

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

RVW 128 of 2019
in
WPA 4806 of 2019

Debjani Sengupta
vs.
The Institute of Cost Accountants of India & Ors.

For the application : Mr. Kallol Basu,
Mr. Suman Banerjee.

For the respondent No.7 : Ms. N.C. Bihani,
Mrs. P.B. Bihani,
Mr. Soumyajit Ghosh.

For the ICAI : Dr. Sutanu Kumar Patra.

Heard on: 23.02.2023 & 11.05.2023
Judgment on: 04.07.2023

Shampa Sarkar, J.:-

1. The application for review had been filed by the writ petitioner of WPA 4806(W) of 2019, inter alia, praying for setting aside the judgment and order dated May 3, 2019.

2. The prayer for review had been made on the ground that the judgment disclosed error apparent on the face of record. As the Officers' Service Rules, 1983 (hereinafter referred to as the said service rules) had not been published in the Gazette of India, the direction of the Court upon the employer to initiate disciplinary proceedings under the said service rules

and to take necessary steps with regard to imposition of punishment etc. as per the provisions of chapter-V of the said service rules, was a mistake of law and should be corrected.

3. Mr. Kallol Basu, learned Advocate appearing on behalf of the applicant/writ petitioner referred to Section 16(2)(a) of the Cost and Works Accountants Act, 1959 (hereinafter referred to as the said Act) and submitted that the council was the appointing authority of the writ petitioner as also the respondent No.7. The proceeding under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the Act of 2013), was initiated against the respondent No.7, on the basis of the complaint of the petitioner.

4. According to Mr. Basu, the council was empowered to prescribe the salaries, fees, allowances of the officers and employees of the council as also their terms and conditions of service. The term 'prescribed', had been defined under Section 2(g) of the said Act as 'prescribed by regulations under the Act'. Referring to Sections 39(2) and 39(3), Mr. Basu urged that all rules and regulations made by the council under the provisions of the said Act should be published in the official gazette with the approval of the Central Government. As the said service rules of 1983, had not been placed before the houses of the Parliament and had not been published in the official gazette, the rules were non-est in the eye of law. The judgment passed by this Court suffered from the illegality of having directed the employer to proceed with the recommendation made by the ICC by applying the provisions of a non-existing rule. In support of such argument and relying on the decision of the Hon'ble Apex Court in the matter of **Board of**

Control for Cricket in India and anr. vs. Netaji Cricket Club and ors.

reported in **(2005) 4 SCC 741**, Mr. Basu submitted that mistake of a Court could be corrected in review. Further reliance was placed in the decision of ***Medha Kotwal Lele vs. Union of India*** reported in **(2013) 1 SCC 297**, on the proposition that once the report of the ICC recommended a punishment, the punishment should be imposed upon the accused. The report should be treated as the enquiry report in any disciplinary proceeding and not as a preliminary report leading to a further disciplinary action as per the service rules. As such, the judgment of this Court, directing further disciplinary proceeding as per chapter-V of the said service rules was erroneous and contrary to the said judgment of the Hon'ble Apex Court and should be reviewed.

5. By referring to the provisions of the Act of 2013, Mr. Basu submitted that in the absence of any rules and regulations, the decision of the ICC was final and hence no further disciplinary proceedings should be initiated by the employer in terms of the said service rules. The punishment as recommended by the ICC should have been imposed straight away and this court should not have further directed the employer to proceed in terms of the service rules, before imposing any punishment.

6. According to Mr. Basu, the decisions of the Hon'ble Apex Court cited by Mr. Bihani, would not be applicable in this case. Those decisions directed that the report of the ICC should be followed by a formal enquiry in terms of the service rules applicable. In this case, there were no service rules in the eye of law and the judgment should be reviewed. The punishment recommended by the ICC should be imposed upon the respondent No.7.

Accordingly, prayers have been made for review of the judgment passed by this court.

7. In conclusion, reference was made to the decision of this Court in the matter of **Anjan Bhattachayrjee vs. The Registrar General, High Court, Calcutta & ors.** passed in **WP 24993(W) of 2017** on the point that Section 26 of the Act of 2013, made a provision for penal action, in case the employer failed to take steps on the basis of the recommendation of the ICC.

8. Mr. Bihani, learned Advocate appearing on behalf of the respondent No.7 in the writ petition and the accused before the ICC, submits that the application for review was not maintainable. The writ petition was heard on January 22, 2019, February 29, 2019 and March 7, 2019 and the judgment was delivered on May 3, 2019. The application under the Right to Information Act on behalf of the applicant/writ petitioner was admittedly made on March 7, 2019. On that day, hearing was completed and the judgment had been reserved. The query whether the said service rules had been published in the official gazette upon approval from the central government had been made on the last day of hearing, but the said point was not urged.

9. The communication was received by the applicant on April 10, 2019 with regard to the non-publication of the said Service Rules in the official gazette. When such information had been received, the judgment had not been delivered and the writ petitioner/applicant had ample opportunity to bring the same to the notice of the Court. According to Mr. Bihani, the applicant/writ petitioner did not choose to bring such information to the knowledge of the Court at any point of time, before the judgment was

delivered on May 3, 2019. The applicant/writ petitioner was well aware of the aspect of non-publication of the rules even before the judgment was delivered. It was urged that the lack of knowledge about non-publication of the rules could not ipso facto be a ground for review. The power of review could be exercised only within the definite limits of Order 47 Rule 1 of the Code of Civil Procedure and principles analogous thereto. Review could not be treated as an appeal. Review was not permitted to test the correctness of the order, but to correct an error. Reference was made to the following decisions:-

- (i) ***Ram Sahu (Dead) Through LRs and Others vs. Vinod Kumar Rawat and Others*** reported in **2020 SCC Online SC 896**,
- (ii) ***Dr. Somayajulu, Secretary, Diesel Loco Shed and South eastern Railway House Building Co-operative Society Limited, Visakhapatnam and Others vs Attiliappala Swamy and others*** reported in **(2015) 2 SCC 390**,
- (iii) ***M/s. Northern India Caterers (India) Ltd. vs Lt. Governor of Delhi*** reported in **(1980) 2 SCC 167**,
- (iv) ***Pancham Lal Pandey v. Neeraj Kumar Mishra and others***, reported in **2023 SCC OnLine SC 143**, and

10. Mr. Bihani further submitted that the disciplinary proceeding, as per the direction of this Court, had been completed by the employer. The disciplinary proceeding was initiated, treating sexual harassment as a misconduct. A said disciplinary proceeding was reached to its logical conclusion. The final decision was arrived at by the disciplinary authority and the writ petitioner/applicant participated in such proceeding all

through. The respondent No.7 was exonerated from the charges. The applicant/writ petitioner challenged the decision of the employer passed in the disciplinary proceeding before a competent court of law, which is pending final hearing. After such steps were taken and after having participated in the disciplinary proceeding, the prayer for review could not be entertained by this Court as the same was harassive, vexatious and not based on justifiable grounds. The review was filed belatedly, i.e. after the limitation prescribed for review had expired and after the order of this Court had been complied with and implemented by the employer.

11. Mr. Bihani further submitted that the terms and conditions of service in respect of those employees who were covered by Section 32 of the said Act, had to be prescribed by the rules and regulations. In such cases approval of the central government was necessary and the rules were to be notified in the official gazette. In other cases, the said service rules were applicable. All other classes of employees were guided by the said service rules. Such rules were not required to be published in the official gazette. Distinguishing the decision of ***Medha Kotwal Lele (supra)***, Mr. Bihani submitted that the aims and objects of the said judgment was towards achieving the guidelines and objectives as laid down in ***Vishaka vs. State of Rajasthan*** reported in ***(1997) 6 SCC 241***. There was no legislation governing the field when the decision was rendered. The decision of the Apex Court was delivered on October 19, 2012. On April 22, 2013, the Act of 2013 came into force. The Act encompassed the guidelines provided in ***Vishaka (supra)***. The legislature took into consideration all the relevant judgments including ***Medha Kotwal Lele (supra)***. The law was enacted in terms of the

decision of ***Vishaka (supra)***. The Act of 2013 was squarely applicable in case of any proceeding initiated under the said Act. Referring to Section 3(3) of the Act of 2013 and Rules 7 and 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, Mr. Bihani submitted that it was abundantly clear that the report of the ICC would be a fact finding report. Thereafter, treating the allegation of sexual harassment, as a misconduct, the employer was bound to proceed under the service rules of the employee, before imposing any penalty. Once the law was in place, the entire issue with regard to sexual harassment of women at workplace had to be decided in terms of the said Act of 2013, and the judgment of ***Medha Kotwal Lele (supra)***, would not be applicable.

12. According to Mr. Bihani, the allegation of sexual harassment being grave in nature and bordering on criminality, made the requirement of a proper departmental procedure, indispensable. The delinquent employee deserved an opportunity to vindicate his position and establish his innocence. Further submission was made that the ambit of departmental enquiry was strictly confined between the employee and the employer and hence the recommendation and the finding of guilt of the ICC was a fact finding enquiry to be followed by a proper disciplinary proceeding as per the disciplinary rules applicable to an employee. On such proposition of law, Mr. Bihani relied on the following decisions:-

(i) *Vijayakumaran C.P.V. v. Central University of Kerala and others*, reported in **(2020) 12 SCC 426**,

(ii) *Nisha Priya Bhatia v. Union of India and another*, reported in **(2020) 13 SCC 56**,

(iii) Laxman B. Panmand v. Nuclear Power Corpn. of India Ltd., reported in **2022 SCC OnLine Bom 893**,

(iv) Pradip Mandal v. Metal Scrap Trade Corpn. Ltd. and others, reported in **2022 SCC OnLine Cal 1304**, and

13. Mr. Bihani submitted that it was settled law that subsequent decisions would be binding as against the earlier precedent. On this proposition, Mr. Bihani cited the decision of **SBI v. Arvindra Electronics (P) Ltd.**, reported in **(2023) 1 SCC 540**.

14. Reliance was also placed on certain office orders in order to assert that the terms and conditions of service, the revision of pay and allowances of the employee of the said institute etc. were all governed by the said service rules. The service rules had been modified from time to time and lastly on March 23, 2019. The pay and allowances of the existing officers of various categories had been revised and the writ petitioner was also a beneficiary of the said rules and consequential revision of pay and allowances made from time to time by amending the said rules.

15. Dr. Partra, learned Advocate for the institute submits that the said service rules were applicable to both the writ petitioner/applicant and the accused/respondent No.7 in terms of their letters of appointment. All categories of officers/employees of the institute were covered by the service rules of 1983. Even if the said rules had neither been gazetted nor placed for approval by the Central Government, they were being universally applied. Recently, the council had decided to take steps for publication of the service rules. However, no documents had been filed in support of such contention. It was a statement from the bar.

16. The parties were heard at length. Grounds for review are primarily set out in the provisions of Section 114 and Order 47 Rule 1 of the Code of Civil Procedure namely, (a) discovery of new and important matter or evidence, which even after exercise of due diligence, were not within the knowledge of or could not be produced by the party seeking review, when the order was passed. (b) whenever there were mistakes or errors apparent on the face of the record. (c) or for any other sufficient reason.

17. The principles applicable in case of review as prescribed by the Code of Civil Procedure are broadly applied even in case of review of judgment and orders passed in writ petitions. This is not a case where the facts that the said service rules had not been published in the official gazette and approval of the central government had not been obtained, were not within the knowledge of the applicant. Query was made by the applicant on March 7, 2019, i.e., the last date of hearing. So the point was being considered by the applicant, but never urged. Information was available with the applicant on April 10, 2019, that is before the judgment was delivered. The applicant did not bring such facts to the notice of the Court, either on the last date of hearing or before the judgment was delivered. The application under the Right to Information Act was filed on March 7, 2019 that is, almost two months before the judgment had been delivered. There was lack of due diligence and the application for review is an afterthought.

18. The other question whether there was error apparent on the face of record is also answered in the negative. The Court, after analysing the entire proposition of law had directed the employer to proceed in terms of Rule 91 of the said service rules, by treating sexual harassment as a misconduct. A

charge-sheet was directed to be issued as per Rule 91(iii) of Service Rules of 1983 and thereafter, the disciplinary proceedings were directed to be conducted as per chapter-V of the said service rules.

19. Pursuant to such direction, the disciplinary proceeding was conducted and the respondent No.7 was exonerated. The petitioner participated in the proceeding and challenged the final decision of the disciplinary authority by filing WP No. 14882 (W) of 2019. The said writ petition is pending. At no point of time, was such point of non-publication of the said service rules, raised.

20. This Court does not find any error apparent on the face of record. The terms and conditions of employment of both the petitioner and the respondent No.7 crystallized with the acceptance of the appointment letter dated March 25, 2013 in case of the applicant/writ petitioner and on July 11, 2012 in case of the respondent No.7. The appointment letters clearly stated that the services of both the employees would be governed by the terms and conditions of Officers' Service Rules framed by the Institute of Cost Accountant of India. Thus, there is no denial of fact that the service of both the petitioner and the respondent No.7 were guided by the said rules and the offer of appointment with such condition and acceptance of the same by the employees, amounted to a concluded contract between the employer and employees.

21. Thus, further deliberation whether the service rules were required to be prescribed in terms of Section 40 of the Act of 1959, would only be an academic discussion in this review application. Moreover, the law is well settled in this regard. In the decision of **Sant Ram Sharma vs. State Of**

Rajasthan & Anr. reported in **AIR 1967 SC 1910**, the Hon'ble Apex Court held that even if the service rules did not cover all situations, the employer would not be precluded from issuing administrative orders or from laying down a procedure to cover up the lacuna or gaps in the service rules and the same would be a part of the terms and conditions of service of an employee and could be treated as the service rules of the employees.

22. In the present case, the said service rules existed, which the parties accepted to be governed by and they also accepted all benefits including revision of pay and allowances as per the said rules. Now, the applicant/writ petitioner cannot turn around and deny the existence of the said service rules which she had agreed to be governed by, at the time of acceptance of the offer of employment.

23. Moreover, upon acceptance of the clause in the appointment letter that the applicant would be governed by the said Rules, the contract between the employer and employee was concluded. Similarly, the respondent No.7 was also entitled to be treated in terms of the said service rules and by chapter-V, thereof in view of the concluded contract with his employer. This exercise had to be resorted to by the employer in terms of the offer of appointment and the concluded contract between the employer and the respondent No.7.

24. After the promulgation of the 2013 Act, this Court is of the view that the decision of **Medha Kotwal Lele (supra)** would not be applicable in this case and the provisions of the Act were to be strictly complied with. Section 13(3)(i) of the Act of 2013 provides that when charges made in the complaint were proved, the ICC was empowered to recommend to the employer that

action should be taken against the employee by treating sexual harassment as a misconduct in accordance with the service rules of the respondent. Section 13(3) of the said Act of 2013 Rules 7 and 9 of the said Rules of 2013 are quoted below:-

“13 Inquiry report.-

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.”

Rules 7 and 9 of the said Rules of 2013:-

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

(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from

the date of receipt of the documents specified under sub-rule (1).

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

(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an *ex-parte* decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:

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

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

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

.....

.....

9. Manner of taking action for sexual harassment.- Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.”

25. From a conjoint reading of Section 13(3) of the said Act and the Rules 7 and 9 of the said Rules, it emerges that when service rules existed, the respondent No.7 was to be dealt with as per the service rules. The report of ICC was a fact finding enquiry report or a preliminary report with regard to the allegation of sexual harassment and the employer was bound to then proceed under the service rules, before imposing any penalty. In this case, the ICC made a recommendation. The recommendation is quoted below:-

“After due consideration of the investigation of this case, ICC has come to the conclusion that the respondent should be awarded major penalty of Reduction in the Grade for Five years (static) along with Removal of Management Authority comprising sanctioning leaves and doing appraisals for five years. The above penalty is considered by the ICC in synchronization with the Sexual Harassment Policy and Disciplinary Procedures of the Institute of Cost Accountants of India.”

26. The employer, on the said recommendation, was mandated to initiate a disciplinary proceeding in terms of the service rules of the employee and only in cases where there were no rules, the ICC was empowered to recommend punishment. Section 28 of the said Act of 2013 clarified the position that the Act was in addition to and not in derogation to any other law for the time being in force, meaning thereby, that the Act was also not an alternative to the Service Rules of an employee. Once a charge of sexual harassment was proved before the ICC, the basis of proceeding against the accused employee for committing the misconduct of sexual harassment had been established. The finding of the ICC would be the charges and the foundation of misconduct, mandating the employer to proceed in accordance with the service rules.

27. The writ petition had been filed challenging the action of the President of the institute in remanding the matter to the ICC for a fresh decision after the report of the ICC was found to be unacceptable. Direction was given for submission of a fresh report. The report of the ICC was set aside. This Court held that the President ought to have proceeded according to the service rules and had erred in asking the ICC to reconsider the recommendation by setting aside the recommendation already made on the basis of complaint against the respondent No.7. The decision was taken by President upon considering a reply given by the respondent No.7 to a show-cause notice.

The respondent No.7 had been asked to respond to the findings of the ICC. The Court held that the said decision of the President, dated February 19, 2018 suffered from illegality, procedural impropriety, and was in violation of principles of natural justice, as also contrary to the said service rules.

28. The Court elaborately discussed the reasons as to why the recommendation of the ICC should be treated as the preliminary report on the charge of misconduct and a charge-sheet should be issued by the employer in terms of the Rule 19 (iii) of the Service Rules of 1983, imputing the offence of sexual harassment of a co-worker as a misconduct.

29. A similar view was expressed by the Apex Court in the decision of **Dr. Vijayakumaran (supra)**. The Hon'ble Apex Court held that a person against whom a charge of sexual harassment was proved before the ICC, could not be terminated simpliciter, but should be subjected to a proper disciplinary proceeding, inasmuch as, the finding of sexual harassment by the ICC were stigmatic and a regular procedure should be followed. The relevant paragraphs are quoted below:-

“11. In the present case, all the three elements are attracted, as a result of which it must follow that the stated order is ex facie stigmatic and punitive. Such an order could be issued only after subjecting the incumbent to a regular inquiry as per the service rules. As a matter of fact, the Internal Complaints Committee had recommended to proceed against the appellant appropriately but the Executive Council proceeded under the mistaken belief that in terms of Clause 7 of the contract, it was open to the Executive Council to terminate the services of the appellant without a formal regular inquiry as per the service rules. Indisputably, in the present case, the Internal Complaints Committee was constituted in reference to the complaints received from the girl students about the alleged misconduct committed by the appellant, which

allegations were duly inquired into in a formal inquiry after giving opportunity to the appellant and culminated with the report recording finding against the appellant with recommendation to proceed against him.

12. Upon receipt of complaints from aggrieved women (girl students of the University) about the sexual harassment at workplace (in this case, University campus), it was obligatory on the Administration to refer such complaints to the Internal Committee or the Local Committee, within the stipulated time period as predicated in Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short “the 2013 Act”). Upon receipt of such complaint, an inquiry is required to be undertaken by the Internal Committee or the Local Committee in conformity with the stipulations in Section 11 of the 2013 Act. The procedure for conducting such inquiry has also been amplified in the 2015 Regulations. Thus understood, it necessarily follows that the inquiry is a formal inquiry required to be undertaken in terms of the 2015 Regulations. The allegations to be inquired into by such Committee being of “sexual harassment” defined in Section 2(n) read with Section 3 of the 2013 Act and being a serious matter bordering on criminality, it would certainly not be advisable to confer the benefit on such employee by merely passing a simple order of termination. Such complaints ought to be taken to its logical end by not only initiating departmental or regular inquiry as per the service rules, but also followed by the other actions as per law. In such cases, a regular inquiry or departmental action as per service rules is also indispensable so as to enable the employee concerned to vindicate his position and establish his innocence. We say no more.

13. A priori, we have no hesitation in concluding that the impugned termination order dated 30-11-2017 is illegal being ex facie stigmatic as it has been issued without subjecting the appellant to a regular inquiry as per the service rules. On this conclusion, the appellant would stand reinstated, but whether he should be granted back wages and other benefits including placing him under suspension and proceeding against him by way of departmental or regular inquiry as per the service rules, is, in our opinion, a matter to be taken forward by the authority concerned

in accordance with law. We do not intend to issue any direction in that regard keeping in mind the principle underlying the exposition of the Constitution Bench in *ECIL v. B. Karunakar*. In that case, the Court was called upon to decide as to what should be the incidental order to be passed by the Court in case after following necessary procedure, the Court/Tribunal was to set aside the order of punishment.”

30. In the decision of *Nisha Priya Bhatia (supra)*, the Hon’ble Apex Court held that the legal machinery to deal with the complaint of sexual harassment at work place was guided by the Act of 2013. The enquiry under the said Act of 2013 was a separate enquiry of a fact finding nature. Post a conduct of fact finding enquiry under the 2103 Act, the matter should go back for a departmental enquiry under the relevant department’s rules. The said departmental enquiry was in the nature of an in-house mechanism. The ambit of such enquiry was strictly confined between the delinquent employee and the department concerned, having due regard to the confidentiality of the procedure. The matter of departmental enquiries, prosecution, penalties and proceedings, were to be guided by the service rules of the employee. The relevant portion is quoted below:-

“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.”

31. In the decision of **Laxman B. Panmand (supra)** the Hon’ble Bombay High Court also expressed a similar view, and held as follows:-

“**30.** Although Mr. Misra has sought to distinguish the decision in Nisha Priya Bhatia (supra) by contending that it was a case under the CCS (CCA) Rules of 1965, where provisions are different from those contained in the D and A Rules of 1996, we cannot possibly avoid the said decision; on the contrary, we are bound by it. The Court in Nisha Priya Bhatia (supra) has interpreted the provisions of the 2013 Act and has categorically held that the petitioner before it seems to have confused two separate inquiries conducted under two separate dispensations as one cohesive process. It was also held that the after the factfinding committee under the Act of 2013 conducts an inquiry, the matter should go before the department for a departmental inquiry under the relevant departmental rules. The distinction sought to be drawn by Mr. Misra is too tenuous to be acceptable. We conclude, based on our reading of paragraph 97 of the decision in Nisha Priya Bhatia (supra), that the disciplinary authority of the petitioner ought to have treated the report of the ICC as a preliminary/fact finding report and ought to have initiated disciplinary proceedings by drawing up a charge-sheet under Rule 12.3 and, thereafter, proceed in the manner as required by Rule 12.4 and the sub-rules following it.

31. In view of above, we have no other option but to declare the impugned orders dated 7th May, 2019, 25th June, 2018 and 2nd February, 2018 as illegal and, therefore, liable to invalidation.

32. We could have ended our judgment here. However, in a recent decision in Agricultural Produce Marketing Committee,

Bangalore v. State of Karnataka, 2022 SCC OnLine SC 342, the Supreme Court has held that the High Court must decide all the issues that are raised before it by the parties and not allow a writ petition upon acceptance of a point without determination of the other points. In such view of the matter, notwithstanding our decision in respect of invalidity of the proceedings giving rise to the orders impugned, we proceed to render our opinion on the order of penalty separately.

35. Nothing in this order shall preclude the Corporation to proceed, after compliance with the aforesaid directions, by initiating appropriate disciplinary proceedings against the petitioner by serving him formal charge-sheet under Rule 12 of the D and A Rules of 1996 by treating the report of the ICC as a preliminary fact-finding report in terms of the law laid down in Nisha Priya Bhatia (*supra*). If such proceedings are initiated, the petitioner shall be entitled to all defences that are available to him in law and the same shall be taken to its logical conclusion uninfluenced by our finding in respect of the first contention raised by Mr. Ramamurthy.”

32. This Court is of the further view that ***Medha Kotwal Lele (supra)*** was rendered at a time when the statute had not come into operation. Now having considered the subsequent decisions of the Hon’ble Apex Court, this court was correct in holding that the report of the ICC could not be treated as the sole enquiry report in such proceeding. The prayer of Mr. Basu for imposition of punishment in terms of the recommendation of the ICC was rightly turned down.

33. The power of review can be exercised only to correct an error or a mistake which was obvious. The mistake cannot be something which has to be established by prolonged arguments and reasoning on points which may conceivably lead to formation of diverse opinions. Review cannot be exercised when the point is debatable and requires a re-hearing of the entire issue.

34. Moreover, the order sought to be reviewed, had already been acted upon, complied with and the disciplinary proceeding had been reached to its logical conclusion. The petitioner participated in the proceeding without any protest. Even after the information was gathered by the petitioner with regard to non-publication of the service rules, the petitioner voluntarily participated in the proceeding.

35. The final decision of the disciplinary proceeding is under challenge. At this stage, a rehearing of the writ petition and a fresh appraisal of the fact and laws which have been raised by way of review is not sustainable. In the decision of **Ram Sahu (Dead) Through LRs and ors.**, it has been categorically held that review cannot be exercised to substitute a view, in the absence of any error apparent on the face of record. In this case, the judgment of this Court is not required to be upset when the said judgment had attained finality and the parties had acted upon the same. The said judgment cannot be disturbed. A re-hearing of the matter is impermissible in law. The relevant paragraphs of the decision are quoted below:-

“8. The dictionary meaning of the word “review” is “the act of looking, over something again with a view to correction or improvement”. It cannot be denied that the review is the creation of a statute. In *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* [Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844], this Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

9. What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by this Court in *T.C. Basappa v. T. Nagappa* [T.C. Basappa v. T. Nagappa, AIR 1954 SC 440]. It is held that such an error is an error which is a patent error and not a mere wrong decision. In *Hari Vishnu Kamath v. Syed Ahmad Ishaque* [Hari Vishnu Kamath v. Syed

Ahmad Ishaque, (1955) 1 SCR 1104 : AIR 1955 SC 233] , it is observed as under : (SCC p. 244, para 23)

“23. ... It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? The learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.”

9.1. In Parsion Devi v. Sumitri Devi [Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715] in paras 7 to 9 it is observed and held as under : (SCC pp. 718-19)

“7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1CPC. In Thungabhadra Industries Ltd. v. State of A.P. [Thungabhadra Industries Ltd. v. State of A.P., AIR 1964 SC 1372] this Court opined : (AIR p. 1377, para 11)

“11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an ‘error apparent on the face of the record’. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an ‘error apparent on the face of the record’, for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by ‘error apparent’. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.’

8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury [Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170] while quoting with approval a passage from Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389] this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1CPC.

9. Under Order 47 Rule 1CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1CPC. In

exercise of the jurisdiction under Order 47 Rule 1CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

36. In the decision of ***Pancham Lal Pandey (supra)***, the Hon'ble Supreme Court held that review could not be allowed to scrutinize the correctness of the decision, but to correct a mistake visible on the face of the order, without going into any query as to whether there was a possibility of another opinion, different from the one expressed.

37. The point urged by the writ petitioner/applicant in this case would amount to not only reconsideration of the entire decision and also open up a debate as to whether the service rules which were applied in all cases a employees in terms of their letters of appointment, were to be followed or were non-est in the eye of law. The Court cannot sit in appeal over its own judgment, thereby allowing further debate with regard to an issue, which had attained finality. The application for review is rejected as the Court does not find that sufficient grounds have been made out for review of the judgment and order dated May 3, 2019. The application, was in effect, an appeal in disguise.

38. The challenge to the final outcome of the disciplinary proceedings shall not be prejudiced by this order.

39. The Review petition is dismissed.

40. There will be no order as to costs.

41. Parties are directed to act on the server copy of this judgment.

(SHAMPA SARKAR, J.)