SCC 1 - Vipulbhai M.Chaudhary Vs. Gujarat Cooperative Milk Marketing Federation Ltd., and others observed that constitutional status has now been conferred on cooperative societies. A learned Single Judge of this Court in the decision reported in 2007 (2) MLJ 1100 – S.Sukumar Vs.Dharapuram Public Servants' Cooperative Thrift and Credit Society Ltd., and in 2007 (2) CTC 480 – P.V.Bose Vs. The Vice Chairman, Bharathiar, after referring to the Marappan case held that Writ Petitions would lie against the Cooperative societies under certain special circumstances. A Division Bench of this Court in the decision reported in 2007(3) CTC 17 -Special Officer Nazareth Urban Co-operative Bank Limited Vs.



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J.Thavasingh and a three Judges Bench in the decision reported in 2007 (5) CTC 1 – M.Kempuraj Vs. Prakashgoklaney held that Writ Petitions can be maintained against the cooperative societies even in matters relating to service under certain circumstances. In the present case, the Writ Petitioner complains of being forced to put in minimum 12 hours work. There are many statutes governing the service conditions of the employees.”

6.5. Further, the Hon'ble Division Bench in *C.Jayaraman Vs. The Special Officer, Vellore District Central Cooperative Bank Limited*, (W.A.No.116 of 2015) once again held as follows,

“2. The constitution has now given a special status to the Cooperative Societies by inserting part IX B, by the Constitution (Ninety Seventh Amendment) Act, 2011.

3. In view of the special status now given to the Cooperative Societies, the earlier view that Writ Petition is not maintainable against cooperative societies is no more a good law.

4. We are, therefore, of the view that the issue raised by the appellant should be decided on merits.”

6.6. Again in *N.Krishnasamy's case* (cited *supra*) the Division Bench held as follows:-

“5. Further, we are of the considered view that in view of Part IX-B inserted to the Constitution of India, 1950, by the Constitution (Ninety-seventh Amendment) Act, 2011, with effect from 15.02.2012, the Co-operative Societies have been given constitutional status and resultantly, the ratio laid down in the aforesaid decision of the Five Judge Bench of this Court in *Marappan -vs- Deputy Registrar of Co-operative Societies, Namakkal* [(2006) 4 CTC 689], pales into insignificance.





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However, as already noticed supra, that question does not really arise for consideration in this case inasmuch as the actual relief has been sought against the First and Second Respondents, who are statutory authorities under the Tamil Nadu Co-operative Societies Act, 1983.”

6.7. After the 97<sup>th</sup> Constitutional Amendment was struck down, the later

Division Bench in *P.Manimaran's case* (cited *supra*) held as follows:-

“11. No doubt, the abovesaid three Division Bench judgments of this Court had held the said view and has observed that the dictum in Marappan's case cannot be held to be a good law in view of the 97th amendment to the Constitution of India. Unfortunately, for the petitioner, a portion of the 97th amendment to the Constitution was struck down by the Hon'ble Supreme Court in Union of India vs. Rajendra N.Shah and another [Civil Appeal Nos.9108-9109 of 2014, dated 20.07.2021]. In the said judgment, the Hon'ble Supreme Court had struck down the provisions of Article 243-ZH to 243-ZT excluding Article 243ZR and 243ZS which relate to multi-state Co-operative Societies and the Co-operative Societies situate in Union Territories on the ground that the concurrence of the State Legislature has not been obtained. The Hon'ble Supreme Court, had in any event, upheld the amendments to Articles 43B and 19(1)(c) of the Constitution of India.

12. In view of the said judgment of the Hon'ble Supreme Court, the position that emerges is that the right to form a Co-operative Society has been recognised as a fundamental right and nothing more. The striking down of 243-ZH to 243-ZT excluding Article 243ZR and 243ZS would lead to a situation where a Co-operative Society cannot be treated as a State or a public authority. In view of this judgment of the Hon'ble Supreme Court, in our considered opinion, the position that prevailed when the Larger Bench of this Court decided in Marappan's case, stands restored and there was no change in law in order to render the Larger Bench judgment in Marappan's case as no longer good law.”



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6.8. Thus, a combined reading of the same, it can be seen that the 97<sup>th</sup> Constitutional Amendment does not expressly make the Cooperative Society as one of the Constitutional authority or the authority by or under the Government, but on the other hand provisions are expressly made that the law should provide for their democratic and autonomous functioning. At the same time, the other provisions are also made with reference to the tenure of the Board, supersession of the Board, Constitution of general body, right of the members to get information, training, right of the members to be in the Management, etc. Perhaps by considering the said provisions, the Hon'ble Division Benches considered the test No.4 as propounded by *Ajay Hasia's case* (cited *supra*) that there is deep and persuasive control and thereby the Cooperative Societies can be considered as a State within the meaning of Article 12. However, it can be seen that the Judgments are *sub-silentio* not articulating the reasons expressly as to how the constitutional amendment elevated the status of the Society as an arm of the State.

6.9. Be that as it may, in the instant case, we are concerned about the issue



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of prerogative writs under the Article 226 of the Constitution of India and the

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Hon'ble Supreme Court of India in *Andi Mukta Sadguru Shree Muktajee*

*Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust Vs. V.R. Rudani*<sup>26</sup>

held as follows and it is essential to extract paragraph No.20, which reads as

follows:-

“20. The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words “any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. **What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.**”

(emphasis supplied)

6.10. As far as the instant case is concerned, the pith and substance of the issue in these Writ Petitions would be the duty of the Management to uphold the right to life of the woman as guaranteed under Article 21 of the Constitution of India, so as to give them free and fair opportunity, by preventing sexual

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<sup>26</sup> (1989) 2 SCC 691



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harassment by all forms at the workplace which is relevant. It is not the business of the Cooperative Society, which is in the form of advancing thrift loans to its members that is relevant. Therefore, if the relevant duty is considered, there can be no two opinion that the duty is a public duty that is cast upon the Management and the Writ Petition is maintainable. A combined reading of the Judgments cited by the learned counsel appearing on behalf of the employee would also reinforce that the matter relating to prevention of sexual harassment at workplace and taking action in respect thereof and grant of protection for women employees at the workplace would be in the realm of public duty and as such I hold that the Writ Petitions are maintainable. Useful reference in this regard can be made to paragraph No.3 of the Judgment in *Vishaka's case* (cited *supra*) wherein sexual harassment was held to be in violative of fundamental rights for women workers conferred under Article 14, 19 and 21 of the Constitution of India. The same was also reiterated in *Mudrika Singh's case* (cited *supra*) and in paragraph No.44, it was held that the Court should hold the spirit of the right against sexual harassment, which is vested in all persons as part of their right to life and right to dignity, under Article 21 of the Constitution of India.



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**G. Question No. (ii):**

7. The employee alleged sexual harassment at workplace in the hands of the said Nagakesari. The Management did not take any action whatsoever based on the final report that is made by the Enquiry Committee vide its report dated 26.05.2002. It must be stated that the complaint was lodged by the employee about the sexual harassment in the year 2001 and by that time, the Hon'ble Supreme Court of India in *Vishaka's case* (cited *supra*) AIR 1997 2 SCC 241 had mandated preventive steps should be taken by the employer and it had also mandated a complaint mechanism and the composition of the complaints committee. In the teeth of the same, when the employee first made an oral complaint in the second week of April, before the Chairman of the Society, the Chairman being a male member did not understand the seriousness and the deleterious effect of sexual harassment at the workplace. His conduct thoroughly exhibits the unconscious incompetency of the persons being products of misogynistic society. He treated as if it is a trivial complaint by a child against another and just warned the perpetrator and asked the complainant to go back and continue the work, by providing an illusionary relief that she need not go



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inside the cabin of the delinquent. It exhibited a conduct where the Management takes note of a very serious complaint in a very casual manner. The factual finding of the National Commission for Women in this regard has to be adverted at this juncture. While the first committee was consisted of three men it was objected to, the second committee was constituted by involving the Society's own advocate as the presiding member of the Committee. It must be seen that the presiding member of the third committee was very much part of the second committee. The employee had complained that she has been verbally abused at the second committee, for not cooperating, when the Management chose to change the committee for the third time, the very same member of the second committee viz., N.Renuka Lakshmi was made as the Chairperson of the Committee. The said Renuka Lakshmi as well as G.Padmanaban who are the members of the Committee and the Director of the Cooperative Society being part of the Management. The sole NGO member who was drafted into the committee had deposed before the Commission that she did not knew any of the procedure that is laid down in the *Vishaka's case* (cited *supra*). That is the nature of the Committee and the report generated by the Management, which gave a clean chit to the said Nagakesari, even though a criminal case had been registered

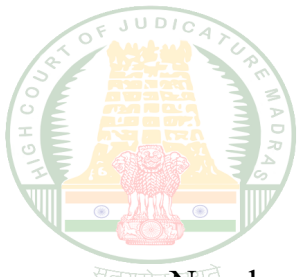


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and the police thought it fit to file a charge sheet and prosecute him.

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7.1. As a matter of fact, during the course of investigation by the police, one Ramamurthy had given a statement before the police that he had actually seen the complainant returning to her seat with tears in her eyes and when he enquired her about the same, the employee told him about the unwelcome behavior on the part of the said Nagakesari. It should be pointed out that the entire episode relating to the enquiry by the Chairman and the said Nagakesari partly admitting his guilt and the fact that immediately thereafter, the Chairman also ordered that no women employee of the Society should enter the cabin of Nagakesari, are all borne out by evidence. On the face of the evidence of Ramamurthy, Senior Administrative Officer, which corroborated the version of the employee/complainant coupled with the fact that Kuppuraj, the Chief Executive Officer, partly admitted that he was being present during the enquiry by the Chairman and only denied that he did not know about the nature of the complaint and from their evidence when they admit that the Chairman had given instructions in shifting the powers of Nagakesari to supervise and control over the women staff, it is crystal clear that there was sexual harassment by the said



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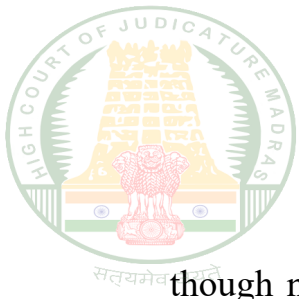
Nagakesari.

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7.2. Though the Appellate Court has given certain findings and ultimately the said Nagakesari died pending the revision, to the limited extent of the issues in the present Writ Petitions are concerned, I am of the view that the findings of the National Commission for Women are in order. There was sexual harassment of the employee by the said Nagakesari at workplace. She had been deprived of her fundamental rights as a woman to have a safe workplace. The employer has not followed the guidelines as set out in *Vishaka's case* (cited *supra*). The enquiry committee constituted by the employer was neither competent nor conducted the enquiry in a fair and just manner. The findings were not based on proper evidence or reasoning.

7.3 The findings of the National Commission are well within the powers and as a matter of fact, falls within the obligation of the Commission. One more serious fact against the management in the instant case is that even after conviction by the Trial Court, no action was taken against the perpetrator. It has to be pointed out that the conviction was never stayed pending the appeal. Even





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though no action can be taken henceforth as the person is no more, but for the purpose of this Writ Petition and for considering of appropriate reliefs, I hold that the Management initially found the allegations as correct, however, did not understand its seriousness and treated in a casual manner. Thereafter, only because the employee persisted with her complaints, the Management instead of correcting itself by taking action, developed an inimical attitude against the victim herself. Accordingly, I answer the question No.(ii) that there was sexual harassment, non following of guidelines laid down in *Vishaka's case* (cited *supra*) and further victimization of the employee.

**H. Question No. (iii):**

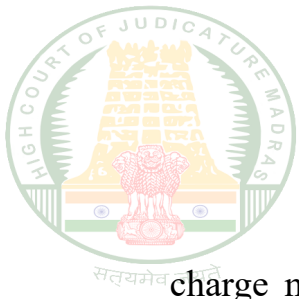
8. It must be seen that the employee joined the service in the year 1993 and she had an unblemished service until she took up the sexual harassment complaint. Even immediately after the day of suspension on 21.11.2001, the employee had enlisted the harassment meted out to her. Thereafter, she had also made a detailed complaint before the National Human Rights Commission. The National Human Rights Commission had issued a notice to the Secretary, Ministry of Railways on 10.01.2002. It must be noted that in the order of



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suspension dated 20.11.2001, though it is not necessary to mention the actual charges, there is no reference as to what the allegations relate to and the disciplinary proceedings is contemplated and the ground on which the employee is placed under suspension. Thereafter, in-spite of so many enquiries and orders of the National Human Rights Commission, only in the year 2003, the first charge memorandum dated 06.06.2003 was issued. In the said charge memorandum issued in the year 2003, the charge is with reference to the behavior of the employee on 05.08.2002 and 24.02.2003. Thus no charge memorandum was issued with reference to the suspension that was made in the year 2001. It must be seen that for the verbal abuse that is said to have been made on 05.08.2002, the charge memorandum was issued in June 2003. When she had forthwith and immediately submitted her explanation on 21.06.2003, another charge memorandum dated 23.06.2003 was issued. It has to be noted that the same was relating to reconciliation of ledgers. The explanation of the employee is that on 25.06.2003 is the last day for reconciliation of ledgers and even two days prior, a charge memorandum seems to have been issued and she has made the reconciliation entries in the ledgers and submitted an explanation. Perhaps irked by the fact that the employee had made the entries after the issuance of

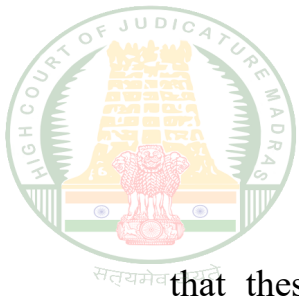


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charge memorandum and submitted a report, the Management had thought of laying a kind of trap to the employee. It can be seen that they had issued the third charge memorandum on 15.07.2003 which also contain a similar charge of non-issuing recovery notice to the members and making entries in the ledger. This time, as per the version of the Management they had cleverly taken photocopy of the ledgers on the date before the issuance of the charge memorandum and an endorsement was also made in the photocopy by the appropriate employee. This time also, the explanation was submitted by her in which she had stated that she made the entries regarding charge No.1 on the various dates mentioned therein and she had also seems to have made that entries. Since the entries were pre-dated, the last charge memorandum was issued on 12.03.2004, since as anticipated the employee fell into the trap, now it is alleged that the employee created false entries for the purpose of wriggling her out of charge.

8.1. While there can be no two opinion that at any stage an employee cannot make any pre-dated entries in the ledgers that too after receipt of the charge memorandum, which will be adequately considered by this Court, while grant of relief to the employee, from the series of transactions, it could be seen



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that these are clearly fishing expeditions and trap laying exercises that are conducted by the Management. These charges relating to non-performing of day to-day work were fished out and levied continuously one after the other only because the employee chose to pursue her remedies before the National Human Rights Commission, State Human Rights Commission, National Commission for Women and the State Commission for Women. At the initial stage, the Management was indifferent of the sexual harassment. Merely because the employee did not heed their advice and keep quiet and also dared to take up the issue repeatedly with the Railway Ministry and the Human Rights Commission etc, it can be seen that the entire Management got antagonized against the employee. I hold that all the charge memoranda are nothing but a fall out of the sexual harassment complaint given by the employee.

8.2 With reference to the findings of the National Commission, as rightly contended by the learned counsel for the Management that the Hon'ble Division Bench of the Bombay High Court has dealt with the issue in ***KPMG India Pvt. Ltd and Another Vs. National Commission for Women (NCW) and Another***<sup>27</sup>.

It had considered the powers and functions of the Commission and after

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<sup>27</sup> (2014) SCC OnLine Bom 4825  
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examining the scheme of the Act held as follows and it is relevant to extract

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paragraph Nos.47, 53, 54, 56 to 59 which read as follows:-

“47. The key areas that the commission is empowered to deal with are safeguards provided to the women under the Constitution of India and other laws and deprivation of women rights as detailed above. In respect of other functions the commission does not have all the powers of a Court.

.....

.....

53. As regards the second point of reference viz. exact nature of sexual harassment and evidence in respect thereof, we understand that these are the matters which are sub-judice before the criminal Court and it is appropriate that respondent No. 2 adduces evidence in the Court instead of commission' looking into the same. That said, “we clarify that the commission will have jurisdiction to inquire into complaints to arrive-ascertain the existence of a prima facie case of violation but should not proceed to adjudicate upon complaints or indict respondents or grant specific reliefs. No doubt it may be necessary for the commission to delve into the facts but it must not arrive at conclusions or grant reliefs. It may however make recommendations on the basis of such facts in the larger interests of women. If a prima facie case is made out the commission must issue notice to the organisation and hear them before making recommending remedial measures. The commission is however not empowered to decide the rights of parties and due care must be taken in this behalf. If the commission proceeds to determine any such issues there will be paral-lel enquiries underway which is hardly desirable. Moreover no purpose will be served by de-commission arriving at findings or granting reliefs or issuing directions since the commission is not a Court. The Act does not envisage enforcement of the commission's directions.

54. The remaining points of reference are as follows;

“3. Reasons of termination of services?

4. Whether there was unfair dismissal?

5. Whether the dismissal has caused loss of future career opportunity?

6. Whether this Committee can recommend to an employee as follows:



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- Letter of apology
- Compensation
- Relief
- Bonus
- Benefits arising out of this dispute
- Any other reliefs.”

.....

.....

56. In conclusion, having considered the submissions of the learned counsel for the parties and having perused the pleadings affidavits and relevant documents we are of the opinion that the terms of reference framed by the Commission will be subsumed by the following broad issues:

1. Whether the National Commission for Women is entitled to entertain complaints of individuals in relation to the matters concerning rights of women?
2. The nature of reliefs the Commission can grant to the individual complainants, if any.?

57. We are of the view that the Commission is empowered to look into complaints relating to deprivation of women's rights non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and developments non compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and provide relief to women and to take up such issues with appropriate authorities. However, it does not have unbridled power or authority. The Commission functions in a recommendatory capacity, and is empowered to take up issues relating to women with the authorities concerned. It is not an adjudicatory body yet Respondent No. 1 complies with the quasi-judicial character of “State” under Article 12 of the Constitution of India.

58. There is no doubt that by virtue of section 10(1)(f) the commission can look into complaint addressed to it and take suo moto notice of matters in relation to deprivation of women's welfare related policy, decisions, guidelines and instructions. The commission is also empowered to take up such issues with appropriate authorities. The powers of the commission while carrying out investigation in relation to the aforesaid matters including limited powers of a civil Court. However, it does not appear to us that the provisions of section 10(4) invest the commission with powers of a civil Court with the intention



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enabling the commission to arrive at the findings of fact which will bind the parties irretrievably. This can be inferred from the fact that empowerment of the commission under section 10(4) is for the purposes listed in section 10(1). The intention is that the commission is entitled to act as a guardian of women's rights with a view to ensuring that women's rights are protected or not rendered inaccessible.

59. As regards the second issue, namely, nature of reliefs the commission can grant to individual complainant we are of the view that the commission may after investigating the complaint take up the matters with appropriate authorities including employer or such other persons whose action or inaction have given rise to such complaints. We are of the view that the commission is not entitled to arrive at final conclusions or grant reliefs that a civil or criminal Court can. In the result the petition succeeds. Rule is made absolute in terms of prayer clause (a). We, however, wish to clarify that respondent No. 2 is at liberty to proceed with its criminal complaints and cyber-crime complaint pending if any without being influenced by any observation in this order. There will be no order as to costs.”

8.2. Going by the dictum, it can be seen that the Commission is empowered to take up the issues, investigate the same and follow up the same with appropriate authorities. The only embargo is that the Commission should not arrive at any findings which will bind the parties irretrievably. That is why, in this case, the Commission in its final directions which were quoted supra, only directed the Management to examine whether the disciplinary actions against the employee herself are a fall out of her daring to file a sexual harassment complaint, by reviewing the exercise by an expert from outside. It only followed



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up the matter with the Management to take a fresh look at the charge memo by employing experts from outside. But the Management feels shy and is aggrieved of the said directions.

8.3 It can be seen that during the year 2001 to 2004, conflicts were escalated and numerous proceedings by way of disciplinary enquiry, second suspension, repeated charge memoranda all were happening continuously and unabated. The only reasonable conclusion that can be made on the sequence of events is that to victimize the victim herself and all these disciplinary proceedings are nothing but a fallout of the sexual harassment complaint. Accordingly, I answer the question No.(iii).

**I. Question No.(iv):**

9. It can be seen that admittedly the employee was to retire from service, upon attaining the age of superannuation at the age of 58 years. The date of birth of the employee is 27.05.1965 and as such she was to retire from service with effect from 31.05.2023. Even as on 2023, the Writ Petitions mentioned above were pending and the disciplinary proceedings could not be finalized. In view





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thereof, it was open for the Management to continue the suspension of the employee or to pass a fresh order of suspension on the last date of superannuation, if they had chosen to retain the employee in service, and to continue the disciplinary enquiry. However, by an order dated 08.05.2023, the Management ordered cessation of service of the employee and it is essential to extract paragraph Nos.13 to 15 of the said order, which reads as under:-

“13. In view of the facts stated herein above, you are hereby informed that, upon attaining the age of 58 years, you shall cease from the services of the Society, w.e.f. 31-05-2023 (AN) and any decision on your terminal benefits, if any, shall be taken, only upon completion of the pending Major Penalty Disciplinary Proceedings and your cessation from services of the Society, is subject to the outcome of all the pending Major Penalty Disciplinary Proceedings and Judicial Proceedings.

14. You may also note that, your accumulation in the Provident Fund Account, including the contribution by the Management, subject to deductions, if any, is eligible to be withdrawn and to draw the same, you ought to submit an application to the Provident Fund Trustees of The Railway Employees' Co-operative Credit Society Staff Provident Fund.

15. You are further ordered to hand over your Office Identity Card and other materials, if any, belonging to the Society, to the Head/Personnel Department/Headquarters.”

(emphasis supplied)

9.1. Admittedly, there is no enabling provision in the duly approved by-laws of the Management, to continue the disciplinary enquiry, after cessation of the employer – employee relationship. The law in this regard has since been



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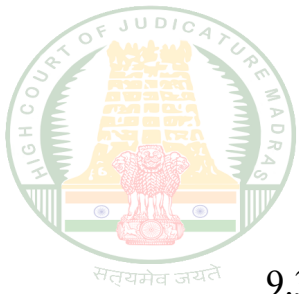
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settled that in the absence of an enabling rule, disciplinary enquiry cannot be continued after the cessation of employer – employee relationship. Useful references in this regard can be made to the Judgment of the Full Bench of this Court in *S.Andiyannan Vs. The Joint Registrar, Cooperative Societies, Madurai Region*<sup>28</sup>(paragraph No.27) as well as the Judgment of the Hon'ble Supreme Court of India in *Dev Prakash Tewari's case* (cited *supra*) (paragraph No.8).

9.2. The contention of *Mr.Anand Gopalan*, the learned counsel for the Management that such a position should not be held against the Management, since the final orders could not be passed only on account of the interim order of this Court. Firstly, nothing prevented the Management to mention the matter well before the date of superannuation of the employee and conduct the case. As a matter of fact, these matters are pending from the year 2004 for the past 21 years. Secondly another option was also open to the Management to retain the employee in service by placing her under suspension and conducting the disciplinary proceedings. The said course was also not resorted to.

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<sup>28</sup> (2015) 3 LW 513  
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9.3 It is true that under all circumstances, the employee cannot escape by the fall of the hammer on the date of superannuation especially when the employee prevented the Management in completion of the disciplinary proceedings. In such extraordinary cases, certainly the Management will be entitled to continue, since no party can be prejudiced on account of the interim orders of the Court. But, such permissions have to be given with reference to the context of the case and taking into account the nature of charges, the period of interim order, time in which the interim order was obtained, etc. In this case, if the overall facts and circumstances are taken and in view of the finding given above that there was sexual harassment to the employee, the Management completely failed to implement any preventive measures and also failed to follow the *Vishaka case* guidelines with reference to the enquiry, on the contrary chose to victimize the employee and the charge memoranda were nothing but a fall out of conducting a roving enquiry and a fishing expedition to make out charge one by one arising out of the day to-day functioning of the employee and even laying a trap to the employee to commit a further error. In the said factual matrix, this is not a fit case where by taking an equitable view, the Management should be permitted to continue the enquiry.



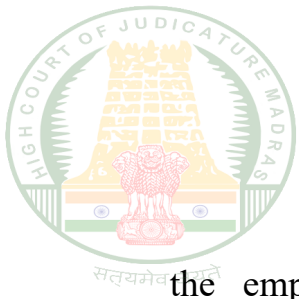
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9.4. Even if there is a provision, the Management can only be prohibited by this Court. In view of the above, no further proceedings can be undertaken with reference to the charge memoranda and they have to be treated as lapsed.

9.5. As a matter of fact, there cannot be any major arguments with reference to the period of suspension and the order that is passed by the Authority responsible for paying Subsistence Allowance. In view of the aforementioned findings, I am of the view that the employee should be deemed to be retired from service and the retirement benefits have to be paid with interest at the rate of 6 % per annum from the date of superannuation till the date of payment, provided the retirement benefits are settled within a period of eight weeks from the date of receipt of the website uploaded copy of this order. If the payments are not settled as aforesaid, then the same shall carry further interest at the rate of 9 % per annum from the date of this order.

9.6 While the employee was only a victim and absolutely no action was taken on her complaint, and on the contrary, the Management chose to victimize



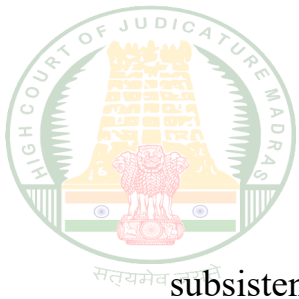
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the employee herself, the employee will be entitled for some kind of

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compensation, since the perpetrator ultimately died after protracted proceedings.

At the same time, even though the final proof of otherwise of charges are not found, from the circumstances, it can also be seen that in her over zealousness to defend the charges, *prima facie*, it can be seen that there is an element of conviction in the allegation of the Management, when it alleges that the employee pre-dated the entries in the ledger. While all along, a perusal of the charge memorandum and the explanation submitted by the employee in respect of the first three charges, the explanation was specific, concrete and prompt. With reference to the last charge memorandum, when it came to pre-dating, the explanation was not immediate and not specific and was asking for the relevant papers and other records. Even though the employee being a victim and was being further harassed, but at all the circumstances straying from the path of truth cannot be justified. Under the said circumstances, when further action are all stopped on the above findings on technical grounds, in order to balance the rights of parties, I am of the view that in the instant case, the employee shall be paid 60% of the back wages for the entire period, from the date of suspension till the date of superannuation. The Management will be entitled to deduct the sum of



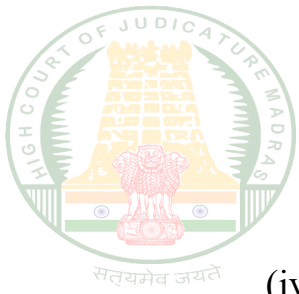
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subistence allowance paid independently or pursuant to the order of the authorities and pay the balance of back wages. In view thereof, these Writ Petitions are disposed of on the following terms:-

(i) It is declared that the employee / petitioner in W.P.No.3109 of 2025 suffered sexual harassment and the Management failed to take appropriate action at all stages and the disciplinary proceedings against the employee are victimization and fall out of the employee chosen to question the sexual harassment before all the authorities and pursue the same aggressively;

(ii) The disciplinary proceedings pursuant to the four charge memoranda bearing reference No.2/2003 dated 06.06.2003, No.3/2003 dated 23.06.2003, No.4/2003 dated 15.07/2003 and No.1/2004 dated 12.03.2004 shall be deemed to have been lapsed and no further orders can be passed;

(iii) The employee will be deemed to have been retired from service, with effect from her date of superannuation i.e., on 31.05.2023 and all the retirement benefits shall be paid to the employee, with further interest at the rate of 6 % per annum from 31.05.2023 till the date of payment. The amount shall be disbursed within a period of eight weeks from the date of receipt of the website uploaded copy of this order, without waiting for the certified copy;



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(iv) The employee will be entitled to 60 % of the back wages all through and the subsistence allowance if any already paid shall be adjusted and the balance shall be paid within a period of eight weeks from the date of receipt of the website uploaded copy of this order, without waiting for the certified copy;

(v) If the amounts are not paid within the above said time period, thereafter, the same shall carry interest at the rate of 9 % per annum from today;

(vi) No costs. Consequently the connected miscellaneous petitions are closed.

10.02.2026

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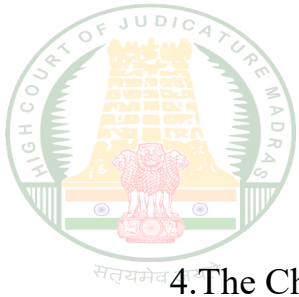
To

1.The Appellate Authority  
Tamil Nadu Payment of Subsistence Allowance Act, 1981  
Deputy Commissioner of Labour I, Office of the Deputy Commissioner of Labour I, Chennai – 6.

2.The Assistant Commissioner of Labour  
Office of the Deputy Commissioner of Labour I  
(Authority under TNSA Act, 1981), Teynampet, Chennai – 6.

3. The Chief Executive  
Railway Employees' Cooperative Credit Society Ltd, Chennai – 3.

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4.The Chairperson

National Commission for Women, New Delhi.

5.The Central Registrar of Co-op Societies

Ministry of Agriculture & Co-operation

Krishi Bhavan, New Delhi – 110 001.

6.The Chairperson

National Commission for Women

No.4, Deen Dayal Upadhyaya Way

New Delhi – 110 002.





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**D.BHARATHA CHAKRAVARTHY, J.**

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Pre-Delivery order made in  
Writ Petition Nos.17338 of 2014, 3109 of 2025,  
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10.02.2026

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