पुणे विद्यापीठ

सर्वोत्कृष्टतेचा स्त्रोत असलेले विद्यापीठ

विद्यार्थी कल्याण मंडळ

डॉ. पंडीत एन. शेळके
एम.एस.सी., पी.एच.डी.
संचालक, विद्यार्थी कल्याण मंडळ

संदर्भ क्र.: विकमं/२०१२–१३/९४८

दिनांक : ११/०५/२०१३.

प्रति,
मा. प्राचार्य / मा. संचालक,
पुणे विद्यापीठाशी संलग्न असलेली
सर्व महाविद्यालये व मान्यताप्राप्त संस्था.

विषय:– **महिलांवरील छेडखानी थांबविण्यासाठी मार्गदर्शक तत्वे नमूद करून त्यांची अंमलबजावणी तातडीने करण्याबाबत.....**

संदर्भ क्र. : **महाराष्ट्र शासन उच्च व तंत्र शिक्षण विभाग मंत्रालय मुबंई यांचेकडील, क्र.संकीर्ण २०१३/प्र.क्र. १२०/विशि–३, दिनांक ४ मार्च २०१३**

महोदय/महोदया,

उपरोक्त संदर्भिय विषयांस अनुसरुन आपणांस कळविण्यात येते की, महाराष्ट्र शासन उच्च व तंत्र शिक्षण विभाग, मंत्रालय, मुंबई यांनी निर्देश केल्यानुसार महिलांवरील छेडखानी थांबविण्यासाठी मार्गदर्शक तत्वे नमूद केली आहे.

याबाबतची माहिती आपल्या महाविद्यालयात/मान्यताप्राप्त संस्थेतील विद्यार्थ्यांच्या निर्दशनास आणून द्यावी व आपणांस विनंती करण्यात येते की, याबाबत आपण आपल्यास्तरावर योग्य ती कार्यवाही करावी.

सदर कार्यवाहीचा अहवाल मा. कार्यसन अधिकारी, **उच्च व तंत्र शिक्षण विभाग, मंत्रालय मुबई,** यांच्या कार्यालयास पाठविण्यात यावा, ही विनंती.

कळावे,

सोबत : **वरीलप्रमाणे.**

(डॉ. पंडित एन्. शेळके)
संचालक,
विद्यार्थी कल्याण मंडळ

विद्यार्थी कल्याण मंडळ, पुणे विद्यापीठ, गणेश खिंड, पुणे – ४११ ००७.
☎ ०२० – २५६०११५४ फॅक्स : ०२० – २५६०११५४ मोबाईल : ९८५०१७६५७५

महाराष्ट्र शासन

क्र.संकीर्ण२०१३/प्र.क्र. १२०/विशि-३
उच्च व तंत्र शिक्षण विभाग,
मादाम कामा रोड, हुतात्मा राजगुरू चौक,
मंत्रालय, मुंबई-४०० ०३२
दिनांक – ४ मार्च ,२०१३.

प्रति,
कुलसचिव,
सर्व अकृषी विद्यापीठ.

विषय – महिलांवरील छेडखानी थांबविण्यासाठी मार्गदर्शक तत्वे नमूद करून त्यांची अंमलबजावणी तातडीने करण्याबाबत.

महोदय,

उपरोक्त विषयाच्या संदर्भात मा. न्यायमूर्ती सी.एस.धर्माधिकारी उच्च न्यायालय यांनी मा. मंत्री, गृह विभाग यांना पाठविलेल्या पत्राची प्रत योग्य त्या कार्यवाही करीता सोबत जोडून पाठवित आहे.

आपला विश्वासू,

(प्र. गि. कानडे)
कक्ष अधिकारी

दिनांक, विद्यार्थी कल्याण
3.5.2013

श्री. देपके (A.R)
यांची कार्यवाही
8/5

R.

(सोबत "मा.सर्वोच्च न्यायालयाने सिव्हिल अपिल क्रमांक ८५१३/२०१२ वर दिनांक ३०.११.२०१२ रोजी दिलेला निर्णय"या विषयाचे गृह विभागाचे पत्र क्रमांक :-याचिका-१२१२/प्र.क्र.५५९/विशा-६.दिनांक ६.१२.२०१२ चे व त्यासोबतच्या सहपत्राची प्रत.)

महाराष्ट्र शासन

तात्काळ
महत्वाचे

क्रमांक : इएसटी - २०१२ / सं.क्र.२१४९/ आस्था-१
उच्च व तंत्र शिक्षण विभाग,
मंत्रालय, मुंबई - ४०० ०३२.
दिनांक :- ३० जानेवारी,२०१३

प्रति,
आयुक्त (व्यवसाय प्रशिक्षण)
संचालक (उच्च शिक्षण/ महाविद्यालयीन शिक्षण/व्यवसाय शिक्षण/कला)
कुलसचिव (सर्व अकृषि विद्यापीठे)

त्यांना विनंती करण्यात येते की,त्यांनी सदरचे परिपत्रक त्यांच्या अधिपत्याखालील कार्यालयांच्या निदर्शनास आणावे व मा.सर्वोच्च न्यायालयाने सिव्हिल अपिल क्रमांक ८५१३/२०१२ वर दिनांक ३०.११.२०१२ रोजी दिलेल्या निर्णयानुसार आवश्यक कार्यवाही करावी.सदर निर्णयातील परिच्छेद ३२ मधील मुद्दा क्र.३ व ६ बाबत शैक्षणिक संस्थांनी विशेष कार्यवाही करुन केलेल्या कार्यवाहीचा अहवाल शासनास उलट टपाली सादर करावा.

प्रत,
सर्व सह/उप सचिव,उच्च व तंत्र शिक्षण विभाग,मंत्रालय, मुंबई
यांना सदरचे परिपत्रक माहितीसाठी व आवश्यक त्या कार्यवाहीसाठी अग्रेषित

(स्वाक्षरी)

(बा.ऑ.हेमाडे)
कार्यासन अधिकारी, महाराष्ट्र शासन

सदर प्रकरणी लोकपाल म.वि. च्या आदेशातील परि-३२ मधील मुद्दा-३ व ६ बाबत दखल घेऊन त्याप्रमाणे कार्यवाही करण्याबाबत कृपया सर्व संलग्नित महाविद्यालयांना कळविण्यात यावे.

[illegible]

महाराष्ट्र शासन

क्रमांक :- याचिका-१२१२/प्र.क्र. ५५९/विशा-६
गृह विभाग,जागतिक व्यापार केंद्र,
सेंटर-१, कफ परेड, मुंबई ४०० ०३२
दिनांक :- ०६ डिसेंबर २०१२

प्रति,

अपर मुख्य सचिव, महसूल व वन विभाग
अपर मुख्य सचिव, शालेय शिक्षण व क्रिडा विभाग
प्रधान सचिव, उच्च व तंत्र शिक्षण विभाग
प्रधान सचिव, महिला व बाल विकास विभाग
प्रधान सचिव, सामान्य प्रशासन विभाग
प्रधान सचिव, परिवहन विभाग
प्रधान सचिव, नगरविकास विभाग
प्रधान सचिव, कामगार विभाग
प्रधान सचिव, पर्यटन व सांस्कृतिक कार्य विभाग
पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई
विशेष पोलीस महानिरीक्षक (म.अ.प्र.क.), महाराष्ट्र राज्य, पुणे
परिवहन आयुक्त, महाराष्ट्र राज्य, मुंबई

विषय:- मा.सर्वोच्च न्यायालयाने सिव्हील अपिल क्रमांक ८५१३/ २०१२ वर दिनांक ३०.११.२०१२ रोजी दिलेला निर्णय.

महोदय,

उक्त विषयावरील न्या. चंद्रशेखर धर्माधिकारी यांनी मा. मंत्री महोदयांना पाठविलेल्या दि. ०१.१२.२०१२ ची प्रत त्या सोबतच्या मा. सर्वोच्च न्यायालयाच्या दि. ३०.११.२०१२ च्या निर्णयाच्या प्रतीसह सोबत माहिती आणि आवश्यक त्या कार्यवाहीसाठी पाठवित आहे.

(सु. ग. सोनवणे)
उप सचिव

न्या. चंद्रशेखर धर्माधिकारी
विद्यमान न्यायमूर्ति, उच्च न्यायालय
व मा. मंत्री यांचा दर्जा (महाराष्ट्र शासनाव्दारे प्रदान)
भारताचे मा. राष्ट्रपतिव्दारा पद्मभूषण
अॅवार्डने सन्मानित.
मानद डॉक्टर ऑफ लॉज्

Justice C.S. Dharmadhikari
Conferred Status of Sitting Judge, of High Court
& Hon'ble Minister (By Govt. of Maharashtra)
AWARDED "PADMA BHUSHAN" BY
PRESIDENT OF INDIA.
HON. DOCTOR OF LAWS.

८- ब समता,
जनरल ज. भोसले मार्ग मुंबई ४०० ०२१
फोन नं. २२०४ ४७१६ फॅक्स निवास : २२८३ ४८३२
कार्यालय फॅक्स : २२६७९६९७

8-A, SAMATA, General J. Bhosale Marg,
MUMBAI 400 021.
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मुंबई
दिनांक : १ डिसेंबर २०१२.

प्रति,

श्री. आर. आर. पाटीलजी,

यांसी सस्नेह नमस्कार,

काल दि. ३० नोव्हेंबर २०१२ रोजी सर्वोच्च न्यायालयाने, डेप्युटी इन्स्पेक्टर जनरल ऑफ पुलिस आणि ईतर विरूध्द एस्. समुथीराम या केसमध्ये महिलावरील छेडखानी थांबविण्यासाठी मार्गदर्शक तत्वे नमूद करून त्यांची अंमलबजावणी तातडीने करावी, असा आदेश केन्द्र सरकार व राज्य सरकारला दिला आहे. त्या निकालाची प्रत सोबत पाठवीत आहे. ही मार्गदर्शक तत्वे का देण्यात येत आहेत. याची समीक्षा निकालच्या परिच्छेद २६ ते ३२ मध्ये नमूद केल्यानंतर परिच्छेद ३२ मध्ये १ ते ८ या परिच्छेदांत सर्वोच्च न्यायालयाने तसे आदेश जारी केले आहेत.

माझ्या अध्यक्षतेखालील समितीनेही अशाच शिफारसी व्दितीय अंतरीम रिपोर्ट मध्ये केल्या आहेत. त्याबाबत शासनाने उच्च न्यायालयांत दाखल केलेल्या शपथ पत्रात असे नमूद केले आहे की, केन्द्र सरकार कायदयात बदल करण्यासाठी पाऊले उचलित आहे. पण ते बिल अपुरे आहे असे नमूद करून सर्वोच्च न्यायालयाने हे आदेश दिले आहेत. अर्थात ते ताबडतोब अंमलात आणणे ही शासनाची जबाबदारी आहे. तशी पाऊले ताबडतोब उचलली जातील अशी अपेक्षा आहे.

कळावे.

आपला सहृदयी

(न्या. चंद्रशेखर धर्माधिकारी)

संलग्न : सर्वोच्च न्यायालयाच्या निकालाची प्रत.

IN THE SUPREME COURT OF INDIA

3/4

CIVIL APPEALLATE JURISDICTION

CIVIL APPEAL NO. 8513 OF 2012

(Arising out of SLP(C) No.31592 of 2008)

The Deputy Inspector General
Of Police & Anr. .....Appellants

Versus

S. Samuthiram ..... Respondent

JUDGMENT

K.S. Radhakrishnan, J

1. Leave granted.

2. Eve-Teasing is a euphemism, a conduct which attracts penal action but it is seen, only in one State, a Statute has been enacted, that is State of Tamil Nadu to contain the same, the consequence of which may at times drastic. Eve-teasing led to the death of a woman in the year 1998 in the State of Tamil Nadu which led the Government bringing an ordinance, namely, the Tami Nadu Prohibition of Eve-Teasing Ordinance, 1998, which later became an Act, namely, the Tamil Nadu Prohibition of Eve-Teasing Act, 1998 [for short 'the Eve-Teasing Act']. The Statement of Objects and Reasons of the Eve-Teasing Act reads as follows:

> "Eve-teasing in public places has been a perennial problem. Recently, incidents of eve-teasing leading to serious injuries to, and even death of a woman have come to the notice of the Government. The Government are of the view that eve-teasing is a menace to society as a whole and has to be eradicated. With this in view, the Government decided to prohibit eve-teasing in the State of Tamil Nadu.
>
> 2. Accordingly, the Tamil Nadu Prohibition of Eve-teasing Ordinance, 1998 (Tamil Nadu Ordinance No. 4 of 1998) was promulgated by the Governor and the same was published in the Tamil Nadu Government Gazette Extraordinary, dated the 30th July, 1998.

3. The Bill seeks to replace the said Ordinance."

3. We are in this case concerned with a situation where a member of the law enforcement agency, a police personnel, himself was caught in the act of eve-teasing of a married woman leading to criminal and disciplinary proceeding, ending in his dismissal from service, the legality of which is the subject matter of this appeal.

4. The respondent herein, while he was on duty at the Armed Reserve, Palayamkottai was deputed for Courtallam season Bandobust duty on 9.7.1999 and he reported for duty on that date at 8.30 PM at the Courtallam Season Police out post. At about 11.00 PM he visited the Tenkasi bus stand in a drunken state and misbehaved and eve-teased a married lady, who was waitingalong with her husband, to board a bus. The respondent approached that lady with a dubious intention and threatened both husband and wife stating that he would book a case against the husband unless the lady accompanied him. Further, he had disclosed his identity as a police man. Both husband and wife got panic and complained to a police man, namely, Head Constable Adiyodi (No.1368) who was standing along with Head Constable Peter (No.1079) of Tenkasi Police Station on the opposite side of the bus-stand. They were on night duty at the bus stand. They rushed to the spot and took the respondent into custody and brought him to Tenkasi Police Station along with the husband and wife. Following that, a complaint No.625/1999 was registered on 10.7.1999 at that Police Station against the respondent under Section 509 of the Indian Penal Code and under Section 4 of the Eve-teasing Act. On 10.7.1999, at about 1.25 hrs., the respondent was taken to the Government Hospital Tenkasi for medical examination. There he was examined by Dr. N. Rajendran, who issued a Certificate of Drunkenness, which reads as follows:

"Symptoms at the time of examination:

Breath smell of alcohol, Eye congested, Retina expanded, sluggish

reaction to light, speech and activities normal, pulse rate 96, Blood

pressure 122/85. I am of opinion that the above person:

(i) consumed alcohol but is not under its influence.

Station: Tenkasi

Date: 10.07.1999

Name: N. Rajendran

(Sd/- dt.10.07.1999)

Civil Surgeon

I am not willing to undergo blood and urine test.

Sd/- S. Samuthiram, PC 388"

5. The respondent was then placed under suspension from 10.7.1999 (FN) as per DO.1360/1999 in C.No.P1/34410/1999 vide order dated 18.7.1999 and departmental proceedings were initiated under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1955 (in short 'Tamil Nadu Service Rules') for his highly reprehensible conduct in behaving in a disorderly manner to a married lady in a drunken state at Tenkasi bus stand on 9.7.1999. Further, it was also noticed that he was absent from duty from 07.00 hrs on 10.7.1999 to 03.45 hrs.

6. The Deputy Superintendent of Police, Armed Reserve, Tiruneveli, conducted a detailed domestic enquiry and after examining ten prosecution witnesses and perusing fourteen prosecution documents and after hearing the defence witnesses, submitted a report dated 22.11.1999 finding all the charges proved against the delinquent respondent. The Superintendent of Police, Tiruneveli after carefully perusing the enquiry report dismissed the respondent from service on 4.1.2000.

7. The respondent, aggrieved by the dismissal order, filed O.A. No.1144 of 2000 before the Tamil Nadu Administrative Tribunal, Chennai. While the O.A.

The mere acquittal by the criminal Court does not entitle the delinquent for exonerating in the disciplinary proceedings. Learned counsel also submitted that the case in hand is not where punishment of dismissal was imposed on the basis of conviction in a criminal trial and only, in such situation, acquittal by a Court in a criminal trial would have some relevance. Further, it was also pointed out that, in the instant case, the respondent was not honourably acquitted by the criminal Court, but was acquitted since complainant turned hostile.

11. Shri V. N. Subramaniam, learned counsel appearing for the respondent, supported the findings recorded by the High Court. Learned counsel submitted that the judgment of the criminal court acquitting the respondent has to be construed as an honourable acquittal and that the respondent cannot be proceeded with on the same set of facts on which he was acquitted by a criminal court. Learned counsel also placed reliance on the judgment of this Court in Capt. M. Paul case (supra).

12. We may first deal with the departmental proceedings initiated against the respondent.

DEPARTMENTAL PROCEDINGS:

13. We may indicate that the following were the charges levelled against the respondent in the departmental proceedings and a charge memo dated 24.8.1999 was served on the respondent:

i) Reprehensible conduct in having behaved in a disorderly manner in a drunkenness mood at Tenkasi Bus-stand on 9.7.1999 at 23.00 hrs.

ii) Highly reprehensible conduct in eve-teasing Pitchammal (44/1999) W/o. Vanamamalai of Padmaneri in the presence of her husband and having approached her with a dubious intention on 9.7.1999 at 23.00 hrs. and thereby getting involved in a criminal case in Tenkasi P.S. Cr. No. 625/1999 under Section 509 IPC and Section 4 of the Tamil Nadu Prohibition of Eve-Teasing Ordinance Act 1998 and

iii) Highly reprehensible conduct in having absented from duty from 10.7.1999 at 07.00 hrs onward till 03.45 hrs.

14. The charges were inquired into by the Deputy Superintendent of Police, Armed Reserve Tirunelveli. The prosecution examined ten witnesses and fourteen documents were produced. On the side of the defence, D.W. 1 and D.W. 2 were examined. After examining the witnesses on either side and after giving an opportunity of hearing, the Enquiry Officer found all the three charges proved beyond reasonable doubt. P.Ws. 4 and 5, who were Head Constables 1368 Adiyodi of Tenkasi Police Station and Head Constable 1079 Peter of Tenkasi Police Station, clearly narrated the entire incident and the involvement of the respondent, so also PW 6, the Head Constable of Tenkasi Police Station. The Enquiry Officer clearly concluded that the evidence tendered by the prosecution witnesses P.Ws. 4, 5 and 6 and prosecution documents 3, 4 and 5 would clearly prove the various charges levelled against him. The Medical Officer of the Government Hospital had also certified that the delinquent had consumed liquor and he was not cooperating for urine and blood tests. The Enquiry Officer also found that the delinquent ought to have reported for duty at the out-post station on 10.7.1999 at 07.00 hrs. as per the instruction given to him on 9.7.1999 at 20.30 hrs., while he reported for courtallam season Bandobust duty at season out-post police station. But, it was found that the delinquent had failed to report for duty. Further, he had also indulged in the activity of eve-teasing a married woman. After finding the delinquent respondent guilty of all the charges, the Enquiry Officer submitted its report dated 22.11.1999. The Superintendant of Police, Tirunelveli concurred with the findings of the Enquiry Officer and held that the charges were clearly proved beyond reasonable doubt. It was held that the respondent being a member of a disciplined force should not have behaved in a disorderly manner and that too in a drunken state, in a public place, and misbehaving with a married woman. It was held that the said conduct of the respondent would undermine the morale of the police force, consequently, the Superintendant of Police awarded the punishment of dismissal from service on the respondent, vide its proceeding dated 4.1.2000. The respondent then filed an appeal before the Inspector General of Police, which was rejected vide his proceeding dated 10.3.2000. Respondent then filed an application in O.A. No. 1144 of 2000 before the Tamil Nadu Administrative Tribunal. While O.A. was pending, the delinquent was acquitted of the criminal charges.

94/4

CRIMINAL PROCEEDINGS:

15. We have indicated that a criminal case was also registered against the respondent by the Tenkasi Police Station being Crime No. 625/1999 under Section 509 IPC and Section 4 of the Eve-Teasing Act, 1998, which was registered as STC 613 of 2002 before the Judicial Magistrate, Tenkasi. Before the Criminal Court, PW 1 and PW 2, the husband and the wife (victim) turned hostile. Prosecution then did not take steps to examine the rest of the prosecution witnesses. Head Constable (No.1368) Adiyodi and Head Constable (No.1079) Peter of Tenkasi Police Station were crucial witnesses. Facts would clearly indicate that it was the above mentioned Head Constables who took the respondent to Tenkasi Police Station along with P.Ws. 1 and 2, though P.Ws. 1 and 2 had clearly deposed before the Enquiry Officer of the entire incident including the fact that the above mentioned two Head Constables had taken the respondent along with P.Ws.1 and 2 to the Tenkasi Police Station. The Criminal Court took the view that since P.W. 1 and P.W. 2 turned hostile, the criminal case got weakened. The prosecution, it may be noted also took no step to examine the Head Constables by name 1368 Adiyodi and 1079 Peter of Tenkasi Police Station, so also the Doctor P.W.8 before the criminal Court. It was under such circumstances that the criminal Court took the view that there is no evidence to implicate the respondent-accused, consequently, he was found not guilty under Section 509 IPC read with Section 4 of the Eve-Teasing Act and was, therefore, acquitted.

16. We may indicate that before the order of acquittal was passed by the Criminal Court on 20.11.2000, the Departmental Enquiry was completed and the respondent was dismissed from service on 4.1.2000. The question is when the departmental enquiry has been concluded resulting in the dismissal of the delinquent from service, the subsequent finding recorded by the Criminal Court acquitting the respondent delinquent, will have any effect on the departmental proceedings. The propositions which the respondent wanted to canvass placing reliance on the judgment in Capt. M. Paul Anthony case (supra) read as follows:

> "(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

9 of 14

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

17. This Court, in Southern Railway Officers' Association v. Union of India (2009) 9 SCC 24, held that acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the Disciplinary Authority. The Court reiterated that order of dismissal can be passed even if the delinquent officer had been acquitted of the criminal charge.

18. In State Bank of Hyderabad v. P.Kata Rao (2008) 15 SCC 657, this Court held that there cannot be any doubt whatsoever that the jurisdiction of the superior Courts in interfering with the finding of fact arrived at by the Enquiring Officer is limited and that the High Court would also ordinarily not interfere with the quantum of punishment and there cannot be any doubt or dispute that only because the delinquent employee who was also facing a criminal charge stands acquitted, the same, by itself, would not debar the disciplinary authority in initiating a fresh departmental proceeding and/or where the departmental

proceedings had already been initiated, to continue therewith. In that judgment, this Court further held as follows:

"The legal principle enunciated to the effect that on the same set of facts the delinquent shall not be proceeded in a departmental proceedings and in a criminal case simultaneously, has, however, been deviated from. The dicta of this Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another [(1999) 3 SCC 679], however, remains unshaken although the applicability thereof had been found to be dependant on the fact situation obtaining in each case."

19. In a later judgment of this Court in Divisional Controller, Karnataka State Raod Transport Corporation v. M. G., Vittal Rao (2012) 1 SCC 442, this Court after a detailed survey of various judgments rendered by this Court on the issue with regard to the effect of criminal proceedings on the departmental enquiry, held that the Disciplinary Authority imposing the punishment of dismissal from service cannot be held to be disproportionate or non-commensurate to the delinquency.

20. We are of the view that the mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the Department. The respondent, it may be noted, is a member of a disciplined force and non examination of two key witnesses before the criminal court that is Adiyodi and Peter, in our view, was a serious flaw in the conduct of the criminal case by the Prosecution. Considering the facts and circumstances of the case, the possibility of winning order P.Ws. 1 and 2 in the criminal case cannot be ruled out. We fail to see, why the Prosecution had not examined Head Constables 1368 Adiyodi and 1079 Peter of Tenkasi Police Station. It was these two Head Constables who took the respondent from the scene of occurrence along with P.Ws. 1 and 2, husband and wife, to the Tenkasi Police Station and it is in their presence that the complaint was registered. In fact, the criminal court has also opined that the signature of PW 1 (husband – complainant) is found in Ex.P1 – Complaint. Further, the Doctor P.W.8 has also clearly stated before the Enquiry Officer that the respondent was under the influence of liquor and that he had refused to undergo blood and urine tests. That being the factual situation, we are of the view that the respondent was not honourably acquitted by the criminal court, but only due to the fact that PW 1 and PW 2 turned hostile and other prosecution witnesses were not examined.

29 (4

Honourable Acquittal

21. The meaning of the expression 'honourable acquittal' came up for consideration before this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

22. In R.P. Kapoor v. Union of India, AIR 1964 SC 787, it was held even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In State of Assam and another v. Raghava Rajgopalachari reported in 1972 SLR 45, this Court quoted with approval the views expressed by Lord Williams, J. in (1934) 61 ILR Cal. 168 which is as follows:

> "The expression "honourably acquitted" is one which is unknown to court of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant believed it to be true and considered that it ought to have been accepted by the Government authorities and by the magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term 'honourably acquitted'".

23/4

23. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

24. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the re-instatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.

25. In view of the above mentioned circumstances, we are of the view that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings as against the respondent, in its limited jurisdiction under Article 226 of the Constitution of India.

26. We may, in the facts and circumstances of this case, wish to add some aspects which are also of considerable public importance. We notice that there is no uniform law in this country to curb eve-teasing effectively in or within the precinct of educational institutions, places of worship, bus stands, metro-stations,

24/4

railway stations, cinema theatres, parks, beaches, places of festival, public service vehicles or any other similar place. Eve-teasing generally occurs in public places which, with a little effort, can be effectively curbed. Consequences of not curbing such a menace, needless to say, at times disastrous. There are many instances where girls of young age are being harassed, which sometimes may lead to serious psychological problems and even committing suicide. Every citizen in this country has right to live with dignity and honour which is a fundamental right guaranteed under Article 21 of the Constitution of India. Sexual harassment like eve- teasing of women amounts to violation of rights guaranteed under Articles 14, 15 as well. We notice in the absence of effective legislation to contain eve-teasing, normally, complaints are registered under Section 294 or Section 509 IPC.

27. Section 294 says that "Whoever, to the annoyance of others- (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song; ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both".

28. It is for the prosecution to prove that the accused committed any obscene act or the accused sang, recited or uttered any obscene song; ballad or words and this was done in or near a public place, it was of obscene nature and that it had caused annoyance to others. Normally, it is very difficult to establish those facts and, seldom, complaints are being filed and criminal cases will take years and years and often people get away with no punishment and filing complaint and to undergo a criminal trial itself is an agony for the complainant, over and above, the extreme physical or mental agony already suffered.

29. Section 509 IPC says, "Whoever intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending, that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both".

30. The burden is on the prosecution to prove that the accused had uttered the words or made the sound or gesture and that such word, sound or gesture was intended by the accused to be heard or seen by some woman. Normally, it is difficult to establish this and, seldom, woman files complaints and often the

wrong doers are left unpunished even if complaint is filed since there is no effective mechanism to monitor and follow up such acts. The necessity of a proper legislation to curb eve-teasing is of extreme importance, even the Tamil Nadu Legislation has no teeth.

31. Eve teasing today has become pernicious, horrid and disgusting practice. The Indian Journal of Criminology and Criminalistics (January- June 1995 Edn.) has categorized eve teasing into five heads viz. (1) verbal eve teasing; (2) physical eve teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects. In Vishaka and Others v. State of Rajasthan; (1977) 6 SCC 241, this Court has laid down certain guidelines on sexual harassments. In Rupan Deol Bajaj and Another v. K.P.S. Gill; (1995) 6 SCC 194, this Court has explained the meaning of 'modesty' in relation to women. More and more girl students, women etc. go to educational institutions, work places etc. and their protection is of extreme importance to a civilized and cultured society. The experiences of women and girl children in over-crowded buses, metros, trains etc. are horrendous and a painful ordeal.

32. The Parliament is currently considering the Protection of Woman against Sexual Harassment at Workplace Bill, 2010, which is intended to protect female workers in most workplaces. Provisions of that Bill are not sufficient to curb eve-teasing. Before undertaking suitable legislation to curb eve-teasing, it is necessary to take at least some urgent measures so that it can be curtailed to some extent. In public interest, we are therefore inclined to give the following directions:

1) All the State Governments and Union Territories are directed to depute plain clothed female police officers in the precincts of bus-stands and stops, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship etc. so as to monitor and supervise incidents of eve-teasing.

2) There will be a further direction to the State Government and Union Territories to install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught.

3) Persons in-charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they

must pass on the information to the nearest police station or the Women's Help Centre.

4) Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.

5) State Governments and Union Territories are directed to establish Women' Helpline in various cities and towns, so as to curb eve-teasing within three months.

6) Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus stands, railway stations, cinema theatres, parties, beaches, public service vehicles, places of worship etc.

7) Responsibility is also on the passers-by and on noticing such incident, they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes.

8) The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the concerned authorities including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing.

33. The Appeal is accordingly allowed with the above directions and the judgment of the High Court is set aside. However, there will be no order as to costs.

J.
(K.S. Radhakrishnan)
J.
(Dipak Misra)

New Delhi,
November 30, 2012