

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.643 OF 2017**

Asif Badremunir Tahasildar	)	
Age 35 years, Indian Inhabitant	)	
presently residig at C/o,Shaikhababu	)	
Ramnagar, Gondia Dist Gondia, Maharashtra	)	..Petitioner

Vs.

1. State of Maharashtra	)	
2. The High Court of Judicature at	)	
Bombay through the Registrar General	)	
High Court Bombay	)	..Respondents

**WITH
WRIT PETITION NO.692 OF 2017**

Asif Badremunir Tahasildar	)	
Age 35 years, Indian Inhabitant	)	
presently residig at C/o,Shaikhababu	)	
Ramnagar, Gondia Dist Gondia, Maharashtra	)	..Petitioner

Vs.

1. State of Maharashtra	)	
through The Government Pleader	)	
High Court (O.S.) Bombay	)	
2. The High Court of Judicature at	)	
Bombay through the Registrar General	)	
High Court Bombay	)	..Respondents

Mr. Arshad Shaikh a/w Mr. S. M. Shettigar for the Petitioner
Mr. H. B. Takke AGP for the Respondent State
Mr. Rahul Nerlekar for the Respondent No.2

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL, JJ
RESERVED ON: 25th APRIL 2018
PRONOUNCED ON : 4th MAY, 2018**

JUDGMENT (PER R.M.SAVANT J.)

1 By the above Writ Petition No.643 of 2017 the Petitioner is challenging the order dated 15-7-2016, (Exhibit N) by which order the Learned Registrar General of this Court has informed the Petitioner that the Disciplinary Authority in exercise of the powers conferred by Sub-rule 5(c) of Rule 8 of the Maharashtra Civil Services (Disciplinary and Appeal) Rules 1979, has decided to hold a Departmental Enquiry against the Petitioner. By the orders passed on the same date, the Enquiry Officer was also appointed to enquire into the charges.

 In so far as the Writ Petition No.692 of 2017 is concerned, the said Writ Petition also challenges the order dated 15-7-2016, (Exhibit D) which order is to the same effect as the order impugned in the above Writ Petition No.643 of 2017. By a separate order passed on the said date an Enquiry Officer has also been appointed to look into the charges which are the subject matter of the second Departmental Enquiry.

2 Since the Petitions involve a common question as to whether the Departmental Enquiry could be commenced against the Petitioner in the absence of a written complaint supported by an affidavit, both the Petitions are heard together and are being disposed of together.

3 The facts giving rise to the above Petitions can in brief be stated thus:

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The Petitioner was appointed as a Civil Judge Junior Division. The Petitioner at the relevant time in the context of the Departmental Enquiry was working as a Civil Judge Junior Division in Bhokardan District Jalna. A complaint was received from one Mr. Teple against the Petitioner concerning his tenure as Civil Judge Junior Division, Bhokardan District Jalna. By the said complaint disciplinary action was sought against the Petitioner. The then Learned Principal District Judge, Jalna forwarded the said complaint to the Registrar General of this Court. The complaint was placed before the Disciplinary Committee. The Disciplinary Committee comprising of the Hon'ble Judges of this Court directed the Learned Principal District Judge Jalna to conduct a fact finding enquiry. The report of the fact finding enquiry was thereafter placed before the Disciplinary Committee who decided to initiate a Disciplinary Enquiry against the Petitioner. The Petitioner was accordingly issued a show cause notice along with the memo of charges and statement of imputations. The Petitioner submitted his reply to the said show cause notice. The matter was placed before the Disciplinary Committee who considered the entire material including the reply submitted by the Petitioner, as the said reply was found not satisfactory, the Disciplinary Committee

decided to hold a regular Departmental Enquiry against the Petitioner. It is by the impugned communication dated 15-7-2016 that the Petitioner was communicated the said decision which as indicated above is the subject matter of the above Writ Petition.

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4 Information was received by the Learned Principal District Judge, Kolhapur as regards the incident which had taken place on 16-7-2015 involving the Petitioner. In the said incident the Petitioner had allegedly assaulted the bus driver of the school bus of his daughter and thereafter threatened the driver and the owner of the bus that he would involve them in a case under Section 307 of the Indian Penal Code, 1860 and put them behind bars for a period of 4 days. Pursuant to the said information which the Learned Principal District Judge Kolhapur had received, he directed the Learned District Judge-3, Kolhapur to conduct a discreet enquiry in respect of the said incident. The Learned District Judge-3 proceeded to Ajara, District Kolhapur which was the place of posting of the Petitioner and conducted a discreet enquiry in respect of the said incident which had allegedly taken place on 16-7-2015. In the course of the said discreet enquiry, the Learned District Judge-3 recorded the statements of the driver, owner of the school bus and some other persons and accordingly submitted his report to the Learned

Principal District Judge. The Learned Principal District Judge upon receipt of the said report in turn submitted his report to the Learned Registrar General of this Court. The matter was thereafter placed before the Disciplinary Committee of this Court. Thereafter on 5-1-2016 the Disciplinary Committee considered the said report and decided to initiate disciplinary action against the Petitioner. The Petitioner was served with a show cause notice with the articles of charges and statement of imputations. The Petitioner has filed his reply to the said show cause notice on 17-5-2016. The matter was placed before the Disciplinary Committee along with the Petitioner's reply and the report of the Learned Principal District Judge. As the Petitioner's reply was not found to be satisfactory, the Disciplinary Committee decided to initiate regular Departmental Enquiry against the Petitioner which decision was communicated to the Petitioner by the impugned order dated 15-7-2016. As indicated above by an order passed on the same day the Enquiry Officer was also appointed to look into the charges alleged against the Petitioner.

5 At this stage it would be relevant to refer to the charges which are alleged against the Petitioner. The said charges are reproduced hereunder:

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(First Departmental Enquiry)

Charge-1

That during your tenure at Bhokardhan you were staying in rented house owned by Shri Bismilla

Khan Mahetab Khan r/o Bhokardhan. In your letter dated 08.04.2010 addressed to Executive Engineer, P. W. D., Jalna you had informed the Executive Engineer that as no Government accommodation was available for you at Bhokardhan, the Principal District Judge, Jalna had granted permission to you to stay in private accommodation on rental basis. Accordingly you had acquired house of Shri Bismilla Khan Mahetab Khan at Bhokardhan on rent of Rs.6,000/- and requested him to issue Certificate in that regard. The copy of said letter was also addressed to the Sub-Divisional Officer, P. W. D., Jalna. After the dispatch of the said letter addressed to the Executive Engineer, P.W.D. Jalna, you had carried out correction in your own handwriting by re-writing the figure Rs.5,000/- as Rs.6,000/- and in words Rupees Five thousand as Rupees Six thousand. As per your oral direction the Sub-Divisional Officer, P. W. D., Jalna also made correction in copy of your letter addressed to him. However, in the office copy maintained by the office, no such corrections have been carried out and the amount of rent is written as Rs.5000/- per month in figures as well as in words. Thus by misusing your official position you had made corrections in forwarding letter later on for your personal benefit.

Charge-2

That you had submitted medical bill of Rs.20,513/- regarding treatment of your wife, Smt. Najnin Tahasildar for reimbursement. In order to get medical reimbursement bill you produced false documents i.e. "Mata Balak Saurakshan Card (ANC Card) purporting to be signed by the Medical Officer, Rural Health Centre, Bhokhardhan, and that by producing such false documents you obtained the amount of Rs.20,513/- on 22.11.2010, you thus not only produced false document but used the said false document (ANC Card) for encashing medical bill knowing that it was a false document and thereby

caused wrongful gain to yourself and wrongful loss to the state exchequer and thereby committed gross misconduct.

Charge-3

That from 08.02.2010 till 03-04-2010 you were stationed at Jalna for training, as per the letter dated 17.10.2012 of the District Court, Jalna (जा.क./आस्था ६२६६/२०१२) you had sought permission to leave headquarters for going to Bhokardhan only on 14.03.2010 and 24.03.2010. That during the cross-examination in the departmental enquiry NO.03/2011 initiated against Shri K. E. Teple, Junior Clerk, Civil Court, Bhokardhan you deposed “हे म्हणने खरे नाही की, मी माझ-या पत्नीला ग्रामीण रुग्णालय भोकरदन येथे दि.०९.०२.२०१० व ०६.०३.२०१० रोजी घेउन गेलो नाही” Thus you either made false statement in the cross-examination in the abovesaid departmental enquiry or on 09.02.2010 and 06.03.2010 you went to P. H.C., Bhokardhan, without seeking permission from the principal District Judge, Jalna to leave the headquarter on the abovesaid dates. You, thereby failed to maintain absolute integrity and devotion to duty by indulging in most inappropriate behaviour.

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(Second Departmental Enquiry)

Charge-1

That on 16.07.2015 at 8.15 a.m. one Shri Ashok Laxman Lohar, Driver of school van reached your bungalow to pickup your daughter Ms. Layba for school. After waiting there for five minutes, the driver Shri Ashok started the van. Thereafter you immediately came out of your house and started abusing and beating the said driver. When he tried to run away, your servant caught him and presented him before you then

you again beat him by kick and fist blows. Your abovesaid misbehaviour shows that you failed to maintain judicial discipline or propriety and you conducted yourself in a manner unbecoming of a Judicial Officer and brought great disrepute to the institution as a whole.

Charge-2

After the said incident you called Shri Vijay Jyotiba Kesarkar and Shri Stephen, owners of the vehicle and Shri Ashok Lohar, Driver, during office hours i.e. 11.00 a.m. in the court, talked rudely with them and threatened them that you will detain them for four days. When they apologized, you threatened them that you would file complaint against them by calling the officer of Education Department. You further threatened them that you will file complaint against them under section 307 of I.P.C. to the effect that they were in the van and they purposely tried to run over him. Your abovesaid misbehaviour shows that you failed to maintain judicial discipline or propriety and you conducted yourself in a manner unbecoming of a Judicial Officer and brought great disrepute to the institution as a whole.

Charge-3

That you misused your position to make Shri Vijay J. Kesarkar and Ashok Lohar to take back the statements given by them during the preliminary enquiry and accordingly both of them filed application to withdraw their statements recorded during the enquiry. You thus failed to maintain absolute integrity by indulging in most inappropriate behaviour.

Hence the allegations against the Petitioner in the Second Departmental Enquiry are two fold, one is the alleged assault of the driver of

the school bus by the Petitioner and the second is the threat given by the Petitioner.

6 In so far as the processing of complaint received against the members of sub-ordinate judiciary is concerned, the Hon'ble The Chief Justice of India had issued guide lines which are comprised in his letter dated 3-10-2014 addressed to the Hon'ble Chief Justices of the High Courts. The said guidelines were issued so that a uniform procedure is followed by all the High Courts dealing with such complaints. The background to the issuance of the said guidelines is contained in the said letter dated 3-10-2014. The said guide lines came to be modified by the Hon'ble The Chief Justice of India, which modification was communicated by letter dated 16-3-2017. The modification carried out was in respect of clause (A) of the said guidelines. A reference would be made to the text of the said guidelines a bit later in this judgment.

7 As indicated above, the order dated 15-6-2017 passed by the Learned Registrar of this Court informing the Petitioner of holding of the disciplinary proceedings against him in respect of two sets of charges which are subject matter of the two disciplinary proceedings, is the subject matter of the above Petitions.

8 Heard, the Learned Counsel for the parties.

9 The principal contention of the Learned Counsel appearing for the Petitioner Mr. Shaikh was that the commencement of the Departmental Enquiry against the Petitioner was in breach of the guidelines issued by the Hon'ble The Chief Justice of India as the Departmental Enquiry sought to be commenced against the Petitioner without there being a written complaint and an affidavit in support thereof as mandated by the said guidelines. The Learned Counsel would contend that in cases of the absence of a written complaint and an affidavit in support thereof the Departmental Enquiry commenced against the judicial officers have been quashed and set aside. The Learned Counsel sought to place reliance on the unreported judgment of the Division Bench of the Gujarat High Court in the matter of **Girishkumar Rameshchandra Soni Vs. State of Gujarat & Ors.** dated 15-9-2017 and the judgment of the Apex Court in the matter of **R. C. Sood Vs. High Court of Judicature at Rajasthan & Ors.**¹ The Learned Counsel would contend that though in respect of the second Departmental Enquiry the Petitioner had pursuant to the show cause notice issued to him represented against the said show cause notice and pointed out as to how it was unnecessary to hold a Departmental Enquiry against him. The reply of the Petitioner has not been taken into consideration and neither has the Petitioner been afforded a personal hearing though the Petitioner had requested for the same. It was next contended by the Learned Counsel that in so far as the first Departmental

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Enquiry is concerned i.e. the incidents which have taken place whilst the Petitioner was posted at Bhokardan District Jalna. The complaint made by one Mr. Teple was motivated in view of the fact that the Petitioner was an Enquiry Officer in the preliminary inquiry which was held against the said Mr. Teple. The Learned Counsel would next contend that in so far as the second Departmental Enquiry is concerned, which is in respect of the alleged incident which took place at Ajara, District Kolhapur, whilst the Petitioner was posted there. There is a reference to Advocate Mr. Shailesh Deshpande in the report of the Learned District Judge who carried out discreet enquiry, the said Advocate was not recommended by the Petitioner for appointment to the post of AGP. It was sought to be contended by the Learned Counsel that why the reference to the Advocate Mr. Shailesh Deshpande appears in the report of the Learned District Judge -3 who carried out the discreet enquiry, is unknown.

10 Per contra the Learned Counsel appearing for the Respondent No.2, Mr. Nerlekar would submit that power to hold the Departmental Enquiry against the judicial officer belonging to the sub-ordinate judiciary is conferred by Rule 8(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979. The said Rule confers a wide power on the Disciplinary Authority in so far as holding of the Departmental Enquiry is concerned and the said Rule leaves it to the subjective satisfaction of the Disciplinary Authority whether such an enquiry is required to be held. The Learned Counsel would contend

that in so far as the guide lines are concerned, they have been modified by the subsequent communication dated 16-3-2017 and the words “and/or verifiable material” has been included in the guide lines meaning thereby that a Departmental Enquiry can be commenced either when there is a complaint accompanied by an Affidavit and/or there is verifiable material. In the instant case, the report of the discreet enquiry which report has been forwarded to this Court by the Learned Principal District Judge, comprised the verifiable material on the basis of which the Departmental Enquiry has been commenced against the Petitioner. The Learned Counsel would next contend that in the instant case the Learned Principal District Judge of Kolhapur has submitted a report to this Court for taking appropriate action in the matter of holding of a Departmental Enquiry against the Petitioner. The Learned Counsel would contend that the contention of the Petitioner that at the stage of considering his explanation to the show cause notice the Petitioner is required to be heard, is misconceived . The Disciplinary Authority on the basis of the material which has come on record till that stage which includes the reply, has to only come to a prima facie conclusion that there is material to proceed against the delinquent. The Learned Counsel would next contend that reliance placed on the judgments of the Division Bench of the Gujarat High Court as well as the judgment of the Apex Court in R. S. Sood, is misplaced as the said judgments were rendered in the fact situation as prevailing in the said cases. The Learned Counsel would contend that the Petitioner would obviously have

adequate opportunity to controvert the charges which are levied against him in the Departmental Enquiry that would be held against him. However, on one ground or the other the said Departmental Enquiries have been unduly delayed by the Petitioner. The Learned Counsel would lastly contend that since the Writ Jurisdiction of this Court is invoked against the communication informing the Petitioner of holding of a Departmental Enquiry against him, this court would not exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India. In support of which contention reliance was placed on the following judgments of the Apex Court.

1. Union of India & Anr. Vs. Kunisetty Satyanarayana (2006) 12 SCC 28
2. Special Director & Anr. Vs Mohd. Ghulam Ghouse & Anr (2004) 3 SCC 440
3. Executive Engineer, Bihar State Housing Board. Vs. Ramesh Kumar Singh & Ors. (1996) 1 SCC 327
4. State of Uttar Pradesh Vs. Brahm Datt Sharma & Anr (1987) 2 SCC 179.

11 Having heard the Learned Counsel for the parties we have bestowed our anxious consideration to the rival contentions. In the context of the challenge raised in the above Petitions, the issue that arises is as regards the power of the Disciplinary Authority in the instant case being the Hon'ble the Chief Justice, the Hon'ble Judges of this Court to institute the disciplinary proceedings against the Petitioner. There can be no

dispute about the fact that the Maharashtra Civil Services Rules are applicable.

A useful reference could be made to Rule 8(1) and (2) of the said Rules which are relevant for the purpose of the present Petition:

8. Procedure for imposing major penalties:- (1)

No order imposing any of the major penalties shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 9, or where such inquiry is held under the Public Servants (Inquiries) Act, 1850 (37 of 1850) in the manner provided in that Act.

(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 22-A of Maharashtra Civil Services (Conduct) Rules 1979, the Complaints Committee established in each 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 for sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

Explanation- Where a disciplinary authority itself holds an inquiry under this rule, any reference to an inquiring authority in this rule shall, unless the context otherwise requires, be construed as reference to the disciplinary authority.

A reading of the said Rule 8(2) therefore discloses that the discretion is of the Disciplinary Authority if it is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant. Hence the said Rule (2) can be said to confer a wide discretion in the Disciplinary Authority in the matter of inquiring into the truth of any misconduct or misbehaviour against the Government servant.

12 Now coming to the guide lines which have been formulated by the Hon'ble The Chief Justice of India which are comprised in the letter dated 3-10-2014 they read thus:-

A. The complaint making allegations against members of the Subordinate Judiciary in the States should not be entertained and no action should be taken thereon, unless it is accompanied by a duly sworn Affidavit and verifiable material to substantiate the allegations made therein.

B. If action on such complaint meeting the above requirement is deemed necessary, authenticity of complaint should be duly ascertained and further steps thereon should be taken only after satisfaction of the competent authority designated by the Chief Justice of the High Court.

C. If the above requirements are not complied with, the complaint should be filed/lodged without taking any steps thereon.

The said guidelines were modified and communicated vide letter dated 16-3-2017 issued by the Hon'ble The Chief Justice Of India. The modification carried out which is relevant for the purposes of the present Petition is in clause (A). The modified clause (A) reads thus:

A. The complaint making allegations against members of the Subordinate Judiciary in the States should not be entertained and no action should be taken thereon, unless it is accompanied by a duly sworn Affidavit and/or verifiable material to substantiate the allegations made therein.

(emphasis supplied)

13 Hence by modification the requirement is that a complaint should be accompanied by duly sworn affidavit and/or verifiable material to substantiate the allegations made therein. Hence a complaint can be entertained in two contingencies one is when a complaint is accompanied by a duly sworn affidavit and second is when the complaint contains verifiable material. It is in the light of the said modification that the instant case would have to be considered. The said modification being in the matter of the procedure which is required to be followed prior to holding a Departmental Enquiry, the same would obviously relate back to the date of issuance of the show cause notice, even if the notice is prior to the issuance of the modification.

14 Now coming to the facts of the instant case in so far as the first enquiry is concerned, the same is on the basis of the complaint made by Shri Teple, which was processed by the Learned Principal District Judge Jalna and then a report was submitted to the Learned Registrar General of this Court which was thereafter placed before the Disciplinary Committee which directed the issuance of the show cause notice to the Petitioner pursuant to which the Petitioner replied to the said show cause notice and the reply having been found not to be satisfactory, the Disciplinary Committee of this Court decided to hold the Departmental Enquiry against the Petitioner. In so far as the second Departmental Enquiry is concerned, the Learned Principal District Judge having received information of the incident which took place on 16-7-2015 had directed the Learned District Judge-3 to conduct a discreet enquiry in respect of the said incident which the Learned Judge conducted and reported to the Learned Principal District Judge. The Learned Principal District Judge on receipt of the said report forwarded the same to the Learned Registrar General of this Court with his recommendation. The Petitioner was thereafter issued a show cause notice as to why a Departmental Enquiry should not be held against him. The Petitioner submitted his reply. Having found the reply of the Petitioner to be unsatisfactory, the Disciplinary Authority decided to hold a Departmental Enquiry against the Petitioner. Hence in respect of both the Departmental Enquiries there is a report of the Learned Principal District Judge which was forwarded along with the verifiable

material which was in the form of the report of the discreet enquiry conducted by the Learned Principal District Judge-3. In respect of the second Departmental Enquiry and the complaint made by Mr. Teple who is an employee of the Court, the same was also forwarded by the Learned Principal District Judge along with his report. Hence in so far as the Departmental Enquiries against the Petitioner are concerned, they would be covered by the second part of clause (A) namely that they are based on verifiable material to substantiate the allegations made. It is therefore not possible to accept the contention of the Learned Counsel for the Petitioner that in the absence of there being written complaint accompanied by a duly sworn affidavit, no Departmental Enquiry can be initiated against the Petitioner. It is also not possible to accept the contention of the Learned Counsel for the Petitioner that the complaint and the duly sworn affidavit have to be read together with the verifiable material so as to mean that the material cannot be independently brought forward but has to be by way of a complaint which is accompanied by a sworn affidavit. It is probably on account of the difficulties faced in proceeding and initiating the disciplinary proceedings wherein information is received by the Learned Principal District Judge or any other authority of the Court that the amendment in the guide lines was made vide letter dated 16-3-2017 by the Hon'ble The Chief Justice of India. Construing the guidelines in the manner sought by the the Learned Counsel for the Petitioner would fetter the powers of the Disciplinary Authority in initiating departmental proceedings

against the erring judicial officers and thereby negating the power vested in the Disciplinary Authority for enquiring into the truth of the allegations against a judicial officer.

15 In so far as the submission of the Learned Counsel for the Petitioner that the reply of the Petitioner has not been considered and that the Petitioner has also not been given a hearing in so far as the second Departmental Enquiry is concerned, in our view the said submission is misconceived. The Disciplinary Authority is under no obligation at the stage of the show cause notice to afford any opportunity of hearing to a delinquent. The Disciplinary Authority has only to consider whether there are grounds for proceeding with so as to enquire into the truth of any allegations against the judicial officer. In our view therefore, the said submission cannot be accepted and there is no violation of the principles of natural justice merely because no hearing was afforded prior to the Disciplinary Authority coming to a conclusion to proceed departmentally against the Petitioner.

16 Now coming to the judgments on which reliance was placed by the Learned Counsel for the Petitioner is concerned, the cause for allowing the Special Civil Application filed by the Petitioner therein are two fold namely that since the allegation made against the Petitioner was as regards sexual harassment in respect of which a complaint was required to be in writing in

terms of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and prior thereto under the Rules which were framed pursuant to the judgment in Vishakha's case and since in the said case there was no written complaint but action was sought to be taken on the basis of the oral complaint made by three Advocates. The Division Bench was of the view that the disciplinary proceedings could not be initiated on the said basis. The second ground was that though the incident was of the year 2012 the decision to hold a Departmental Enquiry against the Petitioner therein culminated in the charge sheet dated 21-1-2017 issued to the Petitioner and therefore there being a time lag of 5 years between the date of the incident and the date of the order, the Division Bench was of the view that a Departmental Enquiry could not be initiated against the Petitioner. The Division Bench of the Gujarat High Court has also referred to the circular issued by that Court on 25-4-2017 which can be said to be paramateria to the first circular issued by the Hon'ble Chief Justice of India. The Division Bench thereafter referred to the Judgment of the Apex Court in R. C. Sood's case (Supra), in which case the Apex Court had set aside the Disciplinary proceedings which were initiated against the Petitioner R. C. Sood as the complaint was not supported by an affidavit. The Division Bench therefore opined that in the absence of any written complaint, initiating the departmental proceedings pursuant to the oral representation, will run counter to the ratio laid down in the judgment of the Apex Court in R. C. Sood

and Ishwarchand Jain Vs. State of Punjab.

17 Now coming to the judgment of the Apex Court in R. C. Sood, the said judgment was rendered by the Apex Court when neither of the circulars i.e. circular dated 3-10-2014 and 16-3-2017 were in the field. The said judgment was also rendered in the peculiar facts of the said case. In the said case the Petitioner R. C. Sood whilst acting as a Registrar of the Rajasthan High Court was proceeded departmentally on account of the wrong mentioning of the cut of date for determining the age in the advertisement issued for filling up the vacancies in the Rajasthan Higher Judicial Service by way of direct recruitment. A committee of two Judges was appointed to go into the matter as regards the mentioning of the cut of date in the advertisement issued calling for applications. The committee of two Judges suggested that fresh applications be called for and the matter should be placed before the Hon'ble Chief Justice for taking suitable action against the officer who was responsible for issuing the incorrect notification. The matter was placed before the Full Court of the High Court. The Full Court constituted a committee of two other Judges to look into the record leading to the issuance of the notification. The said committee observed that it was their tentative view that the Petitioner was responsible for the "forgery committed in the record" and it recommended a regular enquiry to be made in accordance with rules. The report of the two Judges committee was placed before the Full Court and the Full Court resolved

that the Departmental Enquiry be initiated against the Petitioner and he should be placed under suspension. The Petitioner challenged the said action by way of a Writ Petition in the Apex Court. By judgment dated 22-11-1994 the Apex Court quashed the proposed disciplinary proceedings as well as the order placing the Petitioner under suspension. The Apex Court observed that it was difficult to appreciate how the two Judges committee could come to the conclusion that there was a forgery in the record and/or any person had benefited from the said error or that the Petitioner was responsible for the same.

18 The Hon'ble Chief Justice of the Rajasthan High Court had issued a office note dated 12-5-1994 providing that if a complainant does not file the requisite affidavit, no action should be taken on that complaint. Though initially the first disciplinary proceeding was quashed by the Apex Court, the problem of the Petitioner R. C. Sood did not end there. As observed by the Apex Court by letter dated 27-10-1994 one of the Judges of the Rajasthan High Court forwarded a PIL Petition received by him to the Hon'ble Chief Justice by his letter addressed to the Hon'ble Chief Justice mentioning therein that as allegations are serious they deserved to be investigated thoroughly. The said letter was the same letter which had been dealt with by the earlier Hon'ble Chief Justice vide letter dated 31-1-1994 and the issue was closed. However, the matter was placed before the Full Court and the Full Court resolved that

the order passed by the Hon'ble Chief Justice on the report of the preliminary enquiry against R. C. Sood conducted by the Additional Registrar be hereby revoked. The Full Court thereafter resolved to constitute a committee of three Hon'ble Judges of the Rajasthan High Court to enquire into the various complaints forwarded to them by the Hon'ble Judge against the Petitioner R.C. Sood. The Apex Court in the facts of the said case observed that there was no valid reason in law for the Full Court to revoke the decision of the then Chief Justice which was taken on 31-1-1994. The Apex Court also adversely commented upon the manner in which the enquiry was sought to be conducted by the three Judges of the Rajasthan High Court. The Apex Court observed that the witnesses were also of the choice of one of the members of the committee and were persons who were inimical to the Petitioner R.C.Sood. The Apex Court observed that the complainant Vijay Singh was a imposter and who was that person who was examined by the committee, remained unexplained. The Apex Court therefore in the facts of the said case held that the complaint could not have been entertained without there being an affidavit. Paragraphs 23 and 25 of the said judgment are eloquent and reflect the reasons why the Apex Court interfered in the said matter. The same is therefore reproduced hereinunder for the sake for convenience:

23. Apart from the non-judicious manner in which the Three Judge Committee conducted the enquiry the sequence of events, which bears repetition, shows that being piqued with this Court's judgment quashing the first departmental

enquiry the High Court, with a few functionaries playing an active role, left no stone unturned with a view to victimise the petitioner. On 21st October, 1994 the High Court suspended the petitioner and decided to hold the first departmental enquiry. On 24th October, 1994 this suspension was challenged by way of a writ petition in this Court in which this Court on 7th November, 1994 issued show cause notice to the High Court. Suddenly we find on the High Court record Justice Kokje's letter dated 27th October, 1994 forwarding to the then Chief Justice the old complaint of Vijay Singh. The Chief Justice makes an endorsement on this letter on the same date - thereby showing the sense of urgency. First office note is written only on 9th November, 1994, after issuance of notice by this Court in the writ petition filed by the petitioner. The fact that it is only on 30th November, 1994, after the decision of this Court on 22nd November, 1994, that the Full Court fixed up the matter lends credence to the petitioner's submission that the dates which appear on record may not be real. This is more so when we find that none of the documents in the form of complaints allegedly received by the Judges bear any endorsement as to the date of receipt of the same. To crown it all the second round started on a complaint of Vijay Singh stated to have been received by Justice Kokje on or before 27th October, 1994. This complaint had been circulated in September, 1993 amongst all the then Judges of the High Court and in respect of which order was passed by the then Chief Justice and the matter was closed on 31st January, 1994. Respondents' counsel could give no explanation as to how Justice Kokje got this complaint against the petitioner some time before 27th October 1994 when he was transferred to the Rajasthan High Court only on 28th April, 1994. At that time the petitioner had ceased to be the Registrar of the High Court with effect from 1st February, 1994. It is obvious that a copy of this complaint was handed over to Justice Kokje by some one who was interested in harming the

petitioner and thereupon the second round of action against the petitioner commenced with Justice Kokje being made one of the members of the Three Judge Committee.

25. Normally enquiry committees are set up in order to ascertain correct facts. Here, however, we have a situation where a committee consisting of a local judge and two transferred judges was set up with the local judge sitting alone and collecting a menagerie of witnesses who had a grudge against the petitioner and were thus sure to depose against him. Some of these witnesses were those who had not sent any complaint against the petitioner prior to 30th November, 1994 and it is only the local judge who, wanting to gather statements against the petitioner, could have known whom to approach and call for evidence. Of the two transferred judges who were members of the committee, one never took part in any proceeding when evidence was recorded between 20th February (Sic 20-11-1994) and 2nd January, 1995. Yet he signs the report dated 4th January, 1995. The other transferee judge is the person who set the ball rolling with his conjuring up Vijay Singh's complaint which had originally been circulated long before the judge's transfer to Rajasthan. The respondent's counsel was unable to explain as to how this complaint was conveniently placed in this judge's hand. It is evident that there was a deliberate design to bring to a premature end the judicial career of the petitioner, whose name, at that time, was being actively considered for elevation as High Court Judge. This is apparent from the fact that in the resolutions dated 30th November, 1994 and 5th January, 1995 it was resolved by the Full Court that the President of India and the Chief Justice of India should be informed about the holding of the departmental enquiry against the petitioner. Acting on the basis of the Committee's biased report the Full Court, we are sad to note, continued in similar vein and proceeded to nail

the petitioner by taking a decision which lacked objectivity. Apparently stung by the judgment dated 22nd November, 1994 of this Court it retaliated by launching a fresh set of charges against the petitioner clearly with a view to ruin his judicial career. We have no doubt that the action taken by the court was not bona fide and amounts to victimisation. This is certainly not expected from a judicial forum, least of all the High Court, which is expected to discharge its administrative duties as fairly and objectively as it is required to discharge its judicial functions.

19 In our view, the judgments of the Gujarat High Court in Girishkumar Soni's case and the Apex Court in R. C. Sood's case having been rendered in the peculiar facts and circumstances as were prevailing in the said cases would not aid the Petitioner in so far as the instant case is concerned. In the instant case the factual basis has changed in as much as the original circular issued by the Chief Justice of India has been amended by the subsequent circular providing for a written complaint accompanied by an affidavit and/or verifiable material. In our view, in respect of both the Departmental Enquiries there being verifiable material on record, the same would be covered by the amended circular dated 16-3-2017.

20 The question that also arises is whether in the facts of the present case we should exercise our writ jurisdiction. As indicated above the Petitioner has invoked the Writ Jurisdiction of this court against the order dated 15-7-2016 informing him that a Departmental Enquiry is to be commenced against

him. The Petitioner can obviously participate in the enquiry and refute or dispel the charges which are leveled against him. In our view, the commencement of the said two disciplinary proceedings against the Petitioner cannot be said to be without jurisdiction as is sought to be contended by the Learned Counsel for the Petitioner as being in violation of the circulars issued by the Hon'ble The Chief Justice of India. In our view the reliance placed by the Learned Counsel for the Respondent No.2 on the judgments (Supra) of the Apex Court, seems to be apposite. The Apex Court has in terms observed that exercise of writ jurisdiction at the initial stage of commencement of the disciplinary proceedings would only be in exceptional cases more especially in cases where the disciplinary proceedings are commenced without jurisdiction. Such is not the case in the instant matter. We therefore do not deem it appropriate to exercise our Writ Jurisdiction.

21 We however, leave the contentions of the Petitioner in respect of the charges levelled against him in the Departmental Enquiries open. Subject to the aforesaid, the above Writ Petitions are dismissed. Rule to stand discharged in both the Petitions with no order as to costs.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]