

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 888 OF 2020

Pradip Mandal

Vs.

Metal Scrap Trade Corporation Ltd. & Ors.

For the Petitioner : Mr. Joydeep Kar,Sr. Adv.,
Mr. Soumya Majumder,
Mr. Amritam Mandal,
Mr. Aditya Mondal
.....advocates

For the
Respondent No. 1 : Mr. Lakshmi Kumar Gupta, ... Sr. Adv.,
Ms. Noelle Banerjee,
Mr. Dipak Dey,
Mr. Dipanjan Deyadvocates

Heard on : 20.04.2022

Judgment on : 19.05.2022

Hiranmay Bhattacharyya, J.:-

1. This writ petition has been filed seeking a writ of mandamus to set aside the penalty order dated March 3, 2015, the appellate order dated December 3, 2015 and the order dated

December 17, 2019 passed by the Appellate Committee. The petitioner also prayed for other consequential reliefs.

2. The petitioner joined service as a Junior Executive (Law) under the Metal Scrap Trade Corporation (for short "MSTC Ltd."). In the year 2014, petitioner was holding the post of Manager (Law) in MSTC Ltd. and was posted in the head office at Kolkata. The respondent no. 3 who was serving as officer on Special Duty (Law) in MSTC Ltd., and was also posted at the head Office at Kolkata at the relevant point of time lodged a complaint of sexual harassment against the petitioner. Internal Complaints Committee (for short "ICC") furnished its report which was made available to petitioner only on March 11, 2015. Prior thereto, the petitioner was served with a copy of order of punishment dated March 3, 2015 passed by the disciplinary authority. The disciplinary authority imposed a punishment of reduction to a lower grade of pay i.e. Deputy Manager (E-3). Petitioner preferred an appeal against order of punishment on March 20, 2015. During pendency of the said appeal, petitioner challenged the findings and/or recommendations made by ICC by filing a writ petition being WP 15850 (W) of 2015. However, during pendency of the said writ petition, appellate authority passed an order on December 3, 2015 upholding the punishment.
3. Thereafter, WP 15850 (W) of 2015 was dismissed for non-prosecution. However, subsequently an application being CAN

3167 of 2016 was filed for recalling the order dismissing the said writ petition for non-prosecution and for leave to pursue the remedies against the findings and recommendations of ICC. The appellate order dated December 3, 2015 was challenged by the petitioner in WP 2991 (W) of 2016 which was dismissed by an order dated 09.06.2016. On the same date i.e. on 09.06.2016, application for recall of the order dismissing WP 15850 (W) of 2015 for non-prosecution was also dismissed by another co-ordinate bench.

4. Challenging the order dated 09.06.2016 passed in WP No. 2991 (W) of 2016, the writ petitioner preferred an appeal which was registered as FMA No. 4652 of 2016. An appeal being MAT 1253 of 2016 was also filed by the petitioner challenging the order dated 09.06.2016 passed in CAN 3167 of 2016 arising out of WP No. 15850 (W) of 2015. Both the appeals being MAT 1253 of 2016 and FMA 4652 of 2016 were disposed of by a Division Bench of this court, by an order dated June 10, 2019, directing the establishment to reconsider the punishment imposed on the delinquent employee that is the writ petitioner herein by having the issue reconsidered at the appropriate level in the management. The writ petitioner thereafter submitted a representation before the Appellate Committee on 31.07.2019 and the Appellate Committee by an order dated 25.11.2019/17.12.2019 refused

to modify the penalty already imposed on the petitioner by the competent authority.

5. Being aggrieved the petitioner filed the instant writ petition.
6. Mr. Joydeep Kar learned Senior Counsel for the petitioner, by drawing the attention of the court to the order dated June 10, 2019 passed by the Division Bench of this court, submitted that in spite of the observation made therein directing the establishment to take a lenient view in the matter and trim down the punishment, the authority did not adhere to the directions contained in the order of remand. By referring to an observation made by the Division Bench in the said order, Mr. Kar contended that since the establishment, by the order dated 25.11.2019, insisted on the punishment already imposed, the petitioner can now challenge the inquiry made by the ICC, the ICC report and all steps subsequent thereto including the procedures adopted by the disciplinary authority which culminated with the order dated 25.11.2019. By referring to various provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act, 2013 (for short “the 2013 Act”) Mr. Kar contended that the enquiry into the complaint made by the ICC is a fact finding enquiry in terms of the 2013 Act and in case ICC arrived at a conclusion that allegation is proved, employer shall proceed to take action for sexual harassment as a misconduct in accordance with provisions of the service rules which in the

case on hand is MSTC Ltd. Conduct, Discipline and Appeal Rules 1980 (for short “CDA Rules 1980”). Mr. Kar contended that procedure for imposing major penalties laid down under Rule 25 of the CDA Rules 1980 has not been followed in the instant case. He also contended that on a complaint under the 2013 Act a formal enquiry under the said Act is to be undertaken in terms of the 2013 Act and the same is to be taken to its logical end by initiating departmental or regular enquiry as per the service rules. In support of the aforesaid contentions he placed reliance upon the decisions of the Hon’ble Supreme Court in the case of *Nisha Priya Bhatia vs. Union of India and Anr.* reported at (2020) 13 SCC 56 and in the case of *Dr. Vijayakumararan C.P.V. vs. Central University of Kerala and Ors.* reported at (2020) 12 SCC 426. He referred to a decision of a co-ordinate bench of this court in the case of *Debjani Sengupta vs. Institute of Cost Accountants of India and Others* reported at (2019) SCC Online (Cal) 734 in support of his contention that the proceeding before the ICC would not be treated as a regular disciplinary proceeding. Mr. Kar referred to an order dated 04.03.2022 passed by a Division Bench in WPST 105 of 2021 (*Dr. Manotosh Sutradhar vs. State of West Bengal and ors.*) and contended that the recommendation of the ICC is only a piece of evidence and is not conclusive.

7. Mr. Kar referred to the judgment of the Hon’ble Supreme Court in the case of *Vishaka and Ors. vs. State of Rajasthan*

and Ors. reported at (1997) 6 SCC 241 and contended that the Hon'ble Supreme Court laid down the guidelines and the norms for due observations at all work places until a legislation is enacted to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse. He also referred to a decision of the Hon'ble Supreme Court in the case of *Medha Kotwal Lele & Ors. vs. Union of India & Ors.* reported at (2013) 1 SCC 297 and contended that the Hon'ble Supreme Court passed further directions which shall remain in force until the legislative enactment on the subject is in place. He contended that the direction of the Hon'ble Supreme Court of India in the case of *Medha Kotwal* (supra) that the findings and the report of the complaints committee shall be treated as a finding or report inner enquiry into the misconduct of the delinquent would operate only till a legislative enactment on the subject is in place. He contended that after the enactment of the 2013 Act, the statute and not the directions contained either in *Vishaka* (supra) or in *Medha Kotwal* (supra) shall hold the field.

8. Mr. Kar contended that as per the 2013 Act the findings and report of the ICC is nothing but a mere preliminary investigation or enquiry leading to disciplinary action and the same cannot be treated to be a finding/ report in an enquiry into the misconduct of the delinquent. Thus, according to Mr.

Kar the authorities failed to act according to the mandate of the 2013 Act and the CDA Rules 1980 but mixed up the two enquiries as one cohesive process.

9. By referring to the findings of the ICC, Mr. Kar contended that the principles of natural justice has been grossly violated. He also contended that the disciplinary authority acted in gross violation of the principles of natural justice by passing an unreasoned order of punishment without affording any opportunity to the petitioner to make a representation against the ICC report as it is not in dispute that the ICC report was forwarded to the petitioner after he was served with the order of punishment. He also contended that the order of the appellate authority dated 03.12.2015 is also an unreasoned and unspeaking order. He, further, contended that the ICC report was not furnished thereby the principles of natural justice has been grossly violated. Thus, Mr. Kar contended that the orders passed by the disciplinary authority on 03.03.2015, appellate authority on 03.12.2015 and the appellate committee on 25.11.2019 are liable to be set aside. He also contended that the punishment inflicted upon the petitioner is disproportionate to the nature of the misconduct.

10. Mr. Gupta, the learned Senior advocate appearing for the MSTC Ltd. seriously disputed the contentions raised by Mr. Kar. He contended that the petitioner is trying to enlarge the scope of the instant writ petition by misinterpreting the

observation of the Division Bench in the order dated 10.06.2019. He contended that the issues which had already attained finality cannot be reopened by the petitioner at this stage by taking aid of the observation contained in the order dated 10.06.2019. He, further, contended that the Division Bench in the order dated 10.06.2019 did not put any embargo upon the establishment to insist on the punishment already imposed. He contended that the order dated November 25, 2019 disclosed the reasons for not modifying the penalty already imposed upon the petitioner by the competent authority. He further submitted that the misconduct proved against the delinquent officer is of grave nature and the punishment which is to be inflicted upon such delinquent officer falls within the exclusive domain of the employer and it is well settled that a writ court exercising powers of judicial review should be slow in interfering with the quantum of punishment.

11. By referring to various provisions under the 2013 Act, Mr. Gupta contended that the ICC report is binding upon the employer and the employer has no other option but to act upon the recommendation of the ICC. He contended that the petitioner did not pursue his challenge against the ICC report and the decision of a co-ordinate Bench of this court refusing to set aside the order dismissing the writ petition for non-

prosecution had attained finality, the petitioner cannot now seek to challenge the findings of the ICC in this writ petitions.

12. Mr. Gupta referred to the decisions of the Hon'ble Supreme Court of India in the case of *Medha Kotwal* (supra) and contended that the report of the ICC shall be treated as a finding/ report in an enquiry into the misconduct of the delinquent. By referring to Rule 27A of the CDA Rules 1980 Mr. Gupta contended that the service rules provide that in a case of complaint of sexual harassment, the complaints committee will be the enquiry committee for such purpose and the report of such committee shall be deemed to be the enquiry report under the rules. He, thus, submitted that the ICC report cannot be treated to be a mere preliminary investigation report in a case of this nature. According to Mr. Gupta, it is not necessary for the disciplinary authority to initiate the disciplinary proceedings after issuing a chargesheet as contended by Mr. Kar.
13. Heard the learned advocates for the parties and perused the materials on record.
14. An interesting question has cropped up in this writ petition whether in a case of a complaint of sexual harassment, the disciplinary authority has to initiate a fresh inquiry or can take disciplinary action by treating the ICC report to be the report of the Inquiry Authority.

15. The learned Senior Counsels of the respective parties relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Vishaka and Ors. vs. State of Rajasthan and Ors.* reported at (1997) 6 SCC 241 reported at (1997) 6 SCC 241 and *Medha Kotwal Lele & Ors. vs. Union of India & Ors.* reported at (2013) 1 SCC 297 in support of their respective contentions.
16. In *Vishaka* (supra) the Hon'ble Supreme Court of India laid down the guidelines and norms that are to be followed at all workplaces or institutions until a legislation is enacted for effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse at workplace. "Sexual harassment" was defined in the Guidelines and Norms prescribed by the Hon'ble Supreme Court. The employers were directed to create an appropriate complaint mechanism and also as to how the complaints committee is to be constituted. It was also stipulated that where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.
17. In *Medha Kotwal* (supra), Hon'ble Supreme Court, after taking note that the *Vishaka* guidelines have not been implemented effectively, passed further direction in the said judgment which was delivered on October 19, 2012. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services

Conduct Rules were directed to provide that the report of the complaints Committee shall be deemed to be the inquiry report in a disciplinary action under such service rules.

18. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short “the 2013 Act”) received the assent of the President of India and was published in the Gazettee dated April 23, 2013.
19. Therefore, after 2013 Act came into force, whether the inquiry by the ICC can be said to be merely a preliminary investigation or enquiry has to be decided after considering the provisions of the 2013 Act.
20. Section 2(n) of the 2013 Act defines the expression “sexual harassment”. Section 3(2) narrates some of the circumstances which may amount to sexual harassment though the said list is not an exhaustive one.
21. Section 4(1) obliges an employer to constitute an Internal Complaints Committee. The constitution of such committee and the manner in which the same is to be constituted has been provided in subsection (2) of Section 4.
22. “Aggrieved woman” in relation to a workplace has been defined in Section 2(a)(i) to mean a woman of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent.

23. “Respondent” has been defined in Section 2(m) to mean a person against whom the aggrieved woman has made a complaint under Section 9.
24. On complaint being made under Section 9 against an employer, ICC shall proceed to make an enquiry into the complaint in accordance with the service rules applicable to the employee as provided under Section 11 of the 2013 Act.
25. Section 13(1) provides that on completion of an enquiry, the ICC shall provide a report to the employer and such report is to be made available to the parties.
26. Section 13(2) provides that in case ICC arrives at the conclusion that allegation against the employee has not been proved, it shall recommend to the employer that no action is required to be taken. However, if ICC arrives at the conclusion that the allegation against the employee has been proved it shall recommend to the employer under Section 13(3) to take action for sexual harassment as a misconduct in accordance with the provision of the service rules applicable to the employee.
27. Subsection 4 of Section 13 casts an obligation on the employer to act upon the recommendation of ICC.
28. Section 18 provides right of appeal to any person aggrieved by the recommendations made under subsections 2 and 3 of

Section 13 in the manner as may be prescribed. The period of limitation for preferring such appeal has also been laid down in subsection 2 of Section 18.

29. In exercise of the powers conferred by Section 29 of the 2013 Act, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013 (for short “the Rules”) has been framed by the Central Government.
30. Rule 7 lays down the manner in which the inquiry into complaint is to be made by ICC. It provides for supply of a copy of such complaint to the respondent/ employee within the prescribed time limit. The employee has a right to file his reply to the complaint along with his list of documents and names and addresses of witness within the prescribed time limit. Subrule 4 provides that ICC shall make inquiry into the complaint in accordance with the principles of natural justice.
31. ICC also has the right to terminate the inquiry proceedings or to give an *ex parte* decision in terms of Rule 7(5).
32. Section 11(3) of the 2013 Act provides that for the purpose of making an enquiry under Section 11(1), ICC shall have the powers which are vested in a civil court in respect of summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of documents and any other matter which may be prescribed.

33. After reading the provisions laid down in 2013 Act and the rules this Court finds that upon a complaint being made, the copy of the complaint is to be supplied to the employee against whom such complaint is made. The employee gets an opportunity to file his reply to the complaint. The complainant as well as the respondent/ employee gets opportunity to adduce oral as well as documentary evidences in support of their respective contentions. Rules provide that the enquiry by ICC is to be made by following the principles of natural justice. ICC is also vested with the powers of the civil court in respect of certain matters regarding evidence of witnesses etc.. An aggrieved party also has a right to file an appeal against the ICC Report. Thus, after reading the various provisions of the 2013 Act and the rules framed thereunder, this Court is of the considered view that an inquiry conducted by the ICC is a full fledged enquiry wherein the parties get ample opportunities to prove their contentions and a finality is also attached to such inquiry. The 2013 Act also mandates the employer to act on the recommendations of the ICC. Therefore, the inquiry report cannot be said to be merely a preliminary investigation report.

34. Mr. Kar, in course of his arguments attacked the findings of the ICC as well as the procedures adopted by the ICC in conducting such inquiry. Mr. Gupta raised serious objections to such submissions of Mr. Kar and contended that the ICC report cannot be challenged by the petitioner in this writ petition. Mr.

Kar, however, sought to sustain his argument by relying upon the observation made by the Hon'ble Division Bench in the order of remand dated 10.06.2019 which runs thus-

“All other issues are left open inter parties, in the event of the establishment insisting on the punishment imposed.”

35. Mr. Kar contended that the appeal preferred by the writ petitioner challenging the order dated 09.06.2016 passed in CAN 3167 of 2016 arising out of WP NO. 15850 (W) of 2015 was heard analogously with the appeal challenging the appellate order dated December 3, 2015. He further contended that since the ICC report was challenged in WP 15850 (W) of 2015, and the establishment insisted on the punishment already imposed, the writ petitioner can now challenge the ICC report in this writ petition.

36. Admittedly, the writ petitioner did not avail of the statutory remedy of appeal under Section 18 of the 2013 Act against the recommendations made in the ICC Report. Though the writ petitioner challenged the ICC Report in WP 15850(W) of 2015 but the same stood dismissed for non prosecution by an order dated February 10, 2016 as the writ petitioner was not willing to proceed any further with the writ petition. An attempt to recall the order dated February 10, 2016 was also turned down by another co-ordinate bench by an order dated 09.06.2016.

Though the order dated 09.06.2019 was challenged by the writ petitioner, the Division Bench while passing the order dated 10.06.2019 did not interfere with the said order dated 09.06.2019. Thus, the ICC report which was challenged in WP 15850 (W) of 2015 attained finality and the employer is obliged to act upon the recommendation of ICC.

37. The Hon'ble Division Bench after looking into the fundamental facts, materials and findings by the ICC and the view taken by the establishment on the findings of the ICC as well as the appellate authority was of the view that the penalty inflicted upon the writ petitioner not only appeared to be disproportionate to the proved allegation but does not also express itself to be in comity with the rules prescribing the major penalties. Thus, the Hon'ble Division Bench was of the view that the allegations have been proved but chose only to interfere with the imposition of penalty.

38. It is well settled that a judgment is to be read as a whole in order to cull out the ratio therefrom. The effect of a judgment cannot be understood by picking out a solitary observation made in the judgment but such observation is to be read in the context in which the same was made.

39. It is not in dispute that at one point of time the petitioner was holding the post of Manager (Law) in MSTC and is still now holding an important post in the legal department. The writ

petitioner rightly understood the effect of the observation of the Hon'ble Division Bench as quoted hereinbefore and took a conscious decision not to challenge the ICC report in this writ petition.

40. Thus the scope of the instant writ petition cannot be enlarged to include the challenge against the ICC report.

41. Mr. Kar contended that the inquiry by the ICC is a fact finding inquiry under the 2013 Act but the employer cannot straightaway impose punishment on the basis of the ICC Report but has to initiate an enquiry in terms of the CDA Rules 1980 for imposing punishment upon an employee. He contended that the two proceedings one under the 2013 Act and the other under the CDA Rules 1980 are two independent proceedings and the authorities confused the same to form part of one proceeding.

42. If a complaint of sexual harassment is made by an aggrieved woman, the ICC has to make an inquiry into the complaint and submit a report making its recommendations to the employer. ICC may recommend to the employer to take action for sexual harassment as a misconduct in accordance with the service rules governing the employee. Starting from the lodging of such complaint till the ICC report are the proceedings which are guided by the provisions of the 2013 Act and the rules framed thereunder. However, in order to bring the complaint to its

logical end, the employer has to take action on the recommendations of the ICC as per the Service Rules. The CDA Rules, 1980 shall have to be considered for deciding as to how the disciplinary action is to be initiated.

43. Mr. Kar referred to the procedure laid down in Rule 25 of the CDA Rules 1980 and contended that if the Disciplinary Authority proposes to take disciplinary action against the delinquent, it shall have to hold an inquiry after framing definite charges on the basis of imputations of misconduct. The Disciplinary Authority may itself inquire into or appoint any Inquiring authority to inquire into the truth of any imputation of misconduct. After conclusion of the inquiry the Inquiry Officer shall submit his report. Thus, according to Mr. Kar, the employer before imposing any punishment has to initiate the disciplinary proceeding by following the procedures laid down under CDA Rules, 1980. According to Mr. Kar, the employer instead of enquiring into the misconduct treated the ICC Report to be the report of the Inquiring Authority which is contrary to the service rules.

44. Whether the ICC Report under 2013 Act can be construed to be the report of the Inquiring Authority has to be decided upon considering the CDA Rules 1980. Rule 25(2) of the CDA Rules 1980 would be relevant for deciding the aforesaid issue and the same is quoted hereinbelow.

“Rule 25(2)

Whenever the disciplinary authority is of the opinion that there are ground for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, it may itself enquire into, or appoint any inquiring authority to inquire into the truth thereof
Provided that where there is a complaint of sexual harassment within the meaning of Rule 4(3) above, the Complaints Committee 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 Complaint Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

Explanation-Where the disciplinary authority itself holds the inquiry, the inquiring authority shall be construed as a reference to the disciplinary authority.

**Inserted in referene to DPE letter no. 15(07)99-DPE-GM-VOL-III-FTS-2344 dated 11.12.2017 and amended vide decision taken in 293rd Board meeting held on 13.08.2019”*

45. Thus, from the proviso inserted to Rule 25(2) it is evident that in case of a complaint of sexual harassment, the ICC shall be the inquiring authority appointed by the Disciplinary Authority for the purpose of the CDA Rules, 1980.

46. However, it cannot be glossed over that the said proviso was inserted in view of the decision taken in the Board meeting held on 13.08.2019. The question which now arises is, what would

be the effect of the ICC Report which are prior to the incorporation of the aforesaid proviso in Rule 25(2) of the CDA Rules 1980. The answer to such question lies in Rule 27A which reads as follows:-

“Rule 27A

A complaints Committee will be set up in line with the norms prescribed by Hon’ble Supreme Court in Vishaka and others vs. the State of Rajasthan and others, which will inquire into complaints of sexual harassment made in terms of Rule 19A. The Complaints Committee will be deemed to be the inquiry Authority for this purpose and the report of this Committee shall be deemed to be the Inquiry Report under these rules.

Note:

The Complaints Committee shall hold the inquiry proceedings according to the procedure laid down for imposing major or minor penalties, as the case may be, as far as possible and follow the principle of Natural Justice.

(Added vide decision taken in the 219th board meeting held on 25.03.2006 & circulated vide Ref. no. P&T/01/001/85/87 dated 12.4.2006)”

47. The said rule was inserted in CDA Rules 1980, vide Board meeting held on 25.03.2006. The said rule provides that the Complaints Committee i.e. the ICC will be deemed to be the Inquiry Authority for the purpose of complaints of sexual harassment and the report of ICC shall be deemed to be the Inquiry Report. The said rule was in existence when the inquiry was made by the ICC.

48. It is not in dispute that Rule 27A was inserted after the decision of *Vishaka* (supra). It is also not in dispute that the directions, contained in the said decision would be binding and enforceable in law until suitable legislation is enacted. The 2013 Act mandates the employer to take action for sexual harassment as a misconduct in accordance with the service rules applicable to the employee concerned. The CDA Rules 1980 was amended by incorporating Rule 27A in case of complaints of sexual harassment. There is no embargo in the 2013 Act to treat ICC Report to be the report of the Inquiring authority as per the service rules. It also does not appear that the said rules is contrary to 2013 Act. Such amendment of CDA Rules 1980 is not under challenge in this writ petition. Since the amendment to CDA Rules has not been challenged, this Court is unable to accept the contention of Mr. Kar that the Rule 27A could not have been resorted to by the employer in the instant case.

49. Thus, this Court is of the considered view that the ICC Report in the instant case shall be treated to be the Inquiry Report as per CDA Rules, 1980 and the disciplinary authority shall have to take steps as per the CDA Rules before imposing punishment.

50. Mr. Kar placed reliance upon a judgment of the Hon'ble Supreme Court of India in the case of *Dr. Vijayakumaran C.P.V. vs. Central University of Kerala and Others* reported at (2020)12

SCC 426 and contended that a regular enquiry or departmental action as per the service rules is indispensable. In the said reported decision the issue was whether the order of termination was ex facie stigmatic. The Hon'ble Supreme Court held the order of termination to be ex facie stigmatic as the same was issued without subjecting the delinquent to a regular enquiry as per the service rules. On such facts it was held that before passing an order of termination a regular enquiry or departmental action as per the service rules is also indispensable. The said decision is of no assistance to the petitioner in the instant case as ICC Report can be taken to be the report of the Inquiring Authority as per the service rules.

51. By relying upon the observations made by the Hon'ble Supreme Court in paragraph 97 of the case of *Nisha Priya Bhatia vs. Union of India and anr.* reported at (2020) 13 SCC 56, Mr. Kar strenuously contended that it logically follows that after the ICC report, which is an enquiry under the 2013 Act, the disciplinary authority has to initiate a disciplinary proceeding in accordance with the service rules by appointing an Inquiry Officer, framing of charges etc. as the two proceedings cannot be considered to be one cohesive process as held by the Hon'ble Supreme Court in the said reported decision. In the said reported decision, a victim of sexual harassment invoked the jurisdiction of the Hon'ble Supreme Court praying for issuance of a writ directing the Union of India to amend the Central Civil

Services (Classification, Control and Appeal Rules, 1965 [in short CCS (CCA) Rules] to make a provision for a victim of sexual harassment for her representation and/or participation during the enquiry into her complaint. While dealing with the said issue, the Hon'ble Supreme Court held that departmental enquiry is in the nature of an in-house mechanism wherein the participants are restricted and the ambit of such inquiry is strictly confined between delinquent employee and the department concerned.

52. It is well settled that reliance on a decision without looking into the factual background of the case before it is clearly impermissible and a decision is a precedent on its own facts. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. [see *State of Rajasthan vs. Ganeshi Lal* reported at AIR 2008 (SC) 690]. Therefore, the observation in paragraph 97 of *Nisha Priya Bhatia* (supra) has to be read in the context of the issues raised and not what may logically follow therefrom.

53. The issue as to whether a separate inquiry by the Inquiring Officer is to be made even in a case where the service rules governing the employee concerned specifically provides that the

ICC report will be deemed to be the enquiry report was not the issue raised before the Hon'ble Supreme Court of India in *Nisha Priya Bhatia* (supra). Thus, the observations made in the said judgment is of no assistance to the petitioner in the case on hand.

54. The decision of a co-ordinate bench in the case of *Debjani Sengupta vs. Institute of Cost Accountants of India and Others* reported at 2019 SCC Online (Cal) 734 was pressed into service by Mr. Kar to support his contention that the 2013 Act does not envisage that the proceeding before the ICC would be treated as regular proceeding before an Inquiry Authority in terms of the service rules governing the employee. The co-ordinate bench after taking note of Rule 91 of the service rules governing the employee concerned and also that the parties have not produced any policy adopted by the Institute treating the inquiry before the ICC as an enquiry in terms of Rule 91 of the service rules in case of allegations of sexual harassment held that the proceeding before the ICC cannot be treated to be a regular proceeding before the Inquiring Authority. In the case on hand the CDA Rules 1980 incorporated a special procedure for inquiring into complaints of sexual harassment of woman providing that the Complaints Committee i.e. ICC will be deemed to be the enquiry authority and the report of such committee shall be deemed to be the enquiry report under the service rules. Thus, the decision of the co-ordinate bench in

the case of *Debjani Sengupta* (supra) is not applicable to the case on hand.

55. Mr. Kar relied upon an observation made by a Division Bench of this Hon'ble Court in an order dated 04.03.2022 passed in WPST 105 of 2021 with I.A. NO. CAN 1 of 2022 in the case of *Dr. Manotosh Sutradhar vs. State of West Bengal and ors. (supra)* and contended that the recommendation of the ICC is not conclusive and the same is only a piece of evidence. The said observation was made on an application for grant of an interim order and is thus a *prima facie* finding for considering the prayer for interim order. It is well settled that only the *ratio decidendi* of a judgment is a binding precedent and all observations made in the judgment cannot be said to be binding upon the court. Thus, the said observation of the Division Bench as to the effect of the ICC Report, while passing an interim order cannot be said to be binding upon this Court.

56. A complaint of sexual harassment is inquired by the ICC as per the 2013 Act but the disciplinary action is taken under the service rules. After reading the provisions of the 2013 Act and the CDA Rules 1980 this Court is of the considered view that the CDA Rules, 1980 provide for connecting the two proceedings, one under the 2013 Act and the other under the CDA Rules by the ICC Report. In the case on hand, the disciplinary action has to start by treating the ICC Report as the Inquiry Report under the CDA Rules 1980 and to proceed in

accordance with CDA Rules before inflicting punishment upon the delinquent.

57. This Court, therefore, holds that since CDA Rule, 1980 provide that the ICC report shall be treated to be the inquiry report of the Inquiring Authority, there was no necessity to initiate a further inquiry by the disciplinary authority, as contended by Mr. Kar and the ICC report shall be treated to be the report of the Inquiring Authority.

58. In the case on hand it is not in dispute that the disciplinary authority passed the order of punishment dated March 3, 2015 prior to the ICC Report being forwarded to the employee. The order of punishment was passed merely on the basis of ICC Report and without affording any opportunity of hearing to the writ petitioner. Thus, Mr. Kar was right in submitting that, there has been violation of the provision of CDA Rules 1980, as well as the principles of natural justice and also that the petitioner suffered prejudice as an order of punishment was passed.

59. The Appellate Authority rejected the appeal filed by the writ petitioner on 20.03.2015 by an order dated December 3, 2015. The appellate authority was of the opinion that furnishing the ICC Report after the punishment order did not vitiate the inquiry. This Court has already held that non furnishing of the ICC report prior to passing the punishment order amounts to

violation of the principles of natural justice. The said order is also devoid of any reasons.

60. The order of punishment was passed by the Disciplinary authority merely on the basis of the ICC report. The appellate authority mechanically affirmed the order of punishment. The Appellate Committee passed the order dated 25.11.2019 refusing to interfere with the order of punishment imposed on the petitioner by the competent authority. The Division Bench after observing that the punishment imposed was not only disproportionate to the proved allegations but also does not express itself to be in the comity of rules prescribing the major penalties directed reconsideration of the issue of punishment. The appellate committee after quoting the note appearing in the Greetings Card held there is no ground to modify the penalty already imposed by the competent authority. In view of the directions contained in the order dated 10.06.2019, the appellate committee ought to have decided the aforesaid issues highlighted by the Hon'ble Division Bench by passing a reasoned order. The order passed by the appellate committee is absolutely bereft of any reasons and the same is liable to be set aside and quashed for such reason.

61. This Court is, therefore, of the considered view that there is a flaw in the decision making process for inflicting punishment upon the petitioner and interference is called for in exercise of the power of Judicial Review. However, taking into

consideration the chequered history of this matter and also that the appellate committee did not effectively discharge its duty while considering the representation of the petitioner as it did not render its findings on the issues raised in the said representations, this Court feels that the Appellate Committee should be directed to reconsider the representation of the petitioner and decide it afresh strictly in accordance with law. While considering the said representation, the Appellate Committee shall keep in mind the observations made by this Court against the order of punishment passed by the disciplinary authority and the appellate authority.

62. For the reasons as aforesaid, the order of the Appellate Committee dated 25.11.2019 is set aside and quashed. The Appellate Committee is directed to reconsider the representation of the petitioner and dispose of the same in accordance with the relevant rules by revisiting the order of punishment dated 03.03.2015 and the appellate order dated 03.12.2015 after affording an opportunity of hearing to the petitioner and by passing a reasoned order in the light of the observations made by the Hon'ble Division Bench in the order dated 10.06.2019 as well as the observations made in this order and communicate its decision to the petitioner. The entire exercise shall be completed with a period of 4 weeks from the date of communication of this order. Writ petition accordingly stands

disposed of with the above directions. There shall be, however, no order as to costs.

63. There shall be, however, no order as to costs.

64. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)