The **AD-roit LinkS**

NEWSLETTER

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#13

Is the Director the Boss or an Employee under POSH Act?

Inside this edition: Explore how two landmark 2026 High Court judgments clarify when senior executives are treated as "employees" or "employers" under the PoSH Act—and who has jurisdiction to investigate.

YOUR NO. 1 GUIDE TO A SAFER WORKPLACE

From the

FOUNDER'S DESK

Dear Readers,

Sometimes, the most important questions under the PoSH Act lie in the definitions we think we already understand.

Does a senior designation automatically make someone an "Employer"? Or can a Director, CEO or Head of an Institution still be considered an "Employee" for the purpose of a PoSH complaint?

Two recent decisions of the Kerala High Court and the Calcutta High Court bring this thin line into focus. The courts remind us that designation alone may not determine a person's status. Factors such as the nature of the organisation, who exercises ultimate control and management, and the person's authority and accountability within the structure can all become relevant.

This distinction is far from merely technical. It can determine whether a complaint falls within the jurisdiction of the Internal Committee or the Local Committee, making it crucial to get the process right from the very beginning.

In this month's article, we analyse these two recent High Court decisions and explore the evolving interpretation of "Employer" and "Employee" under the PoSH Act.

Because sometimes, the right answer lies not in the title a person holds, but in the role and authority they actually exercise.

Happy Reading!

Leeza Dutta Singh

Founder & Managing Partner,
AD-roit LinkS

Is the Director the Boss or an Employee under PoSH Act?

Analysing the thin line between "Employer" and "Employee" under PoSH

~ By Atryee Dutta

Picture this: Someone at work makes an unwelcome, inappropriate pass at you. You decide to report it, but then you pause. The person who crossed the line isn't just a manager or a teammate; it's the Managing Director, the Chairman, or a board member sitting in the corner office.

Suddenly, a wave of hesitation sets in: *"Can our company's Internal Committee (IC) even investigate the big boss? Or does their high-level title put them completely above the rules?"*

This isn't just a nervous thought, it is one of the trickiest questions companies face today. When top executives face sexual harassment allegations, they often argue that because they run the company, they are technically the "Employer." And as the employer, they claim an Internal Committee made up of their own staff has no legal right to investigate them.

Does a fancy title act as a shield against accountability? Or does the law treat senior executives as employees who must answer to the exact same standards as everyone else?

Two landmark 2026 High Court judgments — one from the **Kerala High Court** *(Prof. (Dr.) J. Sundaresan Pillai v. Dr. K.K. Seethalakshmi)* and another from the **Calcutta High Court** *(XXX v. Union of India & Ors)* — have just tackled this exact question. They draw a clear line showing who counts as an "Employer" versus an "Employee" under the PoSH Act.

"Employer" vs. "Employee" Under PoSH

To understand why this issue goes all the way to the High Courts, we first need to look at how the PoSH Act defines two simple-sounding words: "Employee" and "Employer."

The difference between employer and employee in PoSH is not just about job titles or who sits in the biggest office. It decides who gets investigated by the Internal Committee (IC) and who is responsible for enforcing punishment.

Who is an Employee Under the PoSH Act?

The law defines an "employee" in the widest way possible. Under the PoSH Act, an employee includes:

Full-time and part-time staff

Temporary workers, interns, and trainees

Daily-wage workers and contract staff

Salaried managers, department heads, and executives

The law intentionally uses a broad definition of employee under PoSH Act so that nobody is left out of workplace protection.

Who is an Employer Under the PoSH Act?

On the other side, the definition of employer under PoSH Act refers to the person or authority responsible for the overall management, supervision, and control of the workplace.

In a government office, this might be the Head of the Department. In a private company, it is usually the Board of Directors, the Managing Director, or the person designated by leadership to oversee workplace operations and enforce legal compliance.

The employer has the following responsibilities under the law:

Setting up the Internal Committee

Providing a safe working environment.

Executing the IC's recommendations after an inquiry.

The Gray Zone: Can the IC Investigate Senior Leadership?

This is where the confusion starts. What happens when a Managing Director, Director, or CMD has an official employment contract, receives a salary, but also sits at the very top of company management?

When a complaint is made against top executives, **Internal Committee jurisdiction over senior executives** often gets challenged. The accused leader might say, *"I am the employer, so the IC cannot investigate me."* But the aggrieved worker needs to know their rights.

The Kerala High Court Verdict

(Prof. (Dr.) J. Sundaresan Pillai v. Dr. K.K. Seethalakshmi)

A recent ruling by the Kerala High Court on May 19, 2026 (2026:KER:33013), directly addressed whether a Director can be investigated by an Internal Committee. This case offers a clear look at how courts handle a **PoSH complaint against a Director or CEO**.

What Happened in the Case?

The (Respondent) appellant served as the Director of the Integrated Rural Technology Centre (IRTC). A female employee(Complainant) filed a formal sexual harassment complaint against him. When the company's Internal Committee (IC) summoned him, he challenged their legal right to do so.

Dr. Pillai argued that as the Director and head of the organization, he was the "Employer" under the law. Under the PoSH Act, if a complaint is filed against an employer, it must go to the government-appointed **Local Committee (LC)** rather than the company's internal team. He claimed the internal committee had no power over him.

What Did the Kerala High Court Decide?

The Division Bench of the Kerala High Court rejected his claim and upheld the **Internal Committee jurisdiction over the Director**.

They found that ultimate control, administration, and policy-making power rested with IRTC's General Body and Executive Committee, not the Director alone. Because the Director was appointed by and answerable to the Executive Committee, he was legally an **employee** under Section 2(f) of the PoSH Act.

The Calcutta High Court Verdict

(XXX v. Union of India & Ors)

While the Kerala High Court showed when a Director is an employee, the **Calcutta High Court PoSH judgment** passed on June 23, 2026 (XXX v. Union of India & Ors), tackled the exact opposite side of the coin: What happens when the accused person is truly the boss?

What Happened in the Case?

A temporary advisor at Hindustan Cables Limited filed a workplace sexual harassment complaint against the company's Chairman and Managing Director (CMD).

An Internal Committee was set up to look into the allegations. However, the complainant challenged the IC's power. She argued that because the CMD was the overall head of the office and management, he was legally the "**Employer**" under Section 2(g) of the PoSH Act. Therefore, an internal committee made up of subordinates working under the CMD could not fairly investigate its own top boss.

What Did the Calcutta High Court Decide?

The Calcutta High Court agreed with her and set aside the internal inquiry.

The court carefully examined Sections 2(g) and 6 of the PoSH Act. They held that because the CMD was the head of the office and held primary operational control, he was indeed the **CMD employer under PoSH Act**.

Because he was the employer, the law required the complaint to go directly to the government-appointed **Local Committee (LC)** under Section 6, rather than the company's Internal Committee.

The "Duties & Control" Test — When Does a Boss Count as an Employee?

Looking at these two judgments side by side might feel confusing at first. One court said a Director is an employee, while another court said a CMD is an employer! So, how do courts decide which rule applies?

It all comes down to what legal experts call the duties and control test.

Courts do not just read the title printed on a business card, they look closely at how the company actually operates every day.

When deciding if a high-ranking manager is an "**Employee**" or an "**Employer**" under the PoSH Act, judges ask three main questions:

Q1. Who Does the Boss Report To?

If a Director, Vice President, or Executive reports to a Board of Directors, a Trustee Committee, or a Governing Council, they are legally an **employee**. Even if they manage hundreds of people, they still answer to a higher authority.

If the person holds complete administrative power over the entire office and does not report to anyone locally, they are considered the **employer**.

Q2. What Does Their Contract Say?

Courts check if the person receives a salary, signed an employment contract, or is bound by employee service rules. If they are on the payroll and subject to company discipline, they fit the **definition of employee under PoSH Act**.

Q3. Who Controls the Internal Committee?

If an accused person has total authority to appoint, promote, or fire the members of the Internal Committee, letting that same IC investigate them creates a conflict of interest. In those rare cases, the case shifts to the government's **Local Committee (LC)** to protect the victim from workplace bias.

What This Means for Employees

If you are an employee without a legal background, understanding court rulings like these might feel abstract. But in reality, these two High Court judgments give you powerful protection in your day-to-day work life.

Here is what these rulings mean for you if you ever face workplace harassment from someone in senior management:

☑ Job Titles Are Not Shields

You never have to stay quiet just because the person making you uncomfortable has "Director," "Vice President," or "Head" on their door. The courts have made it crystal clear: senior executives who answer to a board are employees under the law. They must follow the exact same conduct rules as everyone else, and **reporting sexual harassment against senior management** is your legal right.

☑ You Are Guaranteed an Unbiased Inquiry

One of the biggest fears employees have is retaliation—especially when complaining about a powerful figure. These rulings protect you from conflict of interest:

- If the accused boss answers to a board, your company's **Internal Committee (IC)** handles the case.
- If the accused boss is the ultimate owner or CMD who controls the company, the case moves to the independent government **Local Committee (LC)**.

Either way, the law ensures your complaint is never judged by people who are under the direct thumb of the perpetrator.

☑ What to Do If You Need to File a Complaint Against a Boss

If you ever need to figure out **how to file a PoSH complaint against a boss,** follow these simple steps:

- **Document Everything:** Save timestamps, emails, chat messages, or call logs. Write down notes about what happened, when, and where.
- **Submit Your Written Complaint:** Send your complaint to your company's Internal Committee.
- **Let the Committee Route It:** You don't need to worry about figuring out whether your boss is an "Employee" or "Employer." The IC and legal advisors will assess the organizational structure and route the case to the Local Committee if a direct conflict of interest exists.

Workplace harassment protection applies to every employee of the office, from the front desk all the way to the executive suite.

How Companies Should Handle Complaints against Senior Leadership

When a senior leader is named in a report, HR teams and Internal Committees (ICs) must act with extreme care to maintain fairness and protect the integrity of the process.

Here are the operational steps organizations should take for effective **PoSH compliance for companies** when a senior executive is accused:

Act Immediately to Check for Conflicts of Interest

The biggest risk during an inquiry into top management is an **Internal Committee conflict of interest in PoSH cases**. If an IC member reports directly to the accused executive in their daily job, they might feel pressured or conflicted.

- Any IC member with a direct reporting line to the accused should voluntarily recluse (step down) from that specific inquiry.
- The company should temporarily swap in a neutral alternate member to keep the panel completely unbiased.

Verify the Reporting Hierarchy Early

To decide whether the IC has jurisdiction or if the case belongs with the District **Local Committee (LC)**, the IC must immediately review the organizational structure:

- Does the accused leader report to a Board of Directors, a parent company, or a Governing Council? If yes, the IC proceeds with the inquiry.
- Is the accused leader the sole, ultimate authority with no higher governing body? If yes, the IC should assist in transferring the case to the Local Committee.

Rely Heavily on the External IC Member

Under the PoSH Act, every IC must include an independent **External Member**, usually an expert from an NGO, a lawyer, or a PoSH specialist. When investigating senior leaders, the External Member plays one of the most important role in keeping the proceedings objective, fair, and legally sound.

Provide Strong Interim Relief

Senior leaders often hold significant power over budgets, appraisals, and team structures. To prevent implicit pressure or retaliation during the inquiry, the IC should recommend immediate interim measures, such as:

- Temporarily reassigning project reporting lines.
- Placing the accused leader on administrative leave during the investigation.
- Offering flexible or remote work options for the complainant.

Workplace Accountability Has No Title

Workplace dignity is a right, not a corporate privilege. Whether a boss answers to a Board of Directors or holds ultimate power over an office, the law guarantees that every complaint is heard by an unbiased panel, be it your company's Internal Committee or the government's Local Committee.

For employees, this means you never have to tolerate unwelcome behaviour out of fear that a senior leader is "too powerful" to be held accountable. For companies, it serves as a reminder that PoSH compliance for companies requires strong conflict-of-interest checks, and a zero-tolerance culture that starts at the very top. At the end of the day, a safe workplace is built on a very simple promise; everyone deserves respect, regardless of their job title,

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August Edition

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The thin line between Employer and Employee under PoSH

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Your **legal queries**, addressed with **expert insight**.

Q Can our company's Internal Committee really investigate a Managing Director?

Yes! If the Managing Director or Director reports to a Board of Directors, a parent company, or a Governing Body, they are legally an **employee**. The company's Internal Committee (IC) has full legal authority to investigate them **(Kerala High Court precedent)**.

Q What if the person who harassed me is the ultimate owner or founder of the company?

If the accused person holds ultimate operational control and answers to no higher board, they are considered the **employer**. In this case, your complaint goes directly to the district government's **Local Committee (LC)** so you get an independent, unbiased inquiry **(Calcutta High Court precedent)**.

Q Won't IC members be afraid to investigate their own big boss?

The law anticipates this! To prevent pressure or bias, any IC member who reports directly to the accused executive must step down from the inquiry. Additionally, every IC includes an independent **External Member** (like a lawyer or NGO expert) who ensures the process stays fair and objective.

Q What happens if a Director is found guilty by the IC? Who executes the punishment?

The Internal Committee submits its final report and binding recommendations directly to the **Board of Directors** or Governing Body. By law, the Board must execute the disciplinary action such as suspension, removal, or termination within 60 days.

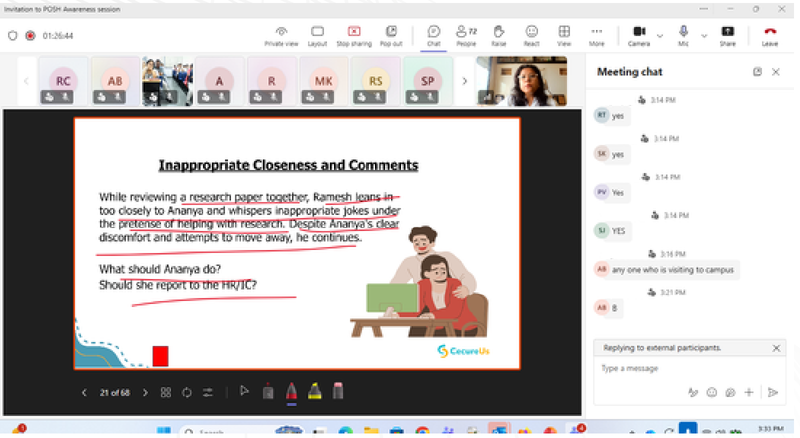
Q Do I need to figure out if my boss is an "Employee" or "Employer" before filing?

No, you don't! You simply submit your complaint to your company's IC. The committee, alongside legal advisors, will check the corporate structure and automatically route the case to the government Local Committee if a direct conflict of interest exists.

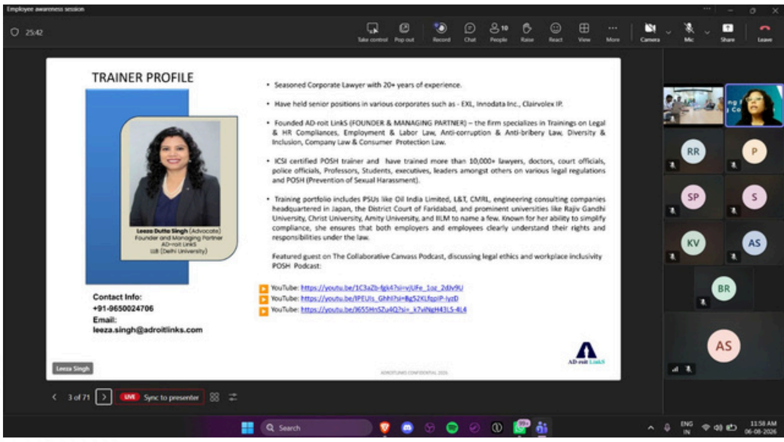
Highlights in Frames

PoSH Training at KK Create

Online PoSH Training at NICMAR



Online PoSH Training at Bridge Green Upcycle



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