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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 31.01.2019

Pronounced on: 20.02.2019

+ W.P.(C) 9777/2017 & CM APPLN. 4747/2019

ATUL KUMAR MITTAL

..... Petitioner

Through Mr.Pradeep Kant, Sr. Adv. with
Mr.Divyanshu Sahay, Adv.

versus

INDIAN INSTITUTE OF TECHNOLOGY DELHI

THROUGH ITS REGISTRAR AND ORS. Respondents

Through Mr. Arjun Mitra, Advocate with
Mr.G.D. Bahuguna, Supdt, (Legal)
for R-1 & R-2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner has prayed as under:

- (i) “Issue writ/order/direction in the nature of *certiorari* calling for the records of the departmental appeal dated 15.03.2017 filed by the Petitioner before the Visitor of the Indian Institute of Technology Delhi under section 13(10) of the Statutes of the Institute and quash the order of dismissal of the departmental appeal [as

communicated to the Petitioner *vide* Letter No. 100203/2017/IESI/ U-1, dated 25.10.2017 (Annexure P-2)] after summoning the same.

- (ii) Issue writ /order/direction in the nature of *certiorari* calling for the records and quashing the Order No. IITD/ IESI/U-1/2016/1576, dated 29.06.2016 (Annexure P-1) passed by Respondent No.2.
- (iii) Issue writ/order/direction in the nature of *mandamus* commanding Respondents to allow the Petitioner continue in service and pay his salary regularly and not to evict him from his allotted residence on campus.
- (iv) *Direct* the Respondent No.1 and 2 to compensate the Petitioner by awarding special damages for the stigma damages for the stigma, harassment and mental agony caused to him at their instance.”

2. The brief facts of the case are that the petitioner was initially appointed as an Assistant Professor by respondent no.2 in the Indian Institute of Technology (hereinafter referred as ‘IIT’), Delhi in the field of water and sewage management on 30.07.1999 and thereafter was selected and appointed as Professor by respondent no.2 on 13.04.2011. In his 17 years of service record at the Institute, he has successfully supervised about 18 Ph. D candidates and 49+ M.Tech candidates and has been privy to

various national and international projects including at Rashtrapati Bhawan. He is aggrieved by malafide imposition of major penalty of compulsory retirement by respondent no.2 in colourable, well-designed and pre-determined exercise of power; all action having been conspiringly undertaken on a false and unproved letter of a student Ms.T.P. (identity not disclosed) dated 22.01.2012 whereby sought change of supervisor which has been treated by the respondents as a complaint of sexual harassment against the petitioner. Vide resolution dated 06.09.2014, the Board of Governors, IIT, Delhi ordered dismissal of petitioner from service by relying upon the inquiry report dated 11.08.2014 submitted by Hon'ble Mrs. Justice Rekha Sharma (Retd.).

3. Mr.Pradeep Kant, learned senior counsel for the petitioner submits that the inquiry authority who submitted the report dated 11.08.2014 was not competent to conduct inquiry into the present allegations of sexual harassment including the specific prohibition ordained under Proviso to Rule 14(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 read with Clause 13(9) of the Statute of the Institute and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

4. Learned senior counsel further submits that earlier the petitioner filed W.P.(C) 6059/2014 before this Court and the same was disposed of vide order dated 15.09.2014 on the statement of IIT that a final decision on the inquiry report has not been taken by the disciplinary authority (Board of Governors); and the Board of Governors shall give full opportunity to the petitioner to be heard on his representation including with respect to factual matrix and then a speaking order will be passed. Consequently, the petitioner was directed to appear before the Board of Governors on 03.11.2014 and the petitioner shall also file all material, on which he seeks to rely, at least one week prior to the final decision taken. It is further submitted that the petitioner came to know under the Right to Information Act that as soon as the notice of above writ petition was given to the Institute on 05.09.2014, the Institute hastily passed an order of dismissal against the petitioner thereby removing him from service on 06.09.2014. However, he made a false statement before this court on 15.09.2014 that final decision was yet to be taken.

5. Accordingly, the petitioner preferred recall application vide CM APPLN. 17178/2014 in W.P.(C) 6059/2014. On 30.10.2014, notice was issued on the said application and this Court recorded that prima facie it

appears that a false statement was made before this Court. The aforesaid application was disposed of vide order dated 30.04.2015 by setting aside the order of dismissal dated 06.09.2014 and issued directions to the Board of Governors (Disciplinary Authority) to ensure that the petitioner was given full and fair opportunity to defend himself and lay his case before the disciplinary authority who was obliged by virtue of the directions issued by this court to consider and decide all contentions of the petitioner including the contention relating to the jurisdiction and authority of inquiry authority to inquire into allegations of sexual harassment in view of proviso to Rule 14(2) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 as also the Sexual Harassment Act 2013.

6. Learned senior counsel further submits that issue of competence and jurisdiction of the inquiry authority whose report dated 11.08.2014 is the basis of the punishment imposed upon the petitioner was also raised before this court in CM APPLN. 17178/2014. However, the Court was of the view that, that was not the “stage for the Court to intercede in the manner” since the petition was being relegated to the Board of Governors for rendition of his grievances. Feeling aggrieved, the petitioner had preferred an LPA No.503/2015 which was dismissed vide order dated 19.01.2016 by recording

as under:

“This Court notices that in the first order disposing of the writ petition or in the course of the application (made later by way of recall), the learned Single Judge consciously did not return any finding as to the legality of the procedure adopted..... In any event, as noticed earlier, the learned Single Judge has not recorded any findings as to the correctness or the legality of the procedure adopted. The Court was informed during the pendency of the appeal that the Board of Governors had, in fact, by its Minutes of Meeting dated 22.07.2015 finally decided to accept the Enquiry Report and issued a show-cause notice to the appellant requiring him to show-cause why he ought not to be dismissed and thereafter, imposed penalty of compulsory retirement after which no final order has been made.”

For the foregoing reasons, the Court is of the opinion that appeal does not merit acceptance. It is accordingly dismissed.”

7. It is relevant to mention here that the impugned order of punishment dated 29.06.2016 inflicting penalty of compulsory retirement was assailed before this Court in W.P. (C) No. 11720/2016. But without entering into the merit, this petition was disposed of vide order dated 16.12.2016 relegating the petitioner to remedy of departmental appeal. Consequently, the petitioner preferred appeal before the visitor which was rejected *ex parte* without any exchange of pleadings or seeking petitioner's response to the comments

given by the Institute in response to the appeal by a non-speaking communication dated 25.10.2017.

8. The present petition is filed pursuant to the liberty granted in W.P.(C) No. 6059/2014 in the order dated 15.09.2014.

9. The submission of counsel for the petitioner is that the punishment imposed on the basis of the inquiry report dated 11.08.2014 submitted by Ms. Justice Rekha Sharma (Retd.) notified to be the inquiry authority on 23.01.2014 is *void ab initio*. As in view of the proviso to Rule 14 (2) of the CCS (CCA) Rules, 1965 that she neither had any authority nor competence to hold inquiry into allegations of sexual harassment. This bar relating to choice in appointment of inquiry authority as contained in proviso to Rule 14 (2) of the CCS (CCA) Rules, 1965 continued even after the sexual harassment Act, 2013 entered into force 09.12.2013 that also made the constitution of the Internal Complaints Committee (hereinafter referred to as 'ICC') mandatory. Section 26 of the Sexual Harassment Act, 2013 provided panel consequences on failure to constitute the Internal Complaints Committee provided in Section 4.

10. Learned senior counsel further submitted that in the present case, the two complaints allegedly of sexual harassment were made on 22.01.2013

and 30.01.2013 i.e. when admittedly, the Sexual Harassment Complaints Committee (hereinafter referred to as 'SHCC') constituted in accordance with the directives of the Hon'ble Supreme Court issued in ***Vishaka & Ors. Vs. State of Rajasthan & Ors.: (1997) 6 SCC 241*** was in existence in the Institute. Thereafter, even when the appointment of Ms. Justice Rekha Sharma (Retd.) was notified on 23.01.2014, the ICC already stood constituted in the Institute on 17.01.2014 in terms of the Sexual Harassment Act, 2013.

11. As per directions of ***Vishaka (supra)***, leave no matter of doubt that until the Sexual Harassment Act, 2013 was enacted and was entered into force on 09.12.2013, the directions issued in ***Vishaka (supra)*** were mandatory and binding and were law within the meaning of Article 141 of the Constitution. This position was reinforced by the three Judges' Bench in ***Medha Kotwal Lele & Ors. Vs. Union of India & Ors.: (2013) 1 SCC 311***. In the said case, their Lordships categorically stated that not only that the Complaints Committee would be the only competent authority to inquire into the complaints of sexual harassment but its report shall be binding and shall be deemed to be inquiry report for further action by the disciplinary authority.

12. Thus, the proviso to Rule 14(2) of the CCS (CCA) Rules, 1965 being clear and specific, i.e., taking away the discretion of the Disciplinary Authority to appoint any other Inquiry Authority to inquire into allegations of sexual harassment; the appointment of present Inquiry Authority by notification dated 23.01.2014 was illegal and without jurisdiction.

13. It is further submitted that the petitioner had suffered heart attack and was on sanctioned medical leave from 13.12.2013 to 26.02.2014 and when he resumed duty on 26.02.2013 and learnt about the appointment of present Inquiry Authority on 23.01.2014. Accordingly, the petitioner took an objection by representation dated 26.02.2014 and thereafter also made another representation dated 01.07.2014 to this effect to the Inquiry Authority. But all this was of no avail.

14. Learned senior counsel further submitted that on the alleged complaints so received by the Institute were sent for preliminary inquiry to a Fact Finding Committee by the SHCC instead of making the preliminary investigation itself. This is evident by the *ex parte* report of the Fact Finding Committee which is at page 232 of the writ petition. This report, the petitioner could only obtain under the Right to Information Act much after the inquiry was over. This entire action of SHCC and the FFC was totally

without jurisdiction as preliminary inquiry/investigation and the regular inquiry, if at all to be conducted, was to be undertaken by the SHCC itself or by the ICC under the Sexual Harassment Act, 2013. The Institute had no liberty to regulate its own procedure.

15. It is further submitted that the Fact Finding Committee Report did not observe anywhere that the present was a case of sexual harassment but collected the material supplied by Ms. T.P. and recorded her statement on 7th, 8th and 11th February, 2014 *ex parte*. Accordingly, the SHCC relying upon the FFC Report resolved on 18.03.2013 to initiate regular inquiry against the petitioner and also directed to serve a summary of complaints so as to enable him to give a reply. The petitioner submitted his reply on 22.03.2013 and though asked for some time to give detailed reply but he denied the contents of the complaint and also enclosed Ms. T.P.'s email to him inquiring petitioner's assistance for securing hostel accommodation and also emails exchanged between the petitioner and Ms. P.J.(identity not disclosed) between 06.10.2008 to 16.11.2011. On 25.03.2013, the petitioner asked for personal hearing from the SHCC while enclosing his email to Vijaya Singh objecting to her publication of research without permission and also email of a student Poonam Ahluwalia and one Mamta Singh who

certified no gender bias at the hands of the petitioner. However, the SHCC decided on 25.03.2013 to initiate regular inquiry and submit a chargesheet after getting it approved from the disciplinary authority. Thus, entire action of the SHCC and FFC was totally without jurisdiction as preliminary inquiry/investigation and the regular inquiry, if at all, to be conducted, was to be undertaken by the SHCC itself or by the ICC under the Sexual Harassment Act, 2013.

16. Learned senior counsel further submitted that the Institute had no liberty to regulate its own procedure and to appoint an Inquiry Authority of its own choice as either the *Vishaka (supra)* directives were to be followed or the provisions of the Sexual Harassment Act, 2013 were to be followed. But there was no vacuum in between with respect to holding of disciplinary inquiry with respect to the complaints of sexual harassment. The procedure prescribed in the Service Rules is mandatory as is evident by the *Steps for Conducting Inquiry in Complaints of Sexual Harassment* notified by the DoPT, Government of India vide O.M. dated 16.07.2015. Hence, merely because Section 28 of the Sexual Harassment Act, 2013 provides that the Act is “*in addition to and not in derogation of*”, it would not mean that a choice is available to the Institute to appoint Inquiry Authority of its own. It

only means that the provisions of other laws shall co-exist along with the Act and that where the special law, namely, the Sexual Harassment Act, 2013 is attracted/applicable, its provisions will apply with full force without encroaching upon the other laws. This view was taken by the Hon'ble Supreme Court in ***KSL & Industries Ltd. Vs. Arihant Threads Ltd.:*** (2015) **1 SCC 166.**

17. In ***Surat Singh (Dead) vs. Siri Bhagwan & Ors.:*** (2018) **4 SCC 562**, it is held that “*when a statute requires a particular act to be done in a particular manner then such act has to be done in that manner only and in no other manner.*”

18. In case of ***Punita K Sondhi (Dr.) Vs. Union of India,*** (2010) **172 DLT 409**, it is held that on the constitution of the Inquiry Authority, proceedings vitiated if constitution of the Inquiry Authority is not acted upon. No adverse inference can be drawn if the petitioner does not participate before the Committee not properly constituted.

19. Learned counsel for the petitioner further submitted that in the present case, the proviso to Rule 14(2) of the CCS (CCA) Rules 1965 statutorily under a legal fiction appoints the Inquiry Authority said to have been appointed by the Disciplinary Authority whereas in Rule 14(2) there is no

specific provision for appointment of Inquiry Authority to inquire into allegations of sexual harassment. The proviso to Rule 14(2) is a substantive enactment, to deal with specified cases of misconduct of sexual harassment. It is a mandatory provision which cannot be bypassed.

20. It is further submitted that the chargesheet dated 26.04.2013 was neither issued nor approved by the Disciplinary Authority (Board of Governors). Hence, the entire exercise initiated consequent thereto is vitiated including the impugned order of punishment. Despite specific challenge being made by the petitioner in his statement of defence dated 07.05.2013 regarding non-approval of the chargesheet by the Board of Governors and the same challenge also having been reiterated in the present petition, however, no such approval has been brought on record by the Institute. Even the minutes of the meeting of the Board of Governors dated 22.07.2015 does not show that the chargesheet was either framed, issued or approved by the Board.

21. On the other hand, Mr.Arjun Mitra, learned counsel appearing on behalf of the respondent nos.1 & 2 submits that in terms of the existing policy on Sexual Harassment Act, 2013 dated 19.02.2001, there is no tolerance towards any kind of sexual harassment, which is defined in the

broadest and most inclusive of terms. On receipt of complaint of Ms.T.P., the same was referred to Sexual Harassment Complaints Committee (SHCC) and in consultation with the Director of the Institute, two lady faculty members were deputed to interact with the complainant to find out the facts. The FFC submitted a report to the SHCC on 13.02.2013 which deliberated in its meeting held on 26.02.2013 and took a view that prima facie, a case of sexual harassment was made out and an inquiry should be conducted. In this meeting, it was decided to inquire into the matter on the basis of these two complaints and serve a summary of the complaints to the petitioner.

22. The email dated 30.01.2013 sent by the former student Ms.P.J. narrated the incident of 09.01.2004 which is stated as under:

“If I remember correctly during the start of my second semester on 09th January 2004 at around 7 PM, I was in the laboratory and Dr. Mittal asked me to accompany him to get a few things from market near IIT Delhi. Initially I was a bit hesitant but I thought that he is just like a father figure so I agreed. He took me in his car to the market (near IIT Delhi) and then he invited me for dinner in his house (he was then the warden of Kumaon Hostel). Again I said no and gave an excuse but he insisted and without stopping continued to drive the car towards the Kumaon Hostel. When we reached his residence, I was shocked to know that his wife was not at home. I felt very uncomfortable and told him that I would like to leave immediately. But again he insisted and told me to have dinner as hostel food (at my hostel Himadri) would be over by then (all this is happening inside his residence with the door closed). Then he offered me wine (I was

shocked and terrified and I was on verge of crying still not sure what to do as I felt cornered and trapped). I told him that I don't drink and again asked him to drop me to hostel (this was around 10 pm). After this, he pushed me down and forced himself upon me. I resisted, cried and begged him to stop.....”

23. Accordingly, the decision was taken to conduct regular inquiry against the petitioner. Accordingly, chargesheet dated 26.04.2013 was served upon the petitioner, with the approval of the Chairman, Board of Governors. The response of the petitioner to the said chargesheet was sent to the office of the Director, in a sealed cover addressed to the Chairman of the Board of Governors on 07.05.2013. After considering the reply of the petitioner, it was directed that an inquiry committee of three lady faculty members should be constituted. After conducting two meetings, the aforesaid inquiry committee vide its note dated 13.12.2013 requested that they may be permitted to withdraw from the inquiry proceedings, since they felt that “.....the procedures of the inquiry are so involved and complex that they may not be competent to carry out the proceedings.”

24. Accordingly, the retired judge of this Court named above was appointed as an inquiry officer, with the approval of the Chairman, Board of Governors, who conducted the proceedings *de-novo*. The inquiry officer sent three notices by speed post to the petitioner, informing him of the

inquiry proceedings with the place and time for the same. The second and third of such notices contained the record of proceedings conducted on the previous date, while the third such notice, recording the proceedings of 04.03.2014 informed the petitioner that

- i. The tracking reports indicated service of the previous communications;
- ii. In case of his non-appearance, the inquiry would continue in his absence;
- iii. The copy of the chargesheet was sent to the petitioner; and
- iv. The petitioner was still at liberty to appear on the next date, i.e. 21.04.2014, if he chose to do so.

25. Since the petitioner deliberately chose not to appear on the said date as well, the inquiry continued and concluded in his absence.

26. Learned counsel for the respondent submitted that the knowledge of the petitioner of the inquiry proceedings being conducted is clearly borne out from (i) his representation dated 26.02.2014 to the Director and (ii) his representation dated 01.07.2014 to the Inquiry Officer. While the first representation refers to the Inquiry Officer being a retired Judge, the second is directly addressed to her. The Inquiry Officer conducted the proceedings

and submitted a report dated 11.08.2014, in which the charges against the petitioner were held proved. The report itself is self explanatory whereby stated that charges were held to be proved and the allegations being found to be correct which constituted the misconduct of the petitioner. It is also observed that the inquiry could only be conducted in terms of Sexual Harassment Act. Significantly, the Inquiry Officer did not accept all allegations at face value, simply on account of the absence of the Charged Officer, but herself questioned the witnesses and went further to examine a witness, not cited as a witness by the Institute. The report dated 11.08.2014 was forwarded to the petitioner on 14.08.2014 and thereafter, on receipt of his response, the BOG decided to impose the penalty of dismissal from service. This decision became the subject matter of litigation, which eventually came to be decided by the order dated 30.04.2015 of this Court in W.P.(C) 6059/2014, upheld by the Division Bench in LPA No. 503/2016 vide order dated 19.01.2016. In compliance with the said directions, a personal hearing was afforded to the petitioner by the BOG, in a meeting specially convened for the purpose; though there is no provision for giving a hearing. A detailed and speaking order was passed in the meeting held on 22.07.2015, in terms of which the Inquiry Report was accepted and the

penalty of compulsory retirement was proposed. This decision has not been challenged by the petitioner.

27. It is further submitted that a show cause notice was issued on the issue of penalty and on receipt of the petitioner's response, the proposed penalty was imposed by the BOG, in terms of its decision dated 04.04.2016. However, the petitioner approached this Court by way of a writ petition being W.P.(C) 11720/2016 after a gap of almost six months, which was disposed of on 16.12.2016 as not pressed, with liberty granted to the petitioner to file the statutory appeal before the Visitor. However, this Court did not express any opinion on the merits of the matter. Accordingly, the appeal was thus filed by the petitioner before the Visitor (i.e. the Hon'ble President of India, in terms of Section 9(1) of the Institutes of Technology Act, 1961) and the same was dismissed vide the order dated 12.10.2017. The summary placed by the Additional Secretary (TE), contains a brief of the entire case, along with the approval of the Hon'ble Minister of Human Resource Development. Not only the procedure adopted by the Institute, but the various orders passed by this Court and the decisions of the Institute were considered and it was ultimately approved by the Visitor that the penalty imposed by the Institute was just and an adequate.

28. It is submitted that there is a Sexual Harassment Complaints Committee, (SHCC) constituted by the Institute in terms of the judgment of the Hon'ble Supreme Court in the case of *Vishakha (supra)*. The Institute already had a policy on Sexual Harassment in place, updated on 19.02.2001, and in terms of which the SHCC had been notified and the relevant notification is of 20.02.2013. In terms of this notification, the SHCC comprised of 11 members, including the members of NGOs, Institute Security Officer, Head of Institute Hospital Services, lady members of the faculty and members of the student body. The proceedings conducted by the SHCC, including their decisions to have a regular inquiry and to serve a charge sheet on the Petitioner have not been challenged. The charge sheet dated 26.04.2013 was issued as per the procedure under CCS/CCA Rules and the Institute Statutes. The petitioner participated in the inquiry proceedings at that stage and did not raise any grievance as regard the procedure, or the contention now being raised, that only the Internal Complaints Committee could look into the issue (instead of an Inquiry Officer).

29. Learned counsel for the respondent further submitted that at the time of issuance of the charge sheet dated 26.04.2013, the provisions of the Act

had not come into force, since the Act itself became effective only on 09.12.2013. The inquiry proceedings thus commenced and continued as mentioned above before the three member inquiry authority and later before retired High Court Judge. During the relevant period, before the Act came into force, there was no bar on a regular departmental inquiry being conducted. The amended provisions of the CCS (CCA) Rules are enabling provisions, which constitute a deeming fiction that the report of the SHCC would be deemed to be the inquiry report. It is nowhere stipulated that only the SHCC could conduct such an inquiry, or that the detailed inquiry not conducted by the SHCC is vitiated. In the present case, the procedures laid down were duly followed and there is no infirmity in the inquiry proceedings.

30. It is further argued that insofar as the appointment of the inquiry officer is concerned, the Institute decided to appoint a retired High Court Judge to conduct the inquiry. The context of the above is the inability expressed by the three member inquiry committee, who requested to be allowed to withdraw since the procedures of the inquiry were so involved and complex that they felt that they may not be competent to carry out the procedures.

31. Further argued that the Board of Governors of the Institute is the appointing authority and faculty members are, the disciplinary authority in terms of Section 25 of the IIT Act. The members of the Board are not only the employees of the Institute, but also include outside persons, being a nominee of the Government and four persons with knowledge in the field of education who are nominated by the IIT Council (defined in Section 31 of the IIT Act). The functions of the Board are provided for in Section 13 of the Act. As per Statute 2, the Board is to meet four times in the year and thus, Statute 7(4) empowers and gives discretion to the Chairman of the Board to exercise the powers of the Board in emergent cases and inform the Board of the action taken by him for approval. In the present case, all the documents, papers and relevant material, including the decision to institute a regular inquiry against the petitioner, the Charge Sheet issued to him, the appointment of the Inquiry Officer, forwarding of the Inquiry report to the petitioner, consideration of the inquiry report etc., have been considered/ratified/approved by the Board of Governors. This is evident from its decision dated 22.07.2015, which is at page 507 of the petition, taken at the meeting convened specially to consider the petitioner's case.

32. It is further submitted that the report of Inquiry Officer was submitted

after the petitioner had been given opportunities to appear and participate in the inquiry. Even though the petitioner had been duly served with all the notices and orders passed by the Inquiry Officer, he deliberately and strategically chose to avoid participating in the inquiry. In this regard, the Petitioner's letter dated 26.02.2014 is significant since his representation clearly reveals that he was well aware of the appointment of High Court Judge (retired) as an Inquiry Officer. In the said letter, the petitioner raises a grievance to the Director in regard to the appointment of a retired Judge as the inquiry officer. Moreover, the petitioner sent a communication on 01.07.2014 to the Inquiry Officer herself, which also indicates his knowledge of the proceedings and his deliberate and strategic avoidance of the same.

33. Learned counsel for the respondent further submitted that as per the proceedings, a Court is not supposed to re-appreciate the evidence or act as an Appellate Authority and moreover, any error in procedure must result in manifest miscarriage of justice or violation of principles of natural justice. In the present case, no prejudice has been caused to the petitioner on account of any of the procedures followed by the Institute, which in any event, were in accordance with the law and its own Act and Statutes.

34. To strengthen his arguments, learned counsel for the respondent has relied upon the case of ***Bhagwan Chand Saxena vs. Export Inspection Council of India: (2013) 138 DRJ 536*** whereby it is held that once the charged officer is rightly proceeded ex-parte, he is not entitled to challenge the proceedings of the enquiry on the ground of unfairness and incompleteness.

35. In case of ***Avinash Mishra vs. UOI: 2014 (215) DLT 714(DB)***, it is held that if the proceedings having started before the commencement of the Act, the same would not apply and the Complaints Committee has the discretion not to follow.

36. In ***Saurabh Kumar Mallick vs. Comptroller and Auditor General of India: 151 (2008) DLT 261 (DB)*** it is observed that when a government servant is to be inflicted a penalty, due procedure in law has to be adopted and the procedure in Rule 14 was to be followed.

37. In case of ***State Bank of India vs. Ramesh Dinkar Punde: (2006) 7 SCC 212*** it is held that the Court is not supposed to re-appreciate the evidence or act as an Appellate Authority and any error in procedure must result in manifest miscarriage of justice or violation of principles of natural justice.

38. While concluding his submissions, it is submitted that the petitioner was given full opportunity in the Department of Proceedings. Thus, there is no violation of the natural justice. Moreover, on considering the report of the Inquiry Officer, the Disciplinary Authority and Appellate Authority have already considered each and every aspect raised by the petitioner and passed the order by taking lenient view against the petitioner. Thus, no interference is required in the present petition and same deserves to be dismissed.

39. It is stated in para 11 of the affidavit that the chargesheet dated 26.04.2013 was served upon the petitioner and on receiving his response, the Chairman, Board of Governors was of the view that a detailed inquiry should be conducted and constituted an Inquiry Committee. In para 12 of the said affidavit, it is stated that the chargesheet was issued as per the procedure given under the CCS(CCA) Rules. The said paragraphs of the affidavit if read in the light of the Minutes of Meeting of the BOG dated 22.07.2015, indicates that the chargesheet dated 26.04.2013 was neither issued by the Board of Governors nor approved by them. Thus, the proceedings stand vitiated in view of the judgment of the Hon'ble Supreme Court in the case of *Union of India Vs. B.V. Gopinath, (2014) 1 SCC 351*.

40. It is pertinent to mention here that the respondent on receipt of the

draft chargesheet dated 08.04.2013 sought approval of the Chairman on the chargesheet and issued the same on 26.04.2013. The petitioner submitted the statement of defence on 07.05.2013. After receipt of the same, the Acting Director submitted a note on 19.06.2013 to the Chairman stating that the BOG is the appointing authority but in emergent cases, the Chairman, BOG may exercise the powers of the Board under Statute 7(4) and informed the Board about the action taken by him. Therefore, Chairman, BOG was requested to advise further action. In response thereto, the Chairman decided to hold regular enquiry and constituted the Three Members Committee. The said Committee was notified on 12.08.2013 and the first meeting of the said Committee was held on 02.12.2013, that is, after four months of its constitution.

41. It remains to be explained by the respondent that when a decision was taken on 19.06.2013 to constitute a Committee for inquiry then what was the urgency to exercise the emergency powers under Statute 7(4), more so, when the Inquiry Authority of Three Members were notified on 12.08.2013 after two months. Likewise, the said Inquiry Authority held its first meeting on 02.12.2013 after four months of its constitution. Besides, the present Inquiry Authority was notified on 23.01.2014, that is, after about 40 days

from the last meeting of the Three Members Inquiry Authority. But even then during this period of 40 days, the directives issued by the Three Members Inquiry Committee were not complied with. Thus, it is established that there was neither any emergency nor the emergency powers under Statute 7(4) were available to be exercised in view of the judgment of ***Prakash Kutik Choudhary Vs. Collector of Dhule, 1989 SCC Online Bom. 306.***

42. It is not in dispute that statement of defence dated 07.05.2013 submitted by the petitioner in reply to the chargesheet was neither supplied to the Inquiry Authority nor to the Disciplinary Authority. Despite the above, office noting was maintained that statement of defence had not been received till 08.06.2013. Moreover, even when the record was forwarded to the First Three Member Inquiry Committee notified on 12.08.2013 for inquiry, as also to the present inquiry authority on 23.01.2014 for inquiry, the documents mentioned therein have been sent curiously did not contain the statement of defence dated 07.05.2013 submitted by the petitioner. It is to be clarified by the fact that the Inquiry Authority in her report dated 11.08.2014 herself records that no counter version has been presented before her with the result that she had no option but to believe the truthfulness,

authenticity and credibility of the statement made before her. Thus, principles of natural justice was grossly violated by not taking into consideration the statement of defence dated 07.05.2013.

43. It is also not in dispute that the petitioner had asked for various documents including the documents regarding salary/honorarium/scholarship of Ms.T.P., the documents regarding allotment of hostel to her, as also the letter of one student Pratibha Sangwan who had said that she was being forced to depose against the petitioner. Besides, other relevant documents were also asked, for particularly, the verification of alleged SMSs.

44. It is pertinent to mention that the Three Member Enquiry Committee, in the order dated 06.12.2013 of the Writ Petition No.11720/2016, was directed that both the Complainants and the Charged Officer should submit an authenticated and verified document through service provider on SMSs exchanged through messages and viber in terms of its verbatim content with full details and also both the complainant and the Charged Officer should submit the details of the ownership of the mobile numbers from which SMSs were generated and received.

45. In addition to above, the Three Member Committee also directed the

disciplinary authority to provide the documents mentioned in the order which were approximately 18 in number. On being faced with the aforesaid requirement of the verification of SMSs with the service provider, the Institute instead of complying with the aforesaid directions got the inquiry authority changed on a totally frivolous ground that the procedures were too complex. Thereafter, the present inquiry authority came to be appointed. Since, the petitioner was not provided with the documents, he submitted a gentle reminder to the Director on 10.03.2014 which was replied on 19.04.2014 that he should raise this issue before the new inquiry authority. This objection was also raised by the petitioner before the inquiry authority by his representation dated 01.07.2014. But the inquiry authority in her ex parte report dated 11.08.2014 held that the petitioner might have had a grievance against the inquiry authority for not supplying him documents as required by him but that inquiry authority has withdrawn from the inquiry and therefore it was wholly irrelevant for the petitioner to harp on his grievance with regard to that authority. The inquiry authority was also of the view that this was *de novo* inquiry entrusted to her and if the petitioner had appeared before her, he would have got ample opportunity to air his grievance. The Board of Governors has accepted the above view of the

inquiry authority. However, the Inquiry Authority as well as the Board of Governors failed to take into account the fact that the earlier Inquiry Authority had issued directions to the Disciplinary Authority to provide the documents which the Disciplinary Authority did not comply. Therefore, merely by change of Inquiry Authority this legal obligation cannot be said to be whittled. the Board of Governors failed to consider and appreciate that the Inquiry Report does not prove the articles of charge and the statement of imputations mentioned in the chargesheet. Instead by a sweeping statement, the Inquiry Authority indicates the petitioner guilty of Section 2(n) of the Sexual Harassment Act, 2013 which was not the charge. The Inquiry Authority has added a new charge against one Ms. Vijaya Singh and in that perspective sweepingly held that the petitioner was a serial offender even though there was no complaint of Vijaya Singh and in any case, no such charge was framed in the chargesheet. In fact, the Board of Governors being conscious of the fact that the statement of Vijaya Singh could not have been recorded by the Inquiry Authority as she was not a listed witness and resultantly dropped her witness from consideration in its Resolution 076.09.2014 but erroneously again relied upon in the same inquiry report in the Resolution dated 22.07.2015, that stood vitiated.

46. In case of *Anant R Kulkarni Vs. Y.P. Educational Society, (2013) 6 SCC 515*. The Supreme Court held that fair action on the part of the authority concerned is a paramount necessity and that inquiry is not to be held only with a view to establish the charges against the person or to impose penalty but is also conducted with the object for recording the truth of the matter. In the present case, the Inquiry Authority has brushed aside all objections raised by the petitioner and has not even relied upon or considered the material/documents available on record as placed with reply dated 22.03.2013, 25.03.2013 and 02.04.2013 before the SHCC. Even if the petitioner could not appear before the Inquiry Authority for any valid reason or otherwise; still it was obligatory upon the Inquiry Authority to see that the charges stand proved on the basis of the admissible evidence tendered by the Institute in view of the observations of the Hon'ble Supreme Court in case of *State of U.P. vs. Saroj Kumar Sinha: (2010) 2 SCC 772*.

47. On perusal of the inquiry report dated 11.08.2014 makes it apparent that the inquiry authority has acted both as a prosecutor and a Judge as the entire report does not mention any single submission of the presenting officer. Moreover, the Board of Governors have also confirmed the inquiry report without appreciating the objections raised by the petitioner.

48. Regarding the charge of Ms. P.J., narrates an incident of January, 2004 of which according to her statement there is no evidence. She passed out from IIT in the year 2008 and completed her Ph.D. under supervision of the petitioner even after the alleged January 2004 incident. Not only this, she was in regular correspondence with the petitioner thereafter from 06.10.2008 to 16.11.2011 till she was reprimanded for plagiarism by the petitioner. Such conduct of maintaining such cordial relation with the petitioner even after such a gruesome incident alleged is wholly unbelievable. This only shows that email dated 30.01.2013 is pre-meditated and designed to lend colour of sexual harassment to the complaint of Ms. T.P. That apart, this alleged complaint is highly belated, in as much, written with delay of about more than 9 years and hence not maintainable in view of Section 9 of the Sexual Harassment Act, 2013 that prescribes limitation period of three months with further extension of three months from the last known incident.

49. It is pertinent to mention here that in the case of *Vishaka (supra)* decided on 13.08.1997 it was clarified that the guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. The directions would

be binding and enforceable in law until suitable legislation is enacted to occupy the field. Admittedly, the alleged incidents are after the decision of *Vishaka (supra)* and before the Sexual Harassment Act, 2013 came into force. Thus, the case of the petitioner would have been strictly considered under the *Vishaka (supra)* guidelines instead of binding the inquiry officer to deal with the allegations against the petitioner out of which the petitioner failed to get the fair opportunity and place his case before the inquiry authority.

50. In view of above discussion and settled position of law, I hereby set aside order dated 29.06.2016 and 25.10.2017. Consequently, the respondents are directed to re-instate the petitioner in service with all consequential benefits within four weeks from the receipt of this order. Thereafter, the respondents are at liberty to conduct inquiry afresh strictly as per the guidelines of the Hon'ble Supreme Court in *Vishaka (supra)*.

51. The petition is, accordingly, allowed.

CM APPLN. 4747/2019

52. In view of the order passed in the present writ petition, this application has been rendered infructuous and is accordingly, disposed of.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 20, 2019/ab/rd