

Kerala High Court clarifies that a director functioning under supervision is an 'employee' under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The Hon'ble High Court of Kerala ("Kerala HC"), in *Prof. (Dr.) J. Sundaresan Pillai vs. Dr. K.K. Seethalakshmi, Presiding Officer, Internal Complaints Committee (ICC) & Others*¹, examined an important jurisdictional question under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("PoSH Act") on whether a Director of an organisation would qualify as an 'employer' or an 'employee' under the PoSH Act.

This distinction is significant because the PoSH Act creates a bifurcated institutional framework for addressing complaints of sexual harassment at the workplace. Under this framework, complaints of sexual harassment against an 'employer' are required to be filed before the Local Committee ("LC") constituted under Section 6(1) of the PoSH Act, whereas complaints against employees are to be inquired into by the Internal Committee ("IC"). In other words, the determination of whether an individual occupies the position of 'employer' or 'employee' within the meaning of the PoSH Act is critical as it dictates which forum has jurisdiction over the complaint and, by extension, the procedural pathway that must be followed.

This ruling provides valuable guidance on determining the status of senior managerial personnel under the PoSH Act framework and reinforces that designation alone is not determinative; rather, the actual control and management structure of the organisation must be examined.

Brief facts

The appellant, a retired Senior Principal Scientist of CSIR, New Delhi was associated with the Integrated Rural Technology Centre ("IRTC") as its Director ("**Appellant**"). On November 27, 2024, a woman employee of IRTC lodged a complaint alleging sexual harassment against the Appellant.

Pursuant to the complaint, the Presiding Officer of the IC issued a notice directing the Appellant to appear before the IC. Then the Appellant challenged the jurisdiction of the IC on the ground that, as Director of IRTC, he qualified as an 'employer' under the PoSH Act. According to him, a complaint against an employer could only be entertained by the LC and not by the IC under Section 6(1)² of the PoSH Act.

¹ 2026 SCC OnLine Ker 4743 (decided on May 19, 2026)

² Section 6(1) of the PoSH Act - Every District Officer will constitute in the district concerned, a LC to receive complaints of sexual harassment from establishments where the IC has not been constituted due to having less than 10 (ten) workers or if the complaint is against the employer himself.

The Appellant accordingly approached the District Collector seeking intervention. Although his representation was forwarded to the concerned authorities for consideration, the IC issued a further notice to him.

The Appellant thereafter filed a writ petition before the Kerala HC under Article 226 of the Constitution of India seeking, *inter alia*, quashing of the summons issued by the presiding officer on the ground that the IC lacked the jurisdiction to inquire into the complaint. The Appellant also sought directions to the District Collector and the district women and child development officer to ensure that any inquiry was conducted by a competent, impartial and legally authorised body.

Further, the Appellant challenged the actions of the presiding officer and alleged inaction on the part of the Governing Body and Executive Committee of the IRTC, contending that such actions were arbitrary, unconstitutional and beyond their authority. By judgment dated January 6, 2026, the Single Judge dismissed the writ petition. Aggrieved by the said decision, the Appellant preferred the present writ appeal.

Issue

The central issue before the Kerala HC was whether the Appellant, as a Director of IRTC, should be regarded as an 'employer' or an 'employee' under the PoSH Act?

What the Kerala HC examined

To answer this issue, the Kerala HC examined the definitions of 'employee' and 'employer' under the PoSH Act, along with the statutory scheme governing the constitution and functioning of the IC and LC. Section 2(f) of the PoSH Act defines 'employee' broadly to include "*any person employed at a workplace for any work on a regular, temporary, ad hoc, or daily wage basis, whether for remuneration or not, and includes co-workers, contract workers, probationers, trainees, and apprentices*". Section 2(g) of the PoSH Act defines 'employer' to include, for workplaces not covered under the government category, "*any person responsible for the management, supervision and control of the workplace,*" with the explanation clarifying that "*management*" includes the person or board or committee responsible for formulation and administration of policies for such organization".

The PoSH Act also creates 2 (two) separate mechanisms for redressal of sexual harassment complaints. Ordinarily, complaints of sexual harassment against an employee are to be investigated by the IC constituted at the workplace. However, where the complaint is against the employer himself, or where an IC has not been constituted due to having less than 10 (ten) workers, the jurisdiction lies with the LC.

The Kerala HC also examined the governance framework of IRTC to determine who exercised actual control over the institution. In doing so, it considered the organisation's Memorandum of Association ("**MoA**") and the distribution of powers among its governing bodies and the office bearers.

Upon examining the MoA, the Kerala HC found that the ultimate authority relating to administration, management, appointment of personnel, disciplinary control and overall governance vested in the General Body and Executive Committee. Although the Appellant, the director of IRTC, functioned as the chief executive officer and was entrusted with the day-to-day management of the institution, those functions were exercised subject to the supervision and control of the aforesaid governing bodies. The Kerala HC also noted that the Director himself was appointed by the Executive Committee.

Findings and analysis

The Division Bench of the Kerala HC upheld the decision of the Single Judge bench and dismissed the appeal. In doing so, the Kerala HC held that merely because the Appellant occupied the position of director and was responsible for managing the day-to-day affairs of the organisation, he could not automatically be classified as an 'employer' under

the PoSH Act. What was relevant was who ultimately exercised control, supervision and management over the workplace.

Since the governing authority of IRTC vested in its General Body and Executive Committee, and since the director functioned under their control and supervision, the Appellant could only be treated as an 'employee' for the purposes of the PoSH Act.

Accordingly, the Kerala HC concluded that the complaint filed by the woman employee was rightly entertained by the IC and that the IC possessed the requisite jurisdiction to inquire into the allegations. The contention that the complaint ought to have been filed before the LC was therefore rejected.

Conclusion

This judgment underscores that the determination of whether an individual is an 'employer' under the PoSH Act depends not merely on the designation but on the actual structure of authority and control within the organisation. The Kerala HC made it clear that merely occupying a senior position or carrying the title of 'Director' or 'Chief Executive Officer' does not automatically elevate an individual to the status of an 'employer' for the purposes of the PoSH Act. The real inquiry is into where the ultimate power of control, supervision and management resides within the organisation.

The ruling is particularly relevant for organisations with layered governance structures, where senior executives may exercise extensive operational authority while remaining accountable to a board, executive committee or governing body. In such cases, the existence of managerial responsibilities alone will not be sufficient to oust the jurisdiction of the IC.

In light of this judgment, employers in India must closely examine their governance structures to accurately determine the applicability of the IC versus the LC, ensure that the ICC is constituted and operates with full independence, and foster an institutional culture in which the statutory framework for addressing sexual harassment is respected and never undermined.

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