

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 198 OF 2021
WITH
CIVIL APPLICATION NO.2563 OF 2021(FILING)**

Dr. Prashant Natekar,
Resident of 37 "Aishwarya",
GOMECO Coop. Housing Society,
Opp. Miraculous Cross of Bambolim,
Bambolim, Goa. 403202.

... Petitioner.

Versus

1. State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.
2. Secretary-Health
Government of Goa,
Secretariat, Porvorim, Goa
3. Director-Administration,
Goa Medical College & Hospital,
Bambolim, Goa.
4. Joint Secretary (Health),
Public Health Department,
Government of Goa Panaji, Goa,
5. Under Secretary (Health),
Public Health Department,
Government of Goa,
Secretariat, Porvorim, Goa.
6. The Dean,

Goa Medical College & Hospital,
Bambolim, Goa

7. Dr. Nilam Madhale,
Associate Professor in Anatomy,
Goa Medical College,
Bambolim, Goa

8. Shri. Visvonatha Castam Naique,
House No. 102, LaxmiNiwas,
Pilerkar Wada, Morombi-O-Grande,
Merces Vaddy, Tiswadi, Goa.

9, Dr. Uday Narayan Kudalkar,
Age 51, Associate Professor in Anatomy,
Goa Medical College, Bambolim-Goa ...Respondents

Mr. S. D. Lotlikar, Senior Advocate *with Mr. Terence Sequeira and Mr. Jayant Karn, Ms. Sailee Keny, Advocates for the Petitioner.*

Mr. Devidas J. Pangam, Advocate General *with Mr. Prashil Arolkar, Additional Government Advocate for the Respondent No.1 and 2.*

Mr. Rajdeep Prabhudessai, Advocate *for the Respondent No.7.*

Mr. Pavithran A.V., Advocate *for the Respondent No.8.*

Mr. Gaurish Agni, Advocate *for the Intervenor.*

**CORAM : DIPANKAR DATTA, CJ &
M. S. SONAK, J.**

**RESERVED ON : 4th August 2022
PRONOUNCED ON : 5th August 2022.**

JUDGMENT : (Per DIPANKAR DATTA, CJ.)

This writ petition, instituted on 22nd January 2021, challenges an order dated 19th June 2017 issued by the Secretary (Health-1), Public Health Department, Government of Goa. The order reads as follows:

"ORDER

Whereas, Inquiry against Dr. Prashant E. Natekar, Professor & Head of the Department of Anatomy, Goa Medical College, Bambolim - Goa, is being contemplated and Dr. Prashant E. Natekar, Professor & Head of the Department of Anatomy, Goa Medical College, Bambolim shall report to Public Health Department, Porvorim, until further Orders."

2. Several grounds have been urged in support of the relief claimed in the writ petition. The prayers read as follows:

"(A) For a writ of mandamus or any other writ, direction or order in the nature of mandamus, quashing and setting aside the Impugned Order No. 1 dated 19/06/2017, bearing No.

1/15/2016II/PHD, passed by the Under Secretary (Health) who is the Respondent No. 5, with a further direction commanding the Respondent Authorities to recall and cancel the Impugned Order No. 1 and to allow the Petitioner to resume duties in his position as Professor and Head of Department of Anatomy at GMC with all consequential benefits,

(B) For a writ of mandamus or any other writ, direction or order in the nature of mandamus, quashing and setting aside the Impugned Order No, 2 dated 27/02/2020 bearing No, 5/4/86-11/GMC/9619, passed by the Director (Admn), GMC who is the Respondent No, 3, add back the leaves of 39.5 days to the credit of the Petitioner and to allow the purported 39.5 unauthorized leaves to be regularized as time spent on duty,

(C) For a writ of mandamus or any other writ, direction or order to Pay compensation of Rs. 1,00,00,000/ (Rupees One Crore only) towards mental harassment, embarrassment suffered by the Petitioner as also for depriving him of opportunities for career advancement, completion of the mandated hours under Continuous Medical Education and for being deprived of updating himself with the latest course curriculum/syllabus for the courses offered at GMC.

(CC) For a Writ of Mandamus, or any other writ, direction order in the nature of mandamus to quash and set aside the Undated Inquiry Report submitted by the committee purported to be constituted vide Order dated 27.07.2020, and all a decisions, proceedings and enquiries made/held on the basis of the said undated Inquiry Report;

(D) For an amount of Rs.2,00,000/- (Rupees Two Lakhs only) towards costs of the Petition.

(DD) to quash and set aside the proposed fresh inquiry purportedly directed vide Order dated 03/08/2021, bearing No. 1/29/2018-C/GMC/175, issued by the Respondent No. 6;"

3. Prayers (CC) and (DD) were inserted in the prayer clauses in terms of an order dated 8th December 2021 permitting amendment.

4. The facts leading to institution of the writ petition may be noted first. While the petitioner was functioning as the Head of the Department of Anatomy in the Goa Medical College (hereafter "the College" for short), the (added) respondent no.7, was working on the post of Associate Professor in Anatomy in the College. On 7th April 2008, the respondent no.7 complained to the Dean of the College against the petitioner about harassment meted out to her. The allegations leveled by the respondent no.7 against the petitioner were that he is:

- Guilty of abetting suicide.
- Guilty of interfering with Dr. xxx in her personal freedom of awarding good marks to students in examinations.
- Guilty of insulting and humiliating Dr. xxx in front of her students and her colleagues.

- Guilty of intimidating Dr. xxx with raised hands and shouting at the top of his voice.
- Guilty of causing insistent mental torture through memos and threatening.

Noticeably, none of the allegations pertain to sexual harassment.

5. The aforesaid complaint was followed up by the respondent no.7 by a second complaint dated 12th November 2008, which had as its subject "Sexual Harassment at Work place". Of the several allegations that were leveled against the petitioner, we have found one allegation to be serious enough to be noted here. It was alleged that the petitioner had put up pornographic pictures on his computer but, having noticed the same, the respondent no.7 had excused herself out of the room.

6. The Complaint Committee, which had been constituted, looked into the allegations leveled by the respondent no.7 in an inquiry that was conducted on 19th/20th November 2008. Such committee consisted of several members including, *inter alia*, the Professor & Head, Forensic Medicines as the Chairperson, an Associate Professor, Obstetrics & Gynaecology and the Matron of the College. The report of the Complaint Committee reveals that the respondent no.7 and the

petitioner were interviewed. The allegations of sexual harassment leveled by the respondent no.7 were denied by the petitioner. The report concluded as follows:

"In view of the foregoing, THE COMMITTEE IS HAMPERED BY THE FACT THAT THE ALLEGED SEXUAL HARASSMENT HAS OCCURED MORE THAN THAN 3 YEARS AGO AND THEREFORE THIS DELAY OBVIATES AUTHENTIC VERIFICATION.

MOREOVER, SINCE DR XXXX HAS CLEARLY EXPRESSED THAT PRESNETLY THERE IS NO SEXUAL HARASSMENT, ONLY PROFOUND VERBAL ABUSE, the following are the recommendations of the Complainant Committee: -

01. Dr. Prashant Natekar should ensure that no opportunity/situation which is potentially open to the point of sexual exploitation be allowed to arise in his department.

02. Dr. xxxx should immediately inform in writing to the appropriate authority if she is subjected to further sexual harassment.

03. In the course of enquiry, it was clearly obvious that there was and is an unhealthy working scenario in the department of Anatomy, with gross indiscipline prevailing. These work related issues must be dealt with by the appropriate authority that is the Dean. It would be prudent for the Dean to issue suitable guidelines for the smooth functioning of the Department given the present status of affairs. Furthermore a course in communication skills and personnel relations would

greatly benefit all the staff in the department of Anatomy.”

After the aforesaid report was submitted by the Complaint Committee, no action against the petitioner appears to have been initiated.

7. More than 7 years after the aforesaid report was submitted by the Complaint Committee, the respondent no.7 once again complained against the petitioner by lodging a complaint dated 18th July 2016. The allegations pertained to harassment at the work place of the respondent no.7 at the instance of the petitioner. What the respondent no.7 essentially alleged is that the petitioner was using his power as the Head of the Department of Anatomy against her and his unethical conduct was causing her mental torture and harassment, apart from defamation.

8. While the matter stood thus, a complaint dated 21st November 2016 was lodged by the (added) respondent no.8 against the petitioner. From the subject of the complaint, it appears that the respondent no.8 had alleged “corrupt behaviour and undisciplined conduct” of the petitioner, harassment of staff and students by the petitioner, research having been conducted by the petitioner without clearance/permission from the

Institutional Ethics Committee of the College and duplication and quadruplication of same research paper publication by the petitioner.

9. In course of hearing, we had asked the parties regarding the identity of the respondent no.8, to which Mr. Lotlikar, learned senior advocate appearing for the petitioner submitted that the respondent no.8 happens to be the father of a removed employee of the College.

10. Thereafter, a second inquiry was conducted. This is revealed from a note bearing FMS 1400028053 dated 9th January 2017, of the Under Secretary (Health), at page 6/N of the relevant file produced by Mr. Pangam, learned Advocate General for Goa in terms of an order passed by us on 1st August 2022. It reveals that a Committee of the College, which met on 17th December 2016 and went through the complaint of the respondent no.7 dated 18th July 2016, did not *prima facie* find any allegation of sexual harassment by the petitioner against the complainant. It was opined that the contentions of the complainant were not under the purview of the Sexual Harassment Committee, but pertain to the academic professional misconduct of the petitioner.

11. Even then, in view of the aforesaid complaints dated 18th July 2016 and 21st November 2016 of the respondents 7 and 8, respectively, the Under Secretary (Health), Public Health Department was directed by the Government to conduct a preliminary inquiry into such complaints. Paragraphs 11 and 12 of the note prepared by the Under Secretary (Health) read as follows:

"11. As stated paras 2 &3, regarding sexual harassment from Natekar meted out to the said Doctors as noted above, there may not be actually proof of evidence in such cases, however, since the misconduct is serious nature i.e. involving sexual harassment at the work place thereby causing mental torture to the victims higher authorities may like to decide the matter for imposing major penalty under Rule 14 of CCS (CCA) Rules, 1965 on Dr. Natekar, Prof & HOD, Department of Anatomy, GMC.

12. In view of foregoing paras, it is submitted as under -

1. To forward the Preliminary inquiry report into the complainants made. Complaint dated 18/07/2016 filed by Dr. xxxxx and Complaint dated 21/11/2016 of Shri Visvonata Custam Naique against Dr. Prashant E. Natekar, Prof & HOD, Department of Anatomy; GMC to the Directorate of Vigilance AND;

2. To conduct the inquiry with respect to allegations regarding misconducts related to

the research papers may be given to the concerned authority.

3. In view of the submission in para 11, Government may like to decide the matter for imposing major penalty under Rule 14 of CCS (CCA) Rules, 1965 on Dr. Natekar, Prof & HOD, Department of Anatomy, GM

'X' above for decision, 'A' for approval."

12. The aforesaid note of the Under Secretary (Health) was placed before the Additional Secretary (Health) and Secretary (Health) whereupon the same was placed before the Minister for Health. By a note dated 9th June 2017, the Minister by a handwritten note opined as follows:

"This matter is very serious. Dr. Natekar to be kept without posting till the vigilance inquiry is over and may be asked to report to Public Health Department and his charge may be given to the next senior most Doctor in that Department. Secretary (Health) may issue directions".

13. There is one other note of the Minister for Health dated 9th June 2017, which reads as follows:

"

NOTE

This matter is of a serious nature and cannot be taken lightly. Secretary Health may please recommend and take strict action in this matter.

The Head of the institution along with the Doctor should be punished.

I believe if action wasn't taken by the Head of the Institution, it was a total laps on the part of the Institution of Goa Medical College. A serious note should be made by the Public Health Department and action should be taken in this regard. Also strict action should be taken against Dr. Natekar involved in this matter and charge of his current position that is Head of Department of Anatomy may be given to Dr. Fatima D'Souza.

Secretary, Health may issue necessary directions and take necessary steps and action in this regard."

14. The aforesaid notes given by the Under Secretary (Health) and the Minister for Health are not on record of the proceedings but are found from the relevant records which were placed before us by Mr. Pangam.

15. It seems to us to be clear that following the aforesaid notes dated 9th June 2017 of the Minister for Health, the impugned order dated 19th June 2017 (quoted at the beginning of this judgment) came to be issued by the Under Secretary (Health-I), whereby, the petitioner was relieved of his duties and functions as Professor & Head of the Department of Anatomy of the College and asked to report to the Public Health Department.

16. We have been informed by Mr. Lotlikar that ever since the petitioner has been reporting at the Public Health Department, he sits in the library during office hours without doing any worthwhile work, but has been drawing his full salary. This situation has continued right from 2017 till this date.

17. Be that as it may, for more than 3 years, no tangible action either to inquire into the complaint of the respondent no.7 in terms of the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereafter "2013 Act", for short) was taken nor any disciplinary proceedings drawn up against the petitioner in terms of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 [hereafter "CCS (CCA) Rules", for short] which, we are informed, is applicable to the petitioner.

18. The national lock-down owing to the unprecedented pandemic was declared only on 24th March 2020 and, therefore, the same could have afforded a ground to the Government not to proceed against the petitioner. But why no action was initiated prior to such lockdown has not been explained.

19. It was as late as on 27th July 2020 that the Government constituted a Committee comprising of four members with the Joint Secretary (Health) as its Chairman to inquire into the complaint dated 18th July 2016 of the respondent no.7 and 21st November 2016 of the respondent no.8. By an order issued under the signature of the Under Secretary (Health-I), the Public Health Department, the Committee was directed to submit its report to the Directorate of Vigilance, with intimation to the Public Health Department. The Committee constituted in terms of the order dated 27th July 2020, submitted an undated inquiry report to the Under Secretary (Health-I) by a confidential note dated 28th May 2021. The report of the Committee records the submission of the petitioner that he had instituted this writ petition challenging the order dated 19th July 2017. The Committee proceeded to hear the respondents 7 and 8 as well as the petitioner. After considering the statements that were made by the complainants as well as the petitioner, the Committee proceeded to make the following recommendations:

“The Committee recommendations are as under: -

a) In view of paras 26 and 27, copies of the following reports may be provided to Dr. xxxxx

Associate Professor, Department of Anatomy with a request to her to make a representation, if any, in terms of Section 12(1) of SHWW (PPR) Act, 2003 which shall be deemed to be treated as an appeal under said Section by the Vishaka Committee: -

(i) Report dated 19th/20th November 2008 of complaint Committee for the sexual harassment of women at workplace headed by Dr. Philomena P. D'Souza, then Professor and HOD of Paediatrics, GMC.

(ii) Report/letter dated 17th December, 2016 of sexual harassment Committee headed by Dr, M. P. Silveira,

(iii) Report dated 08/06/2017 of then Under Secretary (Health-II). This Committee shall be re-constituted if not already existing headed by women officer of sufficiently senior level from another office/department with at least half the members of the Committee should be women may be appointed keeping in mind para 29 above to consider her representation. The Committee should go into the sexual

harassment charge at work place by Dr. Prashant Natekar, with all the seriousness and submit final conclusion to the Government through Dean, Goa Medical College and thereafter, Government may take necessary action and submit it to the Directorate of Vigilance, so that Vigilance Department can initiate appropriate inquiry under relevant Rules and in terms of their letter No.5/223/20-VIG/2819 dated 25/10/2017 (Annexure — VII). This process should be completed within a period of ninety (90) days collectively by Dean, GMC and Public Health Department.

(b) The study of bones including publication of research papers articles etc. requires permission of the Institutional Ethics Committee (IEC) in terms of guidelines by Dean, GMC vide No.E2/GMC/Circular/ 2009/4618 dated 28/10/2015 (Refer Para 34) which speaks of Research Projects including clinical trials and the letter dated 02/08/2018 (Annexure 'I' of Annexure 'C' from Member Secretary, IEC submitted by Dr. Prashant Natekar which states that ICMR guidelines are not clear regarding

ethical Committee approval involving cadaveric specimens, organs and bones and he has submitted lot of documents in this regard and also Anatomy Acts of some States like, Maharashtra, Gujarat etc to support his claim. This being purely technical in nature and require proper analysis, it would be advisable that Dean, Goa Medical College, should refer the matter to the IEC Committee look into the allegations by Dr. xxxx about non taking permission of IEC for publication of his papers nor taking any permission as required in terms of guidelines aforesaid so that IEC can analyze the bunch of papers/ documents, copies of Anatomy Acts submitted by Dr. Prashant Natekar to support his claim of non requirement of permission to publish papers and research work. All the required documents should be sought from Public Health Department by IEC. This Committee should also prepare its report within a period of ninety (90) days and submit the same to the Government through Dean, Goa Medical College for taking appropriate action at their end for onward submission to Directorate of Vigilance.

(c) As far as his remaining of absent and non regularization of the absence in spite of Dr. Savio Rodrigues Committee as outlined in para 35, Dr. Prashant Natekar has acted in the manner of unbecoming of a Government Servant being a senior faculty and Professor of Department of Anatomy and has taken almost more than two years to submit his letter dated 21/02/2020 to regularize his leave for post facto approvals for his visits to MCI inspections, guest lecturer etc proves his above act.

(d) As far as corruption charge of illegal trafficking of temporal bones, though more than four and half (4 ½) years has passed the letter has been written, it would be appropriate that Dean, Goa Medical College may constitute a Committee with at least one senior faculty from Anatomy Department as a member to investigate the matter and take necessary action on the letter of Dr. xxxxx to its logical conclusion by forwarding the report to Government through Dean, Goa Medical College and thereafter to Vigilance Department.

(e) As Shri Visvonata Custa Naique did not receive any reports as per his submission, a copy of the Dr.

Savio Rodrigues Committee (Annexure XI) and that of Under Secretary (Health) (Annexure VI) may be given to Shri Visvonata Naique for his perusal and necessary action, if any,

38. It has been noted that Dr. Natekar has been reporting to the Department of Public Health Department in terms of Order No, 1/15/2016-II/PHD dated 19.06.2017 (Copy is enclosed as Annexure-V) and has been reporting to that Department for quite a long time without any action being initiated against him.

39. Committee has finally taken all facts into consideration and is of the opinion that, pending 37(a), 37(b) and 37(d) above namely Vishaka Committees final conclusion on "Sexual Harassment", Institutional Ethic Committee (IEC) report whether permissions are required or not and Committees report on illegal trafficking of temporal bones as also 17(c), Dr. Prashant Natekar, Professor of Antomy may be considred by the Government for placing him under suspension as continuance ODF Dr. Prashant Natekar, Professor and HOD of Antony presently reporting to Public Health Department will prejudice the investigation

and moreover his wrongdoings involving acts of moral turpitude.

40. This Report is being submitted to the Public Health Department for immediate compliance.”

20. By a letter dated 15th July 2021 issued by the Under Secretary (Health), the Additional Director (Vigilance), Directorate of Vigilance was informed of the acceptance by the Government of the report submitted by the Committee and the Directorate of Vigilance was requested to take further necessary action.

21. The Under Secretary (Health) (Link), by her letter No. 1/15/2016-II/PHD/1368 dated 19th July 2021 also informed the Dean of the College that the Government had accepted the report submitted by the Committee. While the letter was issued to the Directorate of Vigilance to take appropriate action in the matter, the Government directed necessary instructions to be issued to the Dean of the College for action. A copy of the report of the Committee was enclosed therewith.

22. It is in pursuance of the above that a notice dated 24th November 2021 was issued by the Presiding Officer, Internal Complaints Committee of the College (hereafter

'ICC' for short) informing the respondent no.7 and the petitioner that an inquiry would be conducted into the complaint of the respondent no.7 dated 18th July 2016 and for such purpose they were required to attend a hearing on 30th November 2021 at 2.30 p.m. at the Office of the Department of Anesthesiology of the College.

23. It was at this stage that this writ petition was listed on 1st August 2022 before us, when we heard the parties at length and adjourned it till yesterday with a request to Mr. Pangam to produce the relevant records as well as to consider the decision of the Supreme Court reported in (1987) 4 SCC 601 (***P.K. Chinnasamy vs. Government of Tamil Nadu and ors.***).

24. Appearing in support of the writ petition, Mr. Lotlikar contended that the impugned order dated 19th June 2017 is illegal, arbitrary, without jurisdiction and exhibits extreme highhandedness of the Government. The petitioner, who was the Head of the Department of Anatomy, was unceremoniously shunted out of the College and placed at the disposal of the Public Health Department where he has been assigned no work for almost five years. Although the petitioner has not been deprived monetarily, the petitioner has been severely

prejudiced and such prejudice was sought to be shown to us by referring to paragraph 3(uu) of the writ petition, reading as follows:

"3) uu) Apart from this, the Petitioner has also been greatly prejudiced by virtue of Impugned Order No. 1 and consequent denial of leave and permission to leave station. The Petitioner apart from being liable to lose his license and registration as a medical practitioner/doctor is also prejudiced in, inter alia, the following ways:

- i) The Petitioner is losing out on his teaching experience as he has been effectively kept out of GMC for thirty six months by now.*
- ii) The Petitioner cannot accord his Biometric Finger Record installed and monitored by the MCI which is a mandatory requirement of the MCI.*
- iii) The Petitioner has not been allowed to avail of his vacation that he is legally entitled to, since June 2017 i.e. the date of the Impugned Order No. I.*
- iv) The Petitioner has not been permitted to conduct the University examinations at Goa Medical College or to go as an external examiner to other Universities/colleges.*
- v) The Petitioner was denied permission to travel to collect the prestigious ACME (Advanced Course in Medical Education) Certificate from the Jawaharlal Nehru Medical College, Belgavi which in fact is very prestigious not only to the Petitioner but also to the Institution (GMC) as it is a mandatory requirement under the MCI.*

vi) *The Petitioner is denied an opportunity to keep abreast of the new curriculum for the MBBS course that has been changed by the MCI which as Professor and Head of the Department of Anatomy, the Petitioner is absolutely required to be aware of.*

vii) *On the personal health front, the Petitioner has been operated seven times since 2011 for fracture of the tibia/fibula at GMC and at Swasthiyog Prathishthan Hospital, Miraj and has also been referred to the Bombay Hospital for Chronic recurrent Osteomyelitis of Tibia in December 2018 and has been referred to Mumbai for further operative management and treatment at the Bombay Hospital. However, owing to this constant embargo on leaving station and being denied leave as well as vacation, the petitioner is unable to get himself operated thereby denying him the basic right to lead a good life.*

Even the basic daily dressings which the Petitioner could have done at GMC have been denied to him thus causing great hardship to the Petitioner and his family.

viii) *The prolonged and unjustified posting at the Secretariat has caused the Petitioner and his family tremendous harassment, torture, humiliation and distress and a direct fallout of this has been the impact on the health of the Petitioner's wife who had to undergo angiography at the Cardiology Department of GMC."*

25. Based thereon, it has been contended by Mr. Lotlikar that irreparable prejudice has been caused to the petitioner; and bearing in mind the fact that the petitioner has barely a year left for his superannuation, he submitted that this Court in exercise of its extraordinary jurisdiction ought to set aside the order dated 19th June 2017 and restore to the petitioner the post of Professor & Head of Department of Anatomy of the College.

26. Referring to the complaints of harassment/sexual harassment leveled by the respondent no.7, Mr. Lotlikar contended that the facts and circumstances of the present case is a classic example of witch-hunt against the petitioner, which has been embarked upon by the Government. It was pointed out that the first complaint of the respondent no.7 dated 7th April 2008 did not contain a single allegation of sexual harassment. Such omission was sought to be made up by the respondent no.7 in her complaint dated 12th November 2008 where she narrated incidents of 2004-2005. At any rate, such allegations are false. In any event, if the College authorities desired to hold an inquiry into the allegations leveled by the respondent no.7, they were free to do so. In fact, they did appoint the Complaint Committee to

inquire into the allegations, resulting in submission of the report of the Complaint Committee based on the inquiry conducted on 19th/20th November 2008. Respondent no.7 did not take exception to such report of the Complaint Committee despite being aware of the same as is evident from her subsequent complaint dated 18th July 2016. The same issue was racked up by her again after so many years. It was contended that it seems, the Government is bent upon having a report submitted containing adverse findings against the petitioner so that the petitioner can be kept out of office. According to Mr. Lotlikar, the notice of inquiry issued by the ICC of the College dated 24th November 2021 ought not to be allowed to be carried forward since there are previous findings rendered by at least two Committees which have in unambiguous terms held the petitioner not guilty of either harassment or sexual harassment of the respondent no.7.

27. Drawing our attention to paragraph 37 of the report of the Committee constituted by the order dated 27th July 2020, Mr. Lotlikar contended that such report has been accepted by the Government as it appears from the letter of the Under Secretary (Health) dated 15th July 2021. The Committee had recommended that the respondent no.7 may make representation in terms of

section 18(1) of the 2013 Act, which could be deemed to be treated as an appeal under such provision of law; however, to the knowledge of the petitioner, no such appeal has been preferred by the respondent no.7.

28. Mr. Lotlikar has further contended that once the Committee's report is accepted by the Government and there is no valid appeal in the eye of law preferred by the respondent no.7, the Under Secretary (Health) (Link) had no jurisdiction to call upon the Dean of the College to initiate action based on the report of the Committee.

29. In so far as the complaint lodged by the respondent no.8 on 21st November 2016 is concerned, Mr. Lotlikar contended that such a complaint was lodged to wreak vengeance against the petitioner since he was associated in some capacity which ultimately led to removal of the son of the respondent no.8 from service. He further contended that the Government was free to suspend the petitioner and initiate disciplinary proceedings against him, if indeed the allegations levelled were such that the same called for a full-fledged inquiry. However, neither was the petitioner suspended nor were charges drawn up against him. Having regard to the lapse of time since receipt of the complaint from the

respondent no.8 till this date and more so because the petitioner is on the verge of retirement coupled with the fact that the Government sat over the matter for all these years, he submitted that it would be inequitable if the official respondents were granted liberty to proceed against the petitioner at this stage.

30. Our attention was also drawn by Mr. Lotlikar to paragraph 39 of the report of the Committee whereby it was recommended that the petitioner be placed under suspension since it could prejudice the investigation. Unfortunately, despite accepting the report of the Committee, the petitioner has not been placed under suspension and continues to be kept at the disposal of the Public Health Department which clearly evinces an intention of the Government to keep the petitioner away from the College till his retirement on superannuation.

31. Resting on the aforesaid contentions, Mr. Lotlikar prayed for relief as claimed in the writ petition.

32. Appearing on behalf of the Government, Mr. Pangam has submitted that the order dated 19th June 2017 does not suffer from any gross illegality, far less illegality, as contended by Mr. Lotlikar. Our attention was drawn to the decision of the Supreme Court reported in

(2015) 7 SCC 291 (**Ajay Kumar Choudhary vs. Union of India & anr.**) and paragraph 21 thereof was placed for our consideration. Paragraph 21 reads as follows:

"21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the Interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be

held in abeyance stands superseded in view of the stand adopted by us.”

33. According to Mr. Pangam, the Government took a conscious decision to keep the petitioner away from the College so that he could neither tamper with the evidence nor influence witnesses who could be called upon to depose against the petitioner. This was required for severing any local or personal contact which could be misused for obstructing the investigation. Being a valid option, which was open to the Government, the order dated 19th June 2017 calling upon the petitioner to report to the Public Health Department was issued and the same is unexceptionable.

34. Reliance was also placed by Mr. Pangam on the decision of the Supreme Court reported in (2004) 4 SCC 245 [***Union of India (UOI) and ors. vs. Janardhan Debanath and ors.***] in support of the proposition that a transfer from one post to another on account of misbehavior, even without conducting a prior inquiry, is permissible.

35. Insofar as the complaint lodged by the respondent no.7 against the petitioner is concerned, Mr. Pangam contended that the behaviour and conduct of the

petitioner towards his lady colleagues have not been such that it could inspire confidence. On the contrary, not only the respondent no.7, but other staff of the College have also complained of the indecent and unpleasant behaviour of the petitioner. The order dated 19th June 2017, therefore, was an order which was the need of the hour and compelled by the circumstances brought about by the petitioner himself.

36. Moving further, Mr. Pangam contended that the initial report of the Complaint Committee, based on the inquiry conducted on 19th/20th November 2008, was neither accepted nor rejected by the Government and, therefore, there was no impediment in constituting the Committee by the order dated 20th July 2020 once the Government was approached by the respondent no.7 by her complaint dated 18th July 2016 and the respondent no.8 too had complained on 21st November 2016. The allegations leveled in both the complaints being serious enough to warrant a preliminary inquiry, the Committee chaired by the Joint Secretary (Health) was duly constituted on 20th July 2020 and the report of such Committee does not in any manner hold the petitioner to be innocent in all respects. It is in view of the gravity of the allegations leveled against the petitioner and the

Committee's recommendations that the Government proposes to take further action against the petitioner.

37. As observed earlier, in course of hearing we had called upon Mr. Pangam to consider the decision of the Supreme Court in *P.K. Chinnasamy (supra)*. Paragraph 4 thereof reads thus:

"4. In a democratic polity as ours, the bureaucracy works as the pivot for running the administration. So far as the state is concerned, matters of policy and the ultimate responsibility for running the administration is obviously on the apex body — the Council of Ministers and the Executive Head — the Governor. It cannot be lost sight of that every public officer is a trustee and in respect of the office he holds and the salary and other benefits which he draws, he is obliged to render appropriate service to the State. The scheme postulates that every public officer has to be given some posting commensurate to his status and circumstances should be so created that he would be functioning so as to render commensurate service in lieu of the benefits received by him from the State. If an officer does not behave as required of him under the law he is certainly liable to be punished in accordance with law but it would ordinarily not be appropriate to continue an officer against a post and provide no work to him and yet pay him out of the Consolidated Fund. It is with this view that we had called upon the respondent Government to give the appellant a proper posting and extract work from him. Since the State Government has not done the needful, it has

become necessary for the court to interfere. Ordinarily in a case of this type, the court would have no role to play."

38. The decision in *P. K. Chinnasamy (supra)* was sought to be distinguished by Mr. Pangam by submitting that the said case did not arise out of a transfer and the observations in paragraph 4 were made by the Court only upon the State Government's failure to respond to the Court's suggestion. He submitted that such decision, on facts and in the circumstances of the present case, had no application.

39. Mr. Pangam, before concluding his address, urged that the petitioner has failed to set up any case for interference by this Court and prayed for dismissal of the writ petition.

40. After such conclusion, we had requested Mr. Pangam to consider the decision of a Single Bench of the Calcutta High Court reported in 2010 SCC OnLine Cal 2339 (***Dipankar Bandopadhyay vs. Durgapur Chemicals Ltd and ors.***) which dealt with an order of transfer pursuant to which the petitioner, a Chemical Engineer posted in the respondent company's manufacturing plant at Durgapur was posted at its sales office at Kolkata as 'Sales Engineer'. We record no

submission having been made in respect of this decision by Mr. Pangam.

41. We also record that although the respondents 7 and 8 were represented in previous hearings, none of the advocates representing them came forward to address us prior to the judgment in this writ petition being reserved.

42. We have heard learned advocates for the petitioner and the Government at considerable length and also perused the records carefully. Essentially, we are tasked to decide three issues:

(1) Whether the order dated 19th June 2017 is valid and legal?

(2) Whether the Dean of the College ought to be permitted to proceed against the petitioner on the basis of the complaints of sexual harassment levelled by the respondent no.7?

and

(3) Whether the disciplinary authority ought to be permitted to proceed against the petitioner in accordance with law on the basis of the complaint of the respondent no.8?

Subject to our answers to these questions would depend the nature of relief that could be granted to the petitioner, if at all.

Answer to question no.1. -

43. The facts preceding issuance of the order dated 19th June 2017 have been noted by us hereinabove. The note of the Under Secretary (Health), followed by the two notes of the Minister for Health, leave no manner of doubt that the same formed the foundation of the order dated 19th June 2017. Even before any inquiry was initiated, the Minister expressed his mind that punishment is called for. If indeed, the behaviour and conduct of the petitioner has been such that the same are sufficient to attract disciplinary proceedings, the petitioner's disciplinary authority could have initiated the same apart from placing him under suspension if his continued presence at the College would have hampered the conduct of a free, fair and proper inquiry. Regrettably, none of the options which were open to the Government and/or the petitioner's disciplinary authority was exercised. Instead, in terms of the order of the Minister, the petitioner was "to be kept without posting till the vigilance inquiry is over". Not only that, the second note dated 9th June 2017 also reveals the mindset of the Minister to have *inter alia* "the Doctor

punished”, which we presume is a reference to the petitioner. The order of 19th June 2017 which followed these notes can hardly be justified as the fallout of a fair and unbiased application of mind. Even before an inquiry into his conduct, the petitioner incurred the wrath of the Minister who gave a diktat that not only is the petitioner to be kept out of his posting, he also “should be punished”. The note of the Minister preceding the order dated 19th June 2017 does not even remotely refer to the decision in *Ajay Kumar Choudhary (supra)* as the source of inspiration for the Minister to direct the administrative executive to ensure that the petitioner does not continue in the College. We are of the view that paragraph 21 of the decision in *Ajay Kumar Choudhary (supra)* could have been useful for the Government and followed, if the petitioner could have been accommodated in any other post outside the College where he could retain the status that he enjoyed hitherto and where he had the similar opportunity to discharge his official duties as a Professor.

44. It is in this connection that we take note of the decision of the Calcutta High Court in *Dipankar Bandopadhyay (supra)*, where the Court had the occasion to consider the decision reported in 1974 (1) ALL ER 982 (***Langston v. Amalgamated Union of Engineering***

Workers and another) as well as the decision in *P.K. Chinnasamy (supra)*. We quote paragraphs 38 to 40 of the decision herein below:

"38 ***In Langston v. Amalgamated Union of Engineering Workers and Another*** (*supra*), the Trade Union did not want that the appellant/workman should work with the members of such union because he refused to become a member thereof. The union pressed the management to terminate the service of the appellant/workman. To buy peace, the management placed the appellant/ workman under suspension but paid him full wages. Since the suspension was not for any misconduct on the part of the appellant/ workman or by way of interim suspension pending proceedings, he complained to the management contending that he did not intend to become a member of the union and that he had a right to work without being a member thereof. Since the appellant/workman was not given work, the Industrial Court was approached by him with the grievance that he had not been treated fairly by the management and that he was a victim of unfair labour practice. The Industrial Court held against the appellant/workman, who then appealed to the Court of Appeal.

39. The Court was referred to an earlier decision in ***Collier v. Sunday Referee Publishing Co. Ltd.1940 (4) All ER 234*** where Asquith, J. observed :

'It is true that a contract of employment does not necessarily, or perhaps normally, oblige the master to provide the servant with work, Provided

I pay my cook her wages regularly, she cannot complain if I choose to take any or all of my meals out'.

Asquith, J. had referred to two cases where a commercial traveller and salesman:

'were held to have no legal complaint so long as the salary continued to be paid, notwithstanding that, owing to the action of their respective employers, they were left with nothing to do. The employer was not bound to provide work to enable the employee (as the phrase goes) to 'keep his hand in', avoid the reproach of idleness, or even make a profit out of travelling allowances.'

40 Lord Denning, after noticing the above decision, observed as follows:

*'That was said 33 years ago. Things have altered much since then. We have repeatedly said in this Court that a man has a right to work, which the Courts will protect: see **Nagle-v. Feilden and Hill v. C.A. Parsons & Co. Ltd.** I would not wish to express any decided view, but simply state the argument which could be put forward for Mr.Langston. In these days an employer, when employing a skilled man should be given the opportunity of doing his work when it is available and he is ready and willing to do it. A skilled man takes a pride in his work. He does not do it merely to earn money. He does it so as to make his contribution to the well-being of all. He does it so as to keep himself busy, and not idle. To use his skill, and to improve it. To have the satisfaction which comes of a task well done. Such as Longfellow attributed to the village'. blacksmith: 'Something attempted, something done, has*

earned a night's repose.' The Code of Practice contains the same thought. It says, at para 8, that-

'management should recognize the employee's need to achieve a sense of satisfaction in his job and should provide for it so far as practicable.'

A parallel can be drawn in regard to women's work. Many a married woman seeks work. She does so when the children grow up and leave the home. She does it, not solely to earn money, helpful as it is but to fill her time with useful occupation, rather than sit idly at home waiting for her husband to return. The devil tempts those who have nothing to do. To my mind, therefore, it is arguable that in these days a man has, by reason of an implication in the contract, a right to work. That is, he has a right to have the opportunity of doing his work when it is there to be done."

After taking note of paragraph 4 of the decision in *P.K. Chinnasamy (supra)*, the Single Bench proceeded to hold as follows:

"43 More than two decades have passed since then. To make public officers accountable to the people of the nation for whatever they do has been gaining ground. Is it not the right time to emphasize that to sustain a transfer order of the present nature, the employer must be called upon to satisfy the Court of the genuine need that was felt leading to posting of a particular officer at a place where there is every possibility of his services not being utilized fully? Should the Court,

instead of shying away obsessed with the thought that it is for the employer to decide where and when to post its employee, not interfere in a case where reasonable or probable cause is wanting and the impugned action can well be characterised as taken with an oblique or indirect object? In the present day socio-economic scenario, the answers to these questions cannot but be in the affirmative.

44 Experience has shown that one has to pass through several levels before tasting success in life. Being in public employment, the petitioner could legitimately claim to be accorded all the necessary opportunities so that he might blossom in whatever official activity he pursues. An individual employee in pursuit of excellence would be prone to achieve a standard or reach a level fixed by him by climbing the ladder of success. As soon as he achieves/reaches the fixed standard/level, he aims to achieve/ reach a higher standard/level. This is the way one gradually climbs to the top in due course of time. If midway the ladder is removed, the result would be obvious. The target can neither be reached nor the aim achieved. This is precisely what the petitioner in all likelihood is bound to encounter, if posted at Kolkata. A public employer has no right to make his employee sit idle although he may be paid all the emoluments which he would have been entitled to in law had he actually worked. Drain of public exchequer ought to be frowned upon. Gone are the days of pure master-servant relationship regulated by the terms of the contract. An employee in public employment, keeping his designation and emoluments intact, cannot be compelled not to work or made to work in a field

over which he has no expertise, and yet entitled to full pay and allowances. If the petitioner after being posted at the sales office at Kolkata fails to bolster sales of the company's products owing to lack of expertise and experience in the particular field of work he is asked to discharge, the same is most likely to affect his future career in the company. Chance of securing promotion can take a beating; and possibility of other engineers having similar qualifications like the petitioner working in the works/plant stealing a march over him, by reason of their involvement in the manufacturing process and thereby excelling in their pursuit, cannot be totally ruled out. The effort put in by him to achieve a certain degree of excellence would go waste if the posting at Kolkata is not interdicted.

45 In our constitutional scheme, an employer within the meaning of Article 12 cannot use transfer as a camouflage to keep away one or several of its employees from a particular workplace on the ground of public interest to his or their detriment in respect of future prospect. It is too late in the day to seek to sustain such an order of transfer by contending that since there would be no change in salary and status/designation, the employee can have no reason to complain. Money and status do matter, but to a conscientious employee money and status are not all that he seeks to obtain/achieve. Such an employee takes pride in his work and perceives a sense of satisfaction for contributing to the well being of the society at large. A responsible and committed public employee is one who would not merely stick to the normal working hours of ten to five but do more to effectively serve the people. It

is this class of employees that earns the admiration and respect of the public at large, although his peers may not be too satisfied. If such employee seeks to justify the salary being paid to him from the public exchequer by demanding that he be given fullest opportunity to demonstrate his skills further during working hours, should such a claim be nipped in the bud on the specious plea that it is not for the Court to decide where and when to post an employee? I think not. On the basis of the materials on record and for reasons discussed above, I am inclined to return a finding that the impugned transfer order fouls the equal opportunity clause enshrined in Article 16."

(emphasis ours)

45. We share the view expressed by the Calcutta High Court.

46. Although an employer has inherent power to transfer an employee from one place to another, or to issue posting orders to join a different post, such power was not available to be exercised in the present case since in the State of Goa there is no other comparable or equivalent post on which the petitioner could have been placed even though there may have been justifiable reasons for the Government to keep the petitioner out of the College. Instead of issuing the order dated 19th June 2017, the Government could have been well-advised to

place the petitioner under suspension pending completion of inquiry. The fact that the decision in *Ajay Kumar Choudhary (supra)* requires periodical review of a suspension could have been viewed by the Government as an impediment to the petitioner being placed under suspension. Anyways, in our considered opinion, the action of the Government in the present case to pay to the petitioner salary for all these five years without extracting any work from him has to be frowned upon particularly in view of what has been held in *P.K. Chinnasamy (supra)*, since followed in *Dipankar Bandopadhyay (supra)*. The security of service to which the petitioner is entitled, in terms of the governing service rules, could not have been tinkered with by the Government in the manner that we have noticed above. The decision in *Janardhan Debanath (supra)* was rendered in completely different circumstances and the contention as to whether one can claim a right to work did not arise there; hence, the ratio of such decision does not apply in this case.

47. Additionally, it would appear from the impugned order dated 19th June 2017 that the petitioner was asked to report at the Public Health Department in contemplation of an inquiry. We suppose the inquiry was

one contemplated under Rule 14 of the CCS (CCA) Rules, since Mr. Pangam has referred to the decision in *Ajay Kumar Choudhary (supra)*. However, no such regular inquiry has yet been initiated despite lapse of more than five years of the impugned order dated 19th June 2017. We cannot allow the Government to take its own time to initiate a valid inquiry in accordance with law. The delay is abnormal and cannot be eschewed.

48. We agree with Mr. Lotlikar that the impugned order dated 19th June 2017 is indeed illegal, arbitrary and without jurisdiction, apart from being the result of a highhanded excise of power.

Answer to question no.2. -

49. It is true that the complaints of sexual harassment of women at their work place is on the rise and give rise to problems, which need to be considered with utmost sensitivity, more so when a complaint is lodged by none other than a woman Associate Professor against a Professor and Head of the Department in which the woman is posted. In this particular case, what precisely transpired in the interactions that the petitioner had with the respondent no.7 while both of them were associated with the Department of Anatomy in the College is under

consideration. However, what stands out from the facts noticed above is that the incidents that might have happened in 2004-2005 were complained of for the first time in the complaint of the respondent no.7 on 12th November 2008. There was, however, no allegation of sexual harassment in her previous complaint dated 7th April, 2008. We do not see any reason to take exception to the delay. It could be so that the respondent no.7 chose not to have her plight discussed in public. But what is noteworthy is that an inquiry was conducted on 19th/20th November 2008, which resulted in submission of a report. This report, at any rate, did not conclude that the allegation of sexual harassment leveled against the petitioner by the respondents no.7 was fair and truly established. There was a second inquiry too, which we have noted above at paragraph 10. This was followed by a third inquiry conducted by the Committee constituted by the order dated 27th July 2020. The report, which was forwarded by the Chairman of the Committee along with the letter dated 18th May, 2021, contained the recommendations which have been noted above in paragraph 19. There was no conclusive finding given by any of the multiple Committees that the petitioner had committed sexual harassment. The fourth inquiry has now been initiated and if such inquiry finds the

allegations of the respondent no.7 to have substance, such circumstance would then require a separate inquiry being conducted against the petitioner as per the CCS (CCA) Rules in terms of the decision of the Supreme Court reported in (2020) 13 SCC 56 (***Nisha Priya Bhatia vs Union of India***). Paragraph 97 of such decision, which is relevant in this behalf, reads as follows:

"97. Be that as it may, in our opinion, the petitioner seems to have confused two separate inquiries conducted under two separate dispensations as one cohesive process. The legal machinery to deal with the complaints of sexual harassment at workplace is well delineated by the enactment of the Sexual Harassment of Women at Workplace Act, 2013 (hereinafter 'the 2013 Act') and the Rules framed thereunder. There can be no departure whatsoever from the procedure prescribed under the 2013 Act and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (for short 'the 2013 Rules'), either in matters of complaint or of inquiry thereunder. The sanctity of such procedure stands undisputed. The inquiry under the 2013 Act is a separate inquiry of a fact-finding nature. Post the conduct of a fact-finding inquiry under the 2013 Act, the matter goes before the department for a departmental enquiry under the relevant departmental rules [the CCS (CCA) Rules in the present case] and accordingly, action follows. The said departmental enquiry is in the nature of an in-house mechanism wherein

the participants are restricted and concerns of locus are strict and precise. The ambit of such inquiry is strictly confined between the delinquent employee and the department concerned having due regard to confidentiality of the procedure. The two inquiries cannot be mixed up with each other and similar procedural standards cannot be prescribed for both. In matters of departmental enquiries, prosecution, penalties, proceedings, action on inquiry report, appeals, etc. in connection with the conduct of the government servants, the CCS (CCA) Rules operate as a self-contained code for any departmental action and unless an existing rule is challenged before this Court on permissible grounds, we think, it is unnecessary for this Court to dilate any further."

50. Facts of the present case reveal that despite the Committee not having recommended any further inquiry against the petitioner, instead, having granted a liberty to the respondent no.7 to file an appeal under section 18 of 2013 Act and such recommendation having been accepted by the Government, the petitioner has been called upon to attend a fourth inquiry before the ICC of the College for which he has received the notice dated 24th November 2021, although the respondent no.7 is not shown to have filed any appeal. We heard Mr. Pangam submitting that the respondent no.7 was not informed of the Committee's recommendation. Nothing

turns on it. If indeed the respondent no.7 was serious in pursuing her allegations, she ought have demanded the report of the Committee having participated in its deliberations. Such lapses over a long period of time cannot keep the allegations alive. Moreover, as per the decision in *Nisha Priya Bhatia* (supra), even if the petitioner is found guilty by the ICC, there has to be a regular inquiry under rule 14 of the CCS (CCA) Rules which definitely would prolong the agony of the petitioner that he has unnecessarily been suffering from 2008.

51. It is in such facts and circumstances that we need to examine the propriety of the fourth inquiry that is sought to be initiated against the petitioner in relation to certain incidents which might have happened in 2004-2005. We agree with Mr. Lotlikar that the respondents are on a witch-hunt to any how find the petitioner guilty of sexual harassment. Proceedings under the 2013 Act can be initiated if any aggrieved woman makes a complaint of sexual harassment at her workplace within a period of three months from the date of the incident and in case of a series of incidents, within a period of three months from the date of last incident. True it is, when the sole alleged incident of sexual harassment happened in 2004-2005, the 2013 Act was not in force. However,

since the 2013 Act was enforced with effect from 9th December 2013 and the respondent no.7 waited till 18th July 2016 to lodge the third complaint and more than six years have lapsed since then, we are of the firm opinion that granting liberty to the ICC of the College to proceed with the complaint of the respondent no.7 dated 18th July 2016, after the previous three inquiries have not found sufficient material against the petitioner, would amount to a gross miscarriage of justice. Not only is the dignity of a woman employee to be protected, at the same time the reputation that the petitioner earned till the unsavoury incident needs to be protected too. Lapse of time being the most relevant factor and there being no imminent end of the inquiry that has now been initiated once again, we are inclined to allow the complaint of sexual harassment leveled by the respondent no.7 to rest here. No further action on the complaint dated 18th July 2016 would be called for in the circumstances.

Answer to question no.3. -

52. The allegations leveled by the respondent no.8 in his complaint dated 21st November 2016 are indeed serious calling for an appropriate investigation/inquiry, as the case may be. The contention of Mr. Lotlikar that such a complaint was lodged by the respondent no.8 to wreak

vengeance against the petitioner is not considered sufficient to restrain his disciplinary authority from even contemplating further action on such a complaint. Notwithstanding the lapse of time, the petitioner would not be seriously prejudiced if we set timelines for the disciplinary authority to initiate action on the complaint dated 21st November 2016 in accordance with law.

53. On the basis of our aforesaid findings, we direct as follows:

(I) The impugned order dated 19th June 2017 stands set aside, with the result that the petitioner would be immediately, but not later than seven days from the date of uploading of this judgment and order on the website, be reinstated as the Professor & Head of the Department of Anatomy of the College.

(II) The complaints dated 7th April 2008 and 18th July 2016 of the respondent no.7 shall not be inquired into further, either by the Government or by the College.

(III) The disciplinary authority of the petitioner will be entitled to proceed against the petitioner in accordance with law on the basis of the complaint dated 21st November 2016 lodged by the respondent no.8.

(IV) The disciplinary authority of the petitioner will be free to place the petitioner under suspension either in contemplation of disciplinary proceedings under rule 14 of the CCS (CCA) Rules or during the pendency thereof, if at all initiated.

(V) If disciplinary proceedings are initiated against the petitioner, the incumbent Minister for Health who had prepared the notes dated 9th June 2017 shall not be involved in any manner whatsoever in the process of decision making.

(VI) If it is decided by the disciplinary authority of the petitioner to initiate disciplinary proceedings against him based on the complaint of the respondent no.8 dated 21st November 2016, memorandum of charge-sheet in terms of rule 14(3) of the CCS (CCA) Rules must be drawn up within a month from the date of uploading of this judgment and order, as aforesaid.

(VII) If the memorandum of charge-sheet is not drawn up within the period prescribed above, the disciplinary authority of the petitioner shall cease to have any authority to issue memorandum of charge-sheet to the petitioner based on the complaint of the respondent no.8 dated 21st November 2016.

(VIII) If the memorandum of charge-sheet is issued within the time as prescribed, the petitioner shall have a fortnight's time from receipt thereof to submit his written statement of defence. If the petitioner desires to be heard in person, he may indicate the same.

(IX) Should the statement be found not satisfactory and if it is decided to conduct an inquiry, the disciplinary authority of the petitioner may conduct the inquiry itself or appoint an inquiring authority for the purpose, whereafter such disciplinary proceedings may be taken to its logical conclusion by following the procedure for holding an inquiry as contemplated in the other sub-rules of rule 14 of the CCS (CCA) Rules.

(X) In any case, the report of inquiry must be submitted by the inquiring authority to the disciplinary authority within six months of his appointment.

(XI) The petitioner shall not seek unnecessary adjournments and if the inquiry is stalled for any period of time because of grant of adjournments to the petitioner, such time shall be excluded for calculating the period of six months as indicated above.

(XII) If the petitioner is found guilty of the charges drawn up against him, the report of inquiry shall be

furnished to the petitioner without any delay with a request to submit his comments within a period of fortnight from the date of receipt thereof.

(XIII) Upon the response from the petitioner being received, the disciplinary authority shall proceed to pass the final order so that the proceedings are finally concluded by April 2023.

(XIV) If the disciplinary authority itself conducts the inquiry, furnishing of copy of the inquiry report would stand dispensed with.

(XV) If the inquiring authority does not submit its report of inquiry within six months or if the proceedings are not concluded by April 2023, the disciplinary proceedings shall be deemed to have been dropped.

54. On the aforesaid terms, the writ petition stands disposed of.

55. In view of the disposal of the writ petition, the civil application also stands disposed of.

56. No costs.

57. The relevant records shall be returned to the advocate on record for the Government of Goa by the Sheristedar/Court Superintendent.

M. S. SONAK, J.

CHIEF JUSTICE