

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 8th OF NOVEMBER 2024

WRIT PETITION No. 10021 of 2024

DR. KALI CHARNA SABAT

Vs.

U.O.I. THROUGH NATIONAL INSTITUTE OF TECHNOLOGY & OTHERS

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Appearance:

*Shri Manoj Sharma – Senior Advocate with Ms. Lavanya Verma –
Advocate for the petitioner.*

Shri Yogesh Bhatnagar – Advocate for respondents.

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Heard on : 30.07.2024

Pronounced on : 08.11.2024

ORDER

Looking to the issue involved in the case that the petitioner was dismissed from service by way of punishment passed in a departmental enquiry but that has been questioned by the petitioner that the enquiry has been conducted in complete violation of principles of natural justice and contrary to the procedure prescribed under the law and as such, an order has been passed by this Court on 21.05.2024 directing the respondents to file an affidavit/counter to the petition. Reply has been submitted. Since pleadings are complete and counsel for the parties are ready to argue the matter finally, therefore, it is finally heard.

2. This petition is under Article 226 of the Constitution of India asking the following reliefs:-

“(i.) That, this Hon’ ble court be pleased to issue a writ in the nature of certiorari to quash the impugned arbitrary and utterly perverse termination order dt. 29/02/2024 (P/2) & all three inquiry reports of ICC dt. 03/11/2022 (P/11), 14/09/2023 (P/51) & 25/01/2024 (P/58) with charge sheet dt.20/01/2023 (P/11) passed by the registrar.

(ii) That, this Hon’ ble court be pleased to issue a writ in the nature of certiorari to quash the impugned suspension order dt.30/12/2022 (P/12) & extensions of suspension orders dt. 29/03/2023 (P/13), 25/09/2023 (P/14) & 26/12/2023 (P/15) as they were illegally issued. passed by the registrar.

(iii) That, this Hon’ble Court be pleased to direct the respondents to extend the all-consequential benefits.

(iv) Issue any other writ, order or direction as this Hon’ble Court deems fit.”

3. Considering the relief claimed and the averments made in the petition, it is clear that by order dated 29.02.2024 (Annexure P/2), services of the petitioner, who was working in the Institution of respondent No.2 have been terminated with effect from 23.02.2024 from the post of Assistant Professor Grade-II. The said order has been assailed by the petitioner *inter-alia* on grounds that proper procedure for conducting enquiry, especially proper opportunity of hearing has not been given to him and principles of natural justice have not been followed.

4. To resolve the controversy involved in the case and to answer the rival contentions made by counsel for the parties, it is apt to bring certain facts on record in a nutshell, which are as under:-

4.1. That the petitioner was working as Assistant Professor in the Department of Materials and Metallurgical Engineering of Maulana Azad National Institute of Technology Bhopal (hereinafter referred to as the 'Institution'). As per the petitioner, one Dr. C. Sasikumar (respondent no.3), the senior most faculty in the Institution had some personal issues with him and was after him ever since he joined in the Department of respondent No.3 in the Institution. The petitioner did not have any laboratory for carrying out experiments for undergraduate students and lab space for carrying out his research because the respondent No.3 who was the oldest faculty of the department, forcefully occupied most of the lab spaces and major instruments of the department, as if it was his personal property.

4.2 The petitioner after joining, tried his best to take up some major projects and also tried to build some major collaborations. The petitioner knowing that he did not have any lab space requested the respondent No.3 to let him utilize his occupied instruments and lab facilities. However, respondent No.3 instead of cooperating, suggested the petitioner to write some project proposals in which the respondent No.3 will be the principal investigator. As per the petitioner, he would have readily agreed to his proposal, but he could not accept it because their research areas are different. Finally, petitioner could not get any lab space in his Department.

4.3 Even without lab space, due to petitioner's immense efforts, he could get a DST project worth around 46 lakhs, the presentation of which was to be held in April 2024. He submitted a collaborative project (worth 4 crores) of Ministry of Steel in collaboration with Jindal Steel and Power, and Indian Institute of Technology (Banaras Hindu University), which was in its final stage of approval. The petitioner was

also in the final stage of developing a mineral processing laboratory (worth 2.90 crores) between respondent/Institution and in smart systems Hyderabad.

4.4 The respondent No.3 was jealous of petitioner's achievements, therefore, he planned a conspiracy against the petitioner with the help of his major project students. He prepared some students by threatening or by allurements and as a result, some false complaints got registered against the petitioner. As per the petitioner, in the statement of complainants, they have admitted that they have been compelled to make false complaints against him.

4.5 That on 30.07.2022, as stated by respondent No.3, two female students came to his cabin to complain about the conduct of the petitioner but instead of referring the matter to the Internal Complaint Committee (ICC), it was referred to respondent No.4 who was his female friend and as such, they started conspiracy against the petitioner. It is pertinent to mention here that respondent No.4 was not an ICC member and as such, disclosing to her about conduct of the petitioner is violation of Section 16 of 'The Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013' (hereinafter referred to as the Act of 2013) because that is a penal provision in which penalty is also provided as per section 17 of Act of 2013.

4.6 That on 01/08/2022, after discussing with respondent No.4, false complaints were prepared with same hand-written complaints from 2nd, 3rd and 4th year students, addressed to respondent No.4, but according to the petitioner, it was in fact fabricated by some male students that too under the influence of respondent No.3. In the complaint, it was claimed that being a class representative, it was their duty to make

complaint against the conduct of the petitioner and as such complaints were signed by male students showing themselves to be a class representative. As per the petitioner, all those complaints were false and prepared at the instance of respondent No.3.

4.7 As per the petitioner, those complaints were not signed by any female student but was prepared by the male students maliciously claiming themselves to be the class representative and as such, representation was made to the Director of the Institution on 16.02.2023 requesting him to investigate and to take action against the petitioner on the complaints made by the students.

4.8. That, on 03.08.2022, respondent No.4 along with some female students met Dr. Namita Srivastava, the then ICC Chairman so as to convince her about the complaints made against the petitioner and she assured to initiate action against him. However, as per the petitioner, it is required under the provisions of the Act of 2013 that the complaint should be made atleast before minimum three Members Committee. The petitioner has alleged that constitution of ICC was not as per the requirement of the Act of 2013 or also as per the Regulation called “University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 (hereinafter referred to as the ‘Act of 2015’) but despite that, it was proposed to take disciplinary action against the petitioner. As per the petitioner, the presence of respondent No.4 was not required yet he was present and the students of 2nd, 3rd and 4th year who had made the complaints were requested telephonically by the ICC to attend the meeting on 07.09.2022 yet they did not turn up. The respondent No.4 without any authority remained present which in fact is violation of Sections 16 and 17 of the Act of

2013 and otherwise also according to the petitioner reveals his *mala fide* intention.

4.9 It is averred in the petition that on the basis of false complaints made and in violation of all norms of Act and Rules of 2013, the respondents No.3 to 5 in a conspiracy finally made complaints to the Committee of the Institution and requested an enquiry about the said conduct of the petitioner relating to sexual harassment of female students. On 15.09.2022, a complaint was made to the Committee by the respondent No.3 which is Annexure P/9 in pursuance of which a notice dated 20.09.2022 was issued to the petitioner by the respondent No.5 asking him to attend the meeting of ICC on the same day at about 4 p.m. Although, petitioner had submitted reply to the ICC but they needed the reply in a specific format within four hours. The petitioner was very busy with his examination duty and other urgent official works and, therefore, it was not possible for him to give reply in proper format within such a short time and therefore, reply could not be submitted within the said period. Although, when it was submitted, the ICC Chairman, Dr. Namita Srivastava, did not accept it and passed *ex parte* order, prepared enquiry report by ICC on 03.11.2022 (Annexure-P/11). As per the petitioner, the said report has been prepared in complete violation of provisions of the Act and Rules of 2013 and also in violation of principles of natural justice. Thereafter the petitioner was placed under suspension by order dated 30.12.2022 (Annexure-P/12).

4.10 As per the petitioner, the complaints were false and outcome of the malicious conspiracy of respondent No.3 against him because he was jealous of him and as such, he was being harassed, victimized by him with the help of his colleagues. It is averred in the petition that as per Section 11 of the Act, 2013, the allegations made in the complaints

are required to be investigated and enquired about as per the provisions of Service Rules applicable to the respondent-Institution. As per the petitioner, the enquiry has to be conducted as per Central Civil Services (Conduct) Rules, 1964 (hereinafter referred to as the 'Rules of 1964') and also Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as 'Rules of 1965'). It is further averred in the petition as to in what manner, the complaints and allegations made therein could have been ascertained and final decision would be taken. Although petitioner made a request to the respondent No.2 for revocation of his order of suspension, but that request was turned down.

4.11 By memorandum dated 20.01.2023, disciplinary enquiry was proposed against the petitioner and charge-sheet was also issued to him with Article of Charges along with list of documents and list of witnesses.

4.12 As per the petitioner, the Complaints' Committee established in each University or Department is authorized to be the Enquiring Authority appointed by the Disciplinary Authority and if there is no specific procedure, then the said Committee shall hold the enquiry as far as practically possible in accordance with the procedure laid down in Rule 14 of the Rules of 1965. It is alleged in the petition that there is a complete violation of procedure prescribed while conducting enquiry against the petitioner. According to the petitioner, neither any evidence has been adduced nor any opportunity was granted to him to cross examine the witnesses and as such, there is complete violation of principles of natural justice. As per the petitioner, whatever procedure was followed by the respondents is, unknown to law. If overall conduct of the Enquiry Committee is seen, it is clear that the right of defence

has been completely snatched away from the petitioner and one sided decision has been taken by the authority because the enquiring authority had not accepted the request of the petitioner to adduce evidence and even the written evidence submitted by him, were not taken on record. According to the petitioner, there was no personal hearing provided whereas it was only on papers which is an eye wash and just an empty formality. Although the petitioner submitted a detailed representation raising grievance therein that his evidence was not taken note of but the said representation was also not considered, on the contrary, enquiry report was submitted asking the petitioner to submit his reply within ten days which was submitted by him on 12.02.2024, but that was also not taken note of and the final order of terminating petitioner's services has been passed illegally. Hence, this petition has been filed on various grounds mainly on grounds that the enquiry conducted by the respondents is an empty formality; procedure prescribed was not followed and no opportunity to the petitioner to defend himself was granted and as such, enquiry was in violation of principles of natural justice. It is also claimed that none of the complaints were found proved as no complainant was examined and as such, according to the petitioner, it is a case of no evidence as no opportunity was granted to the petitioner to cross examine any of the complainants and as such, the enquiry which is the foundation of the order of termination, is in fact, no enquiry in the eyes of law.

5. Learned counsel for the petitioner has placed reliance upon the judgments in case of **Ruchika Kedia vs. The Internal Complaints, Goa Institute of Management and others passed in W.P. No. 690/2019-**, **Abhilash T. vs. Anamika Prajin & others passed in W.A. No. 1115/2022**, **Smt.Bindu Tripathi @ Bindu Singh vs. Dr.**

Shakuntala Misra (Misc. Bench No. 18346/2021) (Allahabad High Court – Lucknow Bench), Somaya Gupta vs. Jawaharlal Nehru University and Anr. - W.P. (C) No. 7915/2018 decided on 27.08.2018 and in case of **Dr. Bibekananda Mukherjee vs. University of Kalyani and others – WPA No. 11530/2022.**

6. The respondents have filed their reply raising preliminary objection with regard to maintainability of the petition mentioning therein that the petition is barred by Section 29 of the National Institute of Technology Act, 2007 (For short ‘Act, 2007’) which provides any dispute arising out of a contract between an Institute and any of its employees shall, at the request of the employee concerned or at the instance of the Institute be referred to a Tribunal of Arbitration consisting of one member appointed by the Institute, one member nominated by the employee, and an Umpire appointed by the Visitor. It further provides that the decision of the Tribunal shall be final and shall not be questioned in any Court but instead of doing so, the petitioner has directly approached this Court in a petition filed under Article 226 of the Constitution of India and therefore this petition is not maintainable. In this regard, the respondents have also relied upon a decision rendered in the case of **State Bank of Bikaner & Jaipur vs. Nemi Chand Nalwaya** reported in (2011) 4 SCC 584. It is also stated by the respondents that this Court will neither act as an appellate authority nor impose its own view by replacing the view already taken by the authority.

7. The respondents have further stated that the petition is also not maintainable as the Supreme Court has been repeatedly saying that the High Court cannot act as an appellate authority and cannot reassess the evidence and as such in a matter of domestic enquiry since the scope of

interest by the court is not available, therefore the petition is not maintainable. According to the respondents, the enquiry has been conducted in accordance with the procedure prescribed. According to them, the order sheet dated 24.08.2023 reveals that the petitioner has shown his confidence in the enquiry officer, who has followed the proper procedure for conducting the enquiry and statement of witnesses clearly demonstrate that the charges levelled against the petitioner are found proved and therefore punishment imposed against the petitioner cannot be said to be excessive and as such, in a matter of departmental enquiry interference by the Court in a petition filed under Article 226 of the Constitution of India is impermissible. In this regard, learned counsel for the respondents has relied upon decision rendered by a Division Bench of Allahabad High Court in case of **Indian Institute of Technology vs. Rishabh Jha** reported in (2017) 4-ADJ 715 and also in cases of **Avnish Nagra vs. Navodaya Vidyalaya Samiti and others** reported in (1997) 2 SCC 534, **Satish Chandra Anand Vs. Union of India** reported in AIR 1953 SC 250 (Full Bench), **B.C. Chaturvedi v. Union of India** reported in (1995) 6 SCC 749, **Dr. Ashutosh Sharma vs. School of Planning and Architecture, Bhopal & others – WP No. 11403/2009 (decided on 6th October, 2010)** and **Sanjay Upadhyay vs. The State of Madhya Pradesh & others-WP No. 5013/2017 (decided on 6th September, 2021)**.

8. Considering the submissions made by the learned counsel for the parties and on perusal of record, the following questions emerge to be adjudicated in the present case:

“(1) Whether enquiry conducted by the respondents against the petitioner was in accordance with law and the procedure prescribed therein?”

(2) During the course of enquiry whether the enquiry committee followed the principles of natural justice or not?

(3) Whether the enquiry is vitiated on the ground that the same has not been done in accordance with law and the manner in which it should have been done as per law and it deserves to be set aside as principles of natural justice has not been followed?”

9. However, before deciding the aforesaid questions, this Court is under obligation to first deal with the preliminary objection raised by the respondents with regard to maintainability of the petition.

10. Though, learned counsel for the respondents has pointed out that as per Section 29 of the Act, 2007, petition under Article 226 of the Constitution of India cannot be filed directly before the High Court. First, alternative remedy available could have been availed by the petitioner, but according to counsel for the petitioner, under the existing circumstances when enquiry and punishment based thereupon are clear sign of violation of principles of natural justice, then alternative remedy is not a remedy which was to be followed mandatorily prior to approaching the Court and as such according to counsel for the petitioner, the submission so advanced by counsel for the respondents is misconceived and nothing wrong has been committed by filing a petition under Article 226 of the Constitution of India. Here, Section 29 of the Act, 2007 plays an important role to resolve the dispute which reads as under:-

“29. (1) Any dispute arising out of a contract between an Institute and any of its employees shall, at the request of the employee concerned or at the instance of the Institute be referred to a Tribunal of Arbitration consisting of one member appointed by the Institute, one member nominated by the employee, and an umpire appointed by the Visitor.

- (2) The decision of the Tribunal shall be final and shall not be questioned in any court.
- (3) No suit or proceeding shall lie in any court in respect of any matter which is required by sub-section (1) to be referred to the Tribunal of Arbitration.
- (4) The Tribunal of Arbitration shall have power to regulate its own procedure.
- (5) Nothing in any law for the time being in force relating to arbitration shall apply.”

On perusal of aforesaid, it is clear that it is the choice of the employee to avail the forum of Arbitration, but it does not mean that in every dispute between the employee and the Institute, such a remedy of Arbitration has to be availed. If this Court find substance in the submission so advanced by counsel for the petitioner in respect of violation of principles of natural justice, then it will consider whether petition is maintainable or not, but so far as Section 29 of the Act, 2007 is concerned, I am of the opinion, it does not preclude the petitioner from availing remedy available under Article 226 of the Constitution of India because it is the choice of an employee to refer a dispute to the Arbitration Tribunal, if he/she so desires and as is clear from the record that the petitioner being an employee has not made any request to refer the dispute to the Arbitration Tribunal and under such circumstances, it would not come in his way to file a petition under Article 226 of the Constitution of India.

11. Since the questions framed by this Court to be answered in this case are interconnected with each other, therefore, instead of answering them separately, the said questions are being answered by this Court analogously as per the observations made herein-below:-

12. The record reveals that the Board of Governors (BoG) in its 70th meeting held on 13.12.2022 in the capacity of disciplinary authority approved the decision for initiating the disciplinary proceeding against

the petitioner based upon a preliminary investigation report of Internal Complaint Committee (ICC) and an order in this regard was passed on 30.12.2022 (Annexure P/12) placing the petitioner under suspension. Thereafter, vide order dated 20.01.2023 (Annexure P/18), a memorandum was issued to the petitioner containing Statement of Articles of Charge along with Statement of Imputation of Misconduct or Misbehavior in support of the Articles of Charge and also the list of documents and the witnesses. Thus, the enquiry was to be conducted as per Rule 14 of the Rules, 1965 in view of the amendment made in sub-rule (2) of Rule 14 of Rules, 1965 which reads as under:-

“**14 (2)** Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof:

[“Provided that where there is a complaint of sexual harassment within the meaning of Rule 3-C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee Established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules.”]”

13. The misconduct as alleged against the petitioner is provided in Rule 3-C of the Rules, 1964, which reads thus:-

“**3C. Prohibition of sexual harassment of working women :-**

(1) No Government servant shall indulge in any act of sexual harassment of any woman at any work place.

(2) Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at the work place. Explanation. -

(I) For the purpose of this rule, -

- (a) "sexual harassment" includes any one or more of the following acts or behaviour (whether directly or by implication) namely : -
- (i) physical contact and advances; or
 - (ii) a demand or request for sexual favours; or
 - (iii) making sexually coloured remarks; or
 - (iv) showing pornography; or
 - (i) any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.
- (b) the following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment : -
- (i) implied or explicit promise of preferential treatment in employment; or
 - (ii) implied or explicit threat of detrimental treatment in employment; or
 - (iii) implied or explicit threat about her present or future employment status; or
 - (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
 - (v) humiliating treatment likely to affect her health or safety.
- (c) "workplace" includes,-
- (i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government;
 - (ii) hospitals or nursing homes; Page 5 of 21 CENTRAL CIVIL SERVICES (CONDUCT) RULES, 1964
 - (iii) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
 - (iv) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
 - (v) a dwelling place or a house."

14. The Act, 2013 has been made with an object to create workable atmosphere for the women in the workplace and to provide them right of equality, life and liberty and to avoid insecure and hostile work environment in working place. Such an Act has been introduced so as to punish a person who violates the provisions of the Act, 2013. If any of the misconduct, as has been defined under Rule 3C of the Rules, 1964

is committed, then complaint has to be made by an aggrieved woman as per Section 9 of the Act, 2013.

15. As per Section 9 of the Act, 2013, a complaint of sexual harassment has to be made by any aggrieved woman to the Internal Committee or the Local Committee within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident. For the purpose of convenience, Section 9 of the Act, 2013 is quoted herinbelow:-

“9. Complaint of sexual harassment.—(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months , if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.”

However, Section 10 of the Act, 2013 provides as to in what manner complaint made by the aggrieved woman has to be dealt with. Section 10 prescribes that the Internal Committee or a Local Committee before initiating any enquiry in the matter may try to settle the dispute by referring the matter for conciliation and thereafter enquiry shall be

conducted as per Section 11 of the Act, 2013. Section 11 of the Act, 2013 reads as under:-

“11. Inquiry into complaint.— (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;
and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.”

The language used in the aforesaid provision makes it clear that the Committee is under obligation to make an attempt to settle the matter by way of conciliation and if it fails then only the matter has to be enquired into as per Service Rules. There is a complete violation of the provision of Sections 10 and 11 of the Act, 2013.

16. In the facts and circumstances of the case and also the submissions made by counsel for the petitioner, it is necessary to consider the requirement of Section 9 of the Act of 2013. Section 9 quoted hereinabove very clearly provides that the complaint should be made within a period of three months from the date of last instance that too by the aggrieved woman as specified in Section 2(a) but the complaints i.e. Annexures P/6 to P/8 narrating the incidents were made beyond the period of three months from the date of the incident. Rule 7 of Rules of 2013 provides the manner in which complaint has to be filed but the complaints Annexures P/6 to P/8 do not fulfill the said requirement. Rule 7 is required to be reproduced hereinbelow so as to ascertain whether that has been followed or not:-

“7. Manner of Inquiry into complaint.- (1) Subject to the provisions of section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.

(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (I) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub•rule (I).

(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.

(5) The Complaints Committee shall have the right to terminate the inquiry• proceedings or to give an ex-parte decision on the

complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:

Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present.”

17. On 20.09.2022, petitioner was issued notice i.e. Annexure P/10 to appear before the ICC but that notice does not specify about supplying the complaints/documents as mandatory as per Rule 7 of Rules of 2013. The enquiry was finalized by the ICC and report prepared i.e. Annexure P/11 without giving any opportunity of hearing to the petitioner and it is in clear violation of Rule 14 of Rules of 1965. The enquiry report does not reveal whether any complainant appeared or was produced during the course of enquiry and whether petitioner was granted any opportunity to cross-examine them or not. Only on the basis of charges levelled and reply submitted by the petitioner, the Enquiry Committee prepared its report and supplied it to the petitioner on 20.11.2022.

18. The Supreme Court in case of **Medha Kotwal Lele and others Vs. Union of India and others** reported in (2013)1 SCC 297 has observed as under:-

“ 44. In what we have discussed above, we are of the considered view that guidelines in Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place:

44.1. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (by whatever name

these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings, etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

44.2. The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in para 44.1 within two months.

44.3. The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and State level. Those States and/or Union Territories which have formed only one committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such committees an independent member shall be associated.

44.4. The State functionaries and private and public sector undertakings/organisations/bodies/institutions, etc. shall put in place sufficient mechanism to ensure full implementation of Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] guidelines and further provide that if the alleged harasser is found guilty, the complainant victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.

44.5. The Bar Council of India shall ensure that all Bar Associations in the country and persons registered with the State Bar Councils follow Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] guidelines. Similarly, the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by Vishaka [Vishaka v. State of Rajasthan, (1997) 6

SCC 241 : 1997 SCC (Cri) 932] . To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as the Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] guidelines and the guidelines in the present order.”

As per the observation made by the Supreme Court, especially in para 44.1 that the report of the Complaints Committee shall be deemed to be an enquiry report in a disciplinary action under such Civil Services Conduct Rules. The disciplinary authority shall treat the report/findings of the Complaints Committee as the findings in a disciplinary enquiry against the delinquent employee and shall act on such report accordingly. It is also observed therein that the findings and the report of the Complaints Committee shall not be treated to be a mere preliminary investigation or enquiry leading to a disciplinary action but shall be treated as a finding/report in an enquiry into the misconduct of the delinquent.

19. The Kerala High Court in case of **AIR India Limited and others Vs. L.S. Siby and others** reported in **2018 SCC Online Kerala 13878** has observed as under:-

“The learned Single Judge found, according to us rightly, that the procedure as laid down by the office memorandum is in contravention of the statute and hence cannot be held to be valid. Looking at the Act and the Central Civil Services (Classification, Control & Appeal) Rules, the learned Single Judge found that the enquiry conducted under Section 11 of the Act is a full-fledged enquiry, leading to a finding of guilt or otherwise of the delinquent against whom charge of sexual harassment is made. The learned Single Judge also referred to *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 312.

6. We are surprised that even then the Air India, a public sector undertaking, sought to file an appeal again relying on the office memorandum and seeking to justify the procedure adopted by them of a preliminary enquiry conducted behind the back of the delinquent employee. We need only refer to Medha Kotwal Lele and the directions issued therein, after hearing the learned Attorney General for Union of India, which reads thus:—

“2. Notice had been issued to several parties including the Governments concerned and on getting appropriate responses from them and now after hearing the learned Attorney General for UOI and the learned counsel, we direct as follows:

“Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka case, (1997) 6 SCC 241: 1997 SCC (Cri) 932, at p.253, will be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 (hereinafter called the CCS Rules) and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the Rules.”

7. It was also directed that similar amendments be carried out in the Industrial Employment (Standing Orders) Rules. In the teeth of the specific directions issued by the Hon'ble Supreme Court under Section 141, there is no scope for the office memorandum or the procedure brought therein to survive.

8. Hence, going by the directions of the Hon'ble Supreme Court, the enquiry conducted by the ICC should be a full-fledged enquiry complying with the principles of natural justice. However, we endorse the findings of the learned Single Judge, insofar as the cross-examination of the complainant, which has to be done after an assessment of their mental state and also adopting such measures as would not put the complainant to further jeopardy, providing an amicable atmosphere which would put the victim at ease and capable of freely deposing without fear and being subjected to any further harassment. At the same time, it has to be ensured that the delinquent employee is afforded a proper opportunity to elicit answers in his defence. The ICC could arrange the chief and cross-examinations being carried out through electronic systems, without the victim having to face the alleged aggressor. As of now, we are of the opinion that the learned Single Judge was perfectly justified in having set aside the report, which was prepared without following a fair procedure. The Committee will have to comply with the impugned judgment, and proceed with the enquiry as contemplated under the Act and conclude it either way.

9. In this context, we also have to notice the submission made by the learned Senior Counsel on behalf of the 1st respondent, about

the subsequent events, which according to the first respondent belies the factum of the complaint said to have been raised by 17 female employees of AI-SATS. It is the specific submission that the complaints were found to be forged, in an investigation conducted on the basis of a private complaint lodged by the 1st respondent. The 1st respondent has specifically alleged that the complaints were on the instigation of the Vice-President of AI-SATS, who was in inimical terms with the 1st respondent for reason of certain activities of AI-SATS having been brought to the notice of the Air India as also the C.B.I. and Central Vigilance Commissioner. There is a criminal complaint filed against the said Vice-President, who is no more in the service of the AI-SATS, wherein the police had, after investigation, removed the said person from the array of accused. Original Petition is filed as O.P. (Crl) No. 193/2018 against the removal of the 1st respondent from the FIR. It is submitted that there are contradictory statements filed in the said Original Petition by the investigating officer and it would indicate that the entire allegations are cooked up and are at the instigation of the higher-ups in AI-SATS.

10. We need not go into all these allegations at this stage, since we are only concerned with the proceedings taken by the ICC on the complaints levelled by 17 female employees of AI-SATS. We need just notice that only one complainant turned up before the ICC as per Annexure R1(a) report; but who looked visibly upset and could depose only after sustained pacification. The fact that only one complainant turned up is inconsequential as the graveness of the charge of sexual harassment even if against one individual has to be treated with all seriousness. Then there is a reservation on the part of the victims to face the rigour of a legal proceeding, even when carried out in-house; which also cannot be discounted. However, we cannot also ignore the fact that considerable time has elapsed and there are reports that many of the said female employees deny having made such a complaint. Taking all the circumstances into consideration, we are of the opinion that the ICC concerned should first summon the 17 female employees and take individual statements from them, in which proceedings the 1st respondent need not be participated. If on such statements, there is an allegation of sexual harassment, then appropriate notice shall be issued to the 1st respondent and a full-fledged enquiry conducted under Section 11 and further proceedings taken under Section 13 in accordance with the directions in Medha Kotwal Lele after issuing a charge sheet. At the enquiry, the victim need not be directed to again repeat the statement and could as well be asked to swear to the statement already recorded and then the delinquent permitted to cross-examine, as per the procedure delineated herein above.”

As per the observation made by the **Kerala High Court**, the enquiry conducted by the ICC should be a full-fledged enquiry complying with the principles of natural justice. It is also observed by the Court that the victim need not be directed to again repeat the statement and could as well be asked to swear to the statement already recorded and then the delinquent permitted to cross-examine, as per the procedure delineated hereinabove. The Court has further observed that the ICC should summon the female employees/complainants so as to take their individual statement and if on such statements, there is an allegation of sexual harassment, then appropriate notice shall be issued to the delinquent and full-fledged enquiry shall be conducted.

20. In the procedure adopted by the respondents in the present case and even after directing the respondents to produce the order-sheets of enquiry, they failed to show as to how and when opportunity was provided to the petitioner to cross-examine the complainants. Even nothing is produced so as to ascertain whether the statement of complainants were recorded during the course of enquiry or not. As such, in absence of any statement of witnesses or an opportunity to cross-examine them, the procedure adopted by the respondents is unknown to law. Thus, it is clear that the respondents have not followed the principles of natural justice so as to ascertain that the charges levelled against the petitioner are found proved. The manner in which the enquiry was conducted and the procedure adopted by the respondents are unacceptable and contrary to law. Only on the basis of complaint made and reply submitted by the respondents, the finding given by the Enquiry Committee cannot be given a seal of approval to prove the charges levelled against the delinquent. Not only this, but the statement of witnesses produced by the petitioner in writing was also

not taken note of.

21. That, on 18.08.2023, a complaint was made by the petitioner to the Enquiring Authority about biasness. The order-sheet dated 24.08.2023 says that the proceeding when taken up, the delinquent on the first meeting held on 01.05.2023 had shown faith in the Enquiring Authority and as such, his objection was not considered. From the order-sheets of enquiry, it is clear that Ms. Bhavi Chaturvedi and Ms. Vartika Sharma joined the proceeding online and conveniently submitted their statements of later dates through e-mail but no opportunity to cross-examine them was given to the petitioner. As per record, the Presenting Officer without having any authority had asked questions to the petitioner even without calling him as a witness which was contrary to the provisions of Rule 14(18) of Rules of 1965 and the enquiry was concluded without opportunity of defence.

22. From perusal of order-sheets of enquiry, it is clear that no procedure was followed by the respondents as provided under Rule 14 of Rules of 1965. This Court can say that the enquiry is nothing but an eye wash because the same was conducted without following any procedure which had to be mandatorily followed. The witnesses did not physically appeared before the Enquiry Officer and no opportunity to cross-examine those witnesses is given to the delinquent, despite that, their statements taken otherwise, such an enquiry is no enquiry in the eyes of law and it is in clear violation of principles of natural justice. Therefore, this Court has no hesitation to hold that from the very inception respondents have not followed any valid procedure for conducting the enquiry or the requirement of provisions of the Act of 2013. Not only this, the procedure to conduct an enquiry as provided under Rule 14 of Rules of 1965 has also not been followed and as such,

the finding given by the Enquiry Officer cannot be considered to be sustainable in the eyes of law and any punishment based upon said finding cannot be allowed to stand.

23. Accordingly, the petition is **allowed**. The impugned order dated 30/12/2022 (Annexure P/12) & extensions of suspension orders dated 29/03/2023 (Annexure P/13), 25/09/2023 (Annexure P/14) & 26/12/2023 (Annexure P/15) are hereby set aside.

(SANJAY DWIVEDI)
JUDGE