

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3224 OF 2024**

Arun A. Iyer,
Adult, Aged 45 years, lastly working
as Professor in the Department of Humanities
& Social Sciences, I.I.T. Bombay, Powai,
Mumbai – 400 076

...Petitioner

Vs.

1. The Board of Governors,
Indian Institute of Technology, Bombay
IIT Campus, Powai, Mumbai – 400 076

2. The Director,
Indian Institute of Technology, Bombay
IIT Campus, Powai, Mumbai – 400 076

3. The Registrar,
Indian Institute of Technology, BomSebay
IIT Campus, Powai, Mumbai – 400 076

4. Ms. X
Hostel 10, IIT Bombay Mumbai – 400 076

...Respondents

Mr. Ramesh Ramamurthy, Saikumar Ramamurthy and Aalim N. Pinjari for
the Petitioner.

Mr. Arsh Misra for Respondent Nos.1, 2 and 3.

Ms. Surbhi Soni i/b. MGSV & Associates for Respondent No.4.

**CORAM : R. I. CHAGLA AND
 ADVAIT M. SETHNA, JJ.**

**RESERVED ON : 07 MARCH, 2026
PRONOUNCED ON : 24 MARCH, 2026**

JUDGMENT:- (Per Advait M. Sethna, J.)

1. Rule. Rule made returnable with the consent of the parties.

2. This Writ Petition has been filed under Article 226 of the Constitution of India praying for the substantive reliefs as set out in prayer clauses (a) to (c) of the Petition. However, Mr. Ramamurthy would urge this Court to remand the proceedings to the Internal Complaints Committee / Disciplinary Authority, for conducting a fresh inquiry before imposing any major penalty on the Petitioner.

3. The Petitioner in the present proceedings is working in the capacity of a Professor in the department of the Humanities and Social Sciences in the Indian Institute of Technology, Bombay (“**IIT Bombay**”). The Respondent No.4 is the original complainant who preferred a complaint alleging misconduct against the Petitioner.

4. These proceedings confront us with an interesting issue as to whether the major penalty of compulsory retirement imposed on the Petitioner pursuant to the inquiry conducted by the Internal Complaints Committee constituted under the POSH Act and Rules would necessarily entail a separate inquiry, with reference to the CCS (CCA) Rules, 1965 and its applicability in the given factual matrix. This is to be contextually tested when there is a specific mechanism and procedure prescribed for taking action qua misconduct viz. sexual harassment at workplace, contemplated under the aegis of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**” for short), POSH Rules, dovetailed with provisions under special statutes such as the

Indian Institute of Technology Act, (IIT Act) IIT Bombay Policy/Attendant Rules. Considering the reliefs sought and the arguments advanced we are not, at this stage, delving in to the merits of the allegations against the Petitioner.

Factual Matrix:-

5. Certain facts which are necessary for adjudication of this Petition are as under.

6. A complaint dated 22 March 2023 was filed by Respondent No.4 with the Internal Complaints Committee (“ICC” for short) of Respondent Nos.1 to 3 against the Petitioner. This was in regard to instances of sexual harassment as alleged against the Petitioner by Respondent No.4, between the period March 2022 to September 2022.

7. A report dated 11 December 2023 of the ICC was issued, based upon the complaint. An initial fact finding inquiry was conducted. The report duly recorded the summary of allegations; complainant’s statement; summary of Petitioner’s statement; summary of Petitioner’s defence; summary of statement of complainant’s two witnesses; summary of statement of Petitioner’s witnesses; cross-examination of the said witnesses.

8. The said report dated 11 December 2023 recorded the findings of the ICC. Based upon the detailed findings recorded therein, the ICC recommended imposition of major penalty of the Petitioner’s removal from

service.

9. It was on 4 January 2024 that the above report of the ICC was duly served upon the Petitioner and its receipt was acknowledged by him.

10. The Petitioner raised objections to the report of the ICC to the Board of Governors i.e. the Disciplinary Authority, being Respondent No.1.

11. The Respondent No.1-Disciplinary Authority by an inquiry considered the entire proceedings, pursuant to which on 24 February 2024, it was resolved to impose punishment in the nature of compulsory retirement of the Petitioner. Respondent No.2 i.e. the Director of IIT, Mumbai was authorized to take appropriate further action.

12. On 10 April 2024, a Memorandum to show cause why the proposed penalty of compulsory retirement ought not to be imposed on the Petitioner along with the minutes of the meeting of Respondent No.1 held on 24 February 2024 was circulated to the Petitioner, which was received by the Petitioner on 24 April 2024.

13. Aggrieved by the above, the Petitioner approached this Court in an earlier round of litigation by filing a Writ Petition No.2756 of 2024 challenging the above Memorandum dated 10 April 2024.

14. The Petitioner on 21 May 2024 filed a preliminary reply to the said show cause Memorandum dated 10 April 2024.

15. This Hon'ble Court by its order dated 24 May 2024 in the earlier Writ Petition No.2756 of 2024 directed Respondent No.1 to pass a

reasoned order after considering the reply of the Petitioner to the above Show Cause Memorandum.

16. The Petitioner then filed a detailed reply dated 14 June 2024 to the above.

17. It was on 18 June 2024 that the Respondent No.1 passed the Impugned Order dated 18 June 2024 ordering compulsory retirement of the Petitioner from his services at IIT Bombay, with effect from the date of the said order.

18. The Petitioner, aggrieved by the Impugned Order dated 18 June 2024, has filed the present Petition assailing the Impugned Order.

19. We have extensively heard learned counsel for the parties, examined the pleadings on record along with the written submissions tendered.

Rival Contentions

Submissions on behalf of the Petitioner:-

20. Mr. Ramamurthy, the learned counsel for the Petitioner, at the outset submits that the action of the Respondents to impose punishment on the Petitioner only on the report of ICC, without holding a formal inquiry by issuance of a charge-sheet, is contrary to Section 13(3)(i) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**” for short). According to him, the statutes of the IIT do not lay down the procedure for conducting an inquiry to impose a major penalty. Therefore, in terms of the decision

taken in the Council of the IIT held in New Delhi on 6 October 1964 and Sr. No.8 therein, wherever there are no rules framed by the Institute to deal with a particular matter, Government of India Rules i.e. Central Civil Services (Classification, Control and Appeal) Rules, 1965 (“**CCS (CCA) Rules, 1965**” for short) will be applicable.

21. Mr. Ramamurthy would submit that the statute of the IIT in sub-statute No. 9 lays down that major punishment shall be imposed only after holding an inquiry and such inquiry has not been conducted in the given case.

22. Mr. Ramamurthy would then submit that the POSH Act under Section 13(3)(i) provides that if the ICC recommends that a prima facie case of sexual harassment is made out, then it will recommend to the employer to take action for misconduct under the Service Rules. Therefore, POSH Act would entail an inquiry or procedure to be followed before imposing any punishment. Such being issuance of a formal charge-sheet under the Service Rules.

23. Mr. Ramamurthy would submit that Policy on the Prevention, Prohibition and Redressal of Sexual harassment in the workplace with its attendant Rules and procedure (“**IIT Bombay Policy/Attendant Rules**” for short) will not have the effect of overriding statutory rules i.e. CCS (CCA) Rules, 1965 or the statute of IIT, Bombay. The Policy is only in the nature of executive instructions which cannot override the statutory rules as

above framed by the Government India. Therefore, in view of the decision taken by the IIT council on 6 October 1964, since the procedure for conducting inquiry for imposing penalty is not stipulated in the statute of IIT, Bombay, the CCS (CCA) Rules, 1965 would apply to IIT, Bombay for imposing penalty.

24. Mr. Ramamurthy has submitted that the reliance placed by the Respondents on the Apex Court decisions in *Union of India Vs. Dilip Paul*¹ and *Aureliano Fernandes Vs. State of Goa*² for justifying imposition of penalty based only on the ICC report, is not proper. This is because both the said decisions deal with instances of sexual harassment which have occurred in 2009-10 much before the POSH Act came into force in 2013. There is no discussion on the provisions of the POSH Act in the said judgments.

25. Mr. Ramamurthy urged that requirement under Rule 14(2) of the CCS (CCA) Rules, 1965 refers to the ICC conducting an inquiry as far as practicable, under the said Rules if no other procedure is prescribed. This only means that after a charge-sheet is issued under Rule 14(3) would the ICC be appointed as an Inquiry Authority under Rule 14(5) by the Disciplinary Authority. After this, the said CCS (CCA) Rules, 1965 provided for separate procedure for conducting inquiry into the complaints of sexual harassment which would apply to the Respondent-Institute in the present

1 2023 SCC Online SC 1423

2 2023 SCC Online SC 621

case unlike the IIT Bombay Policy/Attendant Rules in the form of an executive instruction, not being applicable in the given case.

26. Mr. Ramamurthy would next submit that the Supreme Court's decision in *Aureliano Fernandes* (supra) would relate to complaint of 2009, when the law laid down in *Vishaka Vs. State of Rajasthan*³ and in that of *Medha Kotwal Lele Vs. Union of India*⁴ were in force and effect. In the present case, the alleged incident occurred in 2022 after enactment of the POSH Act which would be applicable in the given case. Mr. Ramamurthy would place due reliance on the decision of the Supreme Court in *Dr. Vijaykumaran C. P Vs. Central University of Kerala & Ors.*⁵ and *Nisha Priya Bhatia Vs. Union of India & Anr.*⁶, which would require a formal charge-sheet to be issued, under the Service Rules even after an inquiry under the POSH Act is conducted by the ICC, which is the law applicable in the case of the Petitioner.

27. Mr. Ramamurthy would submit that the recent decision of the Supreme Court in *Dr. Sohail Malik vs. Union of India & Anr.*⁷ also supports the case of the Petitioner. This is to the effect that after report of the ICC, there has to be a formal charge-sheet under the Service Rules as applicable.

3 (1997) 6 SCC 241

4 (2013) 1 SCC 311

5 (2020) 12 SCC 426

6 (2020) 13 SCC 56

7 2025 SCC Online SC 2751

28. Mr. Ramamurthy would reiterate that the IIT Bombay Policy / Attendant Rules cannot override the provisions of the statutory CCS (CCA) Rules, 1965 and only such Rules shall prevail. According to him, following the said Policy/Attendant Rules would mean laying down that without holding a formal inquiry by issuing charge-sheet under Service Rules, Respondent No.1-Disciplinary Authority can impose punishment purely on the basis of the ICC report which was the legal position prior to the POSH Act coming into force, based on the judgments in ***Vishaka*** (supra) and ***Medha Kotwal Lele*** (supra).

29. Mr. Ramamurthy has contended that the judgments of the Supreme Court in ***Dr. Vijaykumaran C. P*** (supra) and ***Nisha Priya Bhatiya*** (supra) have not been overruled in the subsequent decisions of ***Dilip Paul*** (supra) and ***Aureliano Fernandes*** (supra) as the said decisions have not dealt with the provisions of the POSH Act. In fact, he points out that, in the subsequent decisions there is no reference to the earlier Supreme Court decisions in ***Dr. Vijaykumaran C. P*** (supra) and ***Nisha Priya Bhatiya*** (supra).

30. Mr. Ramamurthy referring to the rejoinder dated 6 March 2025 filed on record would contend that the judgment in the case of ***Prof. (Dr.) D. Ramakrishnan vs. The Board of Governors, Indian Institute of Technology & Anr.***⁸ which has followed the judgments in the cases of ***Dr. Vijaykumaran***

⁸ Writ Petition No. 1624 of 2022, decided on 21 January 2025

C. P (supra) and *Nisha Priya Bhatiya* (supra) is applicable in the present case. Accordingly, Mr. Ramamurthy would submit that the Impugned Order is required to be set aside and the matter be remanded to the Disciplinary Authority to take appropriate decision based on the ICC report under Section 13(3)(i) of the POSH Act, including issuance of formal charge-sheet under the service Rules.

31. Mr. Ramamurthy would finally pray that the Petition be allowed and the Rule be made absolute.

Submissions on behalf of the Respondents:-

32. Mr. Mishra, learned counsel appearing for Respondent Nos. 1 to 3, has categorically controverted the submissions advanced by Mr. Ramamurthy. During the course of his arguments, he referred to the Affidavit-in-Reply filed on behalf of the said Respondents dated 16 August 2024 by one Ganesh Kisanrao Bhorkade, Registrar, IIT Bombay. Mr. Mishra submitted that the present petition is not maintainable in view of the alternate remedy of Appeal available under Rule 11 of the IIT Bombay Policy read with Section 18 of the POSH Act, which provides an equally efficacious remedy. The sub-statute 10, 11 and 12 of Statute 13 (Terms and conditions of service of permanent employees) of the IIT Bombay Statutes also provides for a statutory Appeal to the Visitor against the orders passed by the Respondent No. 1-Disciplinary Authority. The Petitioner ought to have exhausted the said remedy before approaching

this Court. Therefore, according to him, the petition ought not to be entertained on this ground alone.

33. Mr. Mishra would submit that the report of the ICC dated 11 December 2023 is deemed to be the report of the Inquiry Authority. The action taken by the Disciplinary Authority is strictly in terms of the provisions of Section 13(3)(i) of the POSH Act and Rule 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (“**POSH Rules**” for short). There is no infirmity, much less illegality, in this regard which would warrant interference.

34. Mr. Mishra has drawn our attention to the decision in *Medha Kotwal Lele (supra)* and *Dilip Paul (supra)* where the Supreme Court has held that the report of the ICC ought to be treated as that of an Inquiry Authority.

35. Mr. Mishra would contend that this is a case where the principles of natural justice have been fully complied with by the Respondents. This is inasmuch as the documents have been provided to the Petitioner, who has duly participated in the inquiry and has had ample opportunity to lead evidence and even cross-examine witnesses.

36. Mr. Mishra then submitted that the decision relied upon by Mr. Ramamurthy in *Prof. (Dr.) D. Ramakrishnan (supra)* is distinguishable, considering the fact that the said decision was not rendered in the context of action for misconduct under the POSH Act to be taken in accordance with the POSH Rules and the IIT Bombay Policy/Attendant Rules as

prescribed under Section 13(3)(i) of the said Act. In this context, he submitted that there would be no occasion to apply the proviso to Rule 14(2) of the CCS (CCA) Rules in the given facts and circumstances. Therefore, the said decision is clearly distinguishable qua the present case.

37. Mr. Mishra would urge that the mere non-framing of articles of charge cannot be treated as fatal so far as the Applicant is concerned. This is because the Applicant was aware of the deposition of the complainant, which had been disclosed to him, including the nature of the allegations levelled against him. He was also given an opportunity to submit his reply and furnish a list of witnesses. Therefore, no prejudice would be caused to the said Applicant. For this reason, the decision in *Dilip Paul (Supra)* would clearly apply to the present case.

38. Mr. Mishra has gainfully referred to the recent decision of the Supreme Court in *Dr. Sohail Malik (Supra)*, where the Court, in the context of misconduct under the POSH Act and the Rules framed thereunder, referred to the procedure under the said Act which may be in such manner as may be prescribed and Rules for taking action in that regard. This again makes it clear that there is no occasion to fall back on the CCS (CCA) Rules, 1965 when action for misconduct is squarely provided for under the POSH Act and the Rules framed thereunder, which can be in such manner as may be prescribed. According to him, the principles and the ratio laid down in the said decision would clearly be

applicable in the present case, which would render the submissions of Mr. Ramamurthy untenable.

39. Mr. Mishra would urge that the Petitioner unconditionally accepted all the Rules and Regulations of Respondent-Institute at the time of joining. In view thereof, the IIT Bombay Policy and its Attendant Rules were also unconditionally accepted by the Petitioner, forming part of the Rules and Regulations of the Respondent-Institute. It is, therefore, not open to the Petitioner to now insist on a departure from the said IIT Bombay Policy/Attendant Rules, which forms an integral part of the Rules and Regulations of Respondent-Institute, merely because it does not suit the interest of the Petitioner.

40. Mr. Mishra has referred to Section 13 of the Indian Institutes of Technology Act, 1961 ('**IIT Act**' for short) to contend that the Board of any Institute, such as IIT Bombay in the present case, is responsible for the general superintendence, direction, and control of the affairs of the Institute. The IIT Act confers powers upon the Board, which acts as the Disciplinary Authority, to take decisions on policy matters relating to the administration and functioning of the Institute. Accordingly, under the authority of this law, the Respondent-Institute has framed its Policy and Attendant Rules, which derive their authority from the said statute and are in the nature of a special statute. On this ground as well, Mr. Mishra submits that the general provisions of the CCS (CCA) Rules, 1965 will not

come into play, much less override the specific provisions contained in the IIT Bombay Policy/Attendant Rules, which have their source in the IIT Act.

41. For all of the above reasons Mr. Mishra would submit that the petition is devoid of merit and should be dismissed.

Analysis:-

42. On a careful perusal of the report of the ICC dated 11 December 2023, we find that it is a report of the Inquiry Committee/Authority, in terms of the provisions of the POSH Act, POSH Rules read with the IIT Bombay Policy/Attendant Rules. There is no quarrel in this regard. In fact the decision of the Supreme Court in ***Medha Kotwal Lele*** (supra) followed by a recent decision in ***Dr. Sohail Malik*** (supra) and the decision in ***Dilip Paul*** (supra) make it clear that the Complaints Committee as originally constituted even under the CCS (CCA) Rules, 1965 is deemed to be an Inquiring Authority. Accordingly, pursuant to the enactment of the POSH Act in 2013, the ICC is now treated as an Inquiry Committee/Authority under the provisions of the said Act, which conducts a preliminary fact finding inquiry.

43. The record bears out that the report of the ICC dated 11 December 2023 *inter alia* provides for the summary of allegations; complainant's statement; summary of Petitioner's statement; summary of Petitioner's defence; summary of statement of complainant's two witnesses; summary of statement of Petitioner's witnesses and cross-examination of the said

witnesses. Such report of the ICC was duly served and received by the Petitioner on 4 January 2024. Accordingly, after providing a copy of the report of the ICC to the Petitioner on 4 January 2024, the recommendations arrived at in such report were forwarded to the Disciplinary Authority being the Respondent No.1, in the present case.

44. This, in our view, would constitute the first stage inquiry as also envisaged under the judgments cited (supra). Mr. Ramamurthy has strenuously urged that pursuant to the first stage, the Respondent No.1 i.e. the Disciplinary Authority without a separate inquiry, arrives at a conclusion to impose a major penalty of compulsory retirement on the Petitioner. This according to him is in the teeth of the POSH Act as also Rule 14 of the CCS (CCA) Rules, 1965 which he would submit are to be mandatorily followed. In this regard, Mr. Ramamurthy has been at pains to point out sub-statute no. 9 of the statute No. 13 (Terms and Condition of Service of Permanent Employees) from the IIT Bombay Statutes, the relevant portion of which reads thus:-

“The following penalties may for good and sufficient reasons and as hereinafter provided, be imposed on any member of the staff :-

i) Censure;

ii) withholding of increments or promotion;

iii) recovery from the whole or part of any pecuniary loss caused to the Institute by negligence or breach of orders;

iv) reduction to lower Service, grade or post or to a lower stage in a time scale;

v) compulsory retirement;

vi) removal, from service which shall not be a disqualification for future

*employment under the Institute;
vii) dismissal from service which shall ordinarily be a disqualification for future employment under the Institute.*

“vii) dismissal from service which shall ordinarily be a disqualification for future employment under the Institute.

No order imposing on any member of the staff any of the penalties specified at (iv) to (vii) above shall be passed by any authority subordinate to that by which he was appointed and except after an inquiry has been held and the member of the staff has been given reasonable opportunity of showing cause of the action proposed to be taken in regard to him.

No order imposing on any member of the staff any of the penalties specified at (i) to (iii) above shall be passed by any authority subordinate to that by which he was appointed and unless the member of the staff concerned has been given an opportunity to make a representation to the Appointing Authority.”

(Emphasis supplied)

45. The above postulates an inquiry which in the given factual complexion has been duly conducted in the manner so prescribed/stipulated. Pursuant to the receipt of ICC report dated 11 December 2023, the Petitioner had raised objections on such report to Respondent No.1-Disciplinary Authority. The inquiry further progressed in terms of a proposal of Respondent No.1-Disciplinary Authority. This has taken into consideration the first stage inquiry proceedings, report of the ICC and written representation of the Petitioner thereby resolving that a major penalty of compulsory retirement be imposed on the Petitioner, authorizing the Director to take further action and communicate the said decision to the Petitioner. The inquiry further continued by issuance of a

Show Cause Notice/Memorandum dated 10 April 2024 to the Petitioner. The Petitioner filed his detailed reply dated 14 June 2024 to the same. All of this was duly considered by the Respondents before passing the final Impugned Order dated 18 June 2024.

46. It is thus clear that the Petitioner has participated at every stage of the inquiry which has culminated in issuance of the Impugned Order. The record does not bear out even a single instance of violation of the principles of natural justice *qua* the Petitioner. Accordingly, we are of the considered view that the mandate under sub-statute no. 9 (*supra*) as referred to by Mr. Ramamurthy has been complied with in letter and spirit, in the given case. It is not as if that the Respondents have thrust the punishment of compulsory retirement of Petitioner, solely on the basis of the report of ICC.

47. According to Mr. Ramamurthy the statutes of IIT do not lay down any procedure for conducting an inquiry to impose a major penalty. He would therefore refer to the decision taken in the IIT Council on 6 October 1964. He would contend that such decision envisaged that where no Rules have been framed by an Institute to deal with a particular matter, the CCS (CCA) Rules, 1965 will apply. To analyze such submission in its proper perspective, it is necessary to refer to Section 13 of the POSH Act, the relevant portion of which reads thus:-

“Section 13. Inquiry report - (1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(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 District Officer, as the case may be -

(i) To take action for sexual harassment as a misconduct in according 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.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.”

(Emphasis supplied)

48. A perusal of the above clearly contemplates taking action for sexual

harassment by the concerned employer can be in two ways (i) in accordance with the provisions of service rules applicable; OR (ii) where no such service rules have been made, in such manner as may be prescribed. This is to be read with the POSH Rules more particularly Rule 9 which reads thus:-

“Rule 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.

The words “except in cases where service rules exist” (supra) makes it evident that the said Rules under the POSH Act clearly contemplate a situation for taking action, for sexual harassment including terminating the employee from service in a case where the service rules do not exist. In such scenario, Section 13(3) of the POSH Act clearly stipulates that in such cases the action for sexual harassment may be taken in such manner as may be prescribed. It is in this context that one needs to fall back on the IIT Act read with Bombay Policy/Attendant Rules.

49. At this juncture, we find it apposite to refer to Section 13(2) of the IIT Act which reads thus:-

“13. Functions of Board.- (1)

(2) Without prejudice to the provisions of sub-section (1), the Board

of any Institute shall—

- (a) take decisions on questions of policy relating to the administration and working of the Institute;*
- (b) institute courses of study at the Institute;*
- (c) make Statutes;*
- (d) institute and appoint persons to academic as well as other posts in the Institute;*
- (e) consider and modify or cancel Ordinances;*
- (f) consider and pass resolutions on the annual report, the annual accounts and the budget estimates of the Institute for the next financial year as it thinks fit and submit them to the Council together with a statement of its development plans;*
- (g) exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Act or the Statutes.”*

It is thus clear that the Board has been given wide powers under the said statutory provision *inter alia* to take decision on questions of policy relating to the administration and working of the institute. The Respondent No.1-Board also has been conferred with the power to appoint such committee as it considers fit and necessary for the exercise of powers and performance of duties under the IIT Act. In this context, we find force in the submission of Mr. Mishra that the said Policy/Attendant Rules of IIT Bombay is not dehors the IIT Act. In fact, such Policy/Attendant Rules clearly refers to the POSH Act and Rules.

50. Contextually, we deem it necessary to reproduce the relevant portion of the IIT Bombay Policy/Attendant Rules which provides for the

legal context. It reads thus:-

“1. LEGAL CONTEXT

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d) As an educational and research institution established on a 750-acre campus, there are several types of legal relations viz. employer-employee, student faculty, research scholar-supervisor, vendor-customer, residents and visitors, auto-drivers and passengers etc. In view of this, to prevent or deter the commission of acts of sexual harassment and to provide a procedure for the solution, settlement or prosecution of acts of sexual harassment, the following policy is being put in place by the Institute.”

51. The above makes it clear that the procedure for initiating action in relation to sexual harassment as a misconduct as referred to in Section 13(3)(i) of the Act is clearly provided for in the IIT Bombay Policy/Attendant Rules. Explanation 1 to clause 4 of the said Policy is also significant, the relevant extract of which is reproduced below:-

“4. Jurisdiction

...

...

1. Explanations

a) Any complaint outside of these specifications may be examined by the GC-ICC in terms of jurisdiction and taken up for consideration.

b) When the respondent is an employee, the GC-ICC shall have inherent jurisdiction under SHWW Act of 2013 & SHWW Rules 2013 to deal with

complaints of sexual harassment at the workplace. Such inquiry shall be made as per the provisions of the service rules applicable to the respondent. Where the Central Civil Services (Conduct) Rules, 1964 (CCS(C) Rules) are applicable to the respondent, it may be noted that sexual harassment is prohibited under Rule 3C of the said Rules and the inquiry of the GC-ICC will be the departmental proceedings and the procedure as laid down under this policy will prevail over that as laid down under Central Civil Services (Classification, Control and Appeal) Rules (CCS (CCA) Rules) as provided under the Proviso of Rule 14 (2) of the CCS (CCA) Rules.”

Emphasis Supplied

Therefore, Explanation 1(b) to clause 4 above envisages that a clear and exhaustive procedure as laid down under the IIT Bombay Policy/Attendant Rules, which would prevail over that under Rule 14(2) of the CCS (CCA) Rules, 1965.

52. A bare perusal of Section 13(3)(i) of the POSH Act read with Rule 9 of the POSH Rules evidently indicate no reference whatsoever to the CCS (CCA) Rules, 1965. In fact to interpret the expression “in such manner as may be prescribed” which appears in Section 13(3)(i) of the POSH Act is where the IIT Bombay Policy/Attendant Rules would come into play, to throw light on the procedure which is duly prescribed thereunder for an action to be taken in case of sexual harassment at workplace, under the aegis of the POSH Act and Rules.

53. Furthermore, clause 10 of the said IIT Bombay Policy/Attendant

Rules deals with report on findings and recommendations and action taken, of which the relevant portion reads thus:-

“xiii. Subject to the consideration of an appeal, if any, against a proposed penalty the Disciplinary Authority shall take disciplinary action within sixty days of receipt of the final report from the GC-ICC and shall inform the GC-ICC and the complainant on the action taken. It is clarified that the report of the GC-ICC shall be treated as the inquiry report on the basis of which penalty can be proposed/imposed against the respondent. An appeal not filed within one month of receipt of notice will be liable to be rejected.”

(Emphasis supplied)

54. The above clarifies that the report of the ICC shall be treated as the inquiry report on the basis of which penalty can be proposed/imposed against the Petitioner. We are dealing with a situation of action for misconduct as envisaged under Section 13(3)(i) of the POSH Act. The POSH Act and POSH Rules also contemplate action for such misconduct in such manner as may be prescribed. This being the case, one need not in the given factual complexion, take recourse to CCS (CCA) Rules, 1965. Despite specific query from the Court to Mr. Ramamurthy whether there are any Rules in this regard to mandate a separate inquiry or make reference to the CCS (CCA) Rules, 1965, there is no such Rule, much less statutory provision pointed out to us, in this regard. In fact, the IIT Bombay Policy/Attendant Rules which are to be read in the context of IIT

Act, expressly excludes the applicability of CCS (CCA) Rules, 1965. For such reasons, the contentions advanced by Mr. Ramamurthy do not persuade, much less convince us.

55. Adverting to the submission of Mr. Ramamurthy that the IIT Bombay Policy/Attendant Rules can never partake the nature of Rules even though it refers to the Attendant Rules and procedures, in the given set of facts, is not well founded. This is inasmuch as Section 13 of the POSH Act read with Rule 9 of the POSH Rules specifically provide for an action to be taken against the delinquent/Petitioner for sexual harassment at workplace in such manner as may be prescribed, as elucidated.

56. We have noted Mr. Ramamurthy's submission to the effect that a second stage inquiry ought to commence with the issuance of a charge-sheet, a procedure which is ordinarily resorted to, under the CCS (CCA) Rules, when applicable. The conduct of the parties concerned, in the given facts, is an essential and necessary concomitant, inextricably connected to the statutory mandate under the canopy of the POSH Act, POSH Rules, IIT Act, IIT Bombay Statutes and the Policy/Attendant Rules. In such matters involving allegations not merely of indiscipline but of serious misconduct, a myopic approach under the extant legal framework ought not to be adopted. Misconduct falling under the aegis of the POSH Act are to be dealt with utmost gravitas. The findings of a specialized fact finding body like the ICC followed by the decision of the disciplinary committee is

pursuant to a full fledged inquiry wherein the Petitioner has duly and fully participated. This has been undertaken 'in such manner as may be prescribed' as stipulated under Section 13(3)(i) of the POSH Act. In view thereof, there cannot be a double inquiry for the same issue/subject matter/cause of action. Therefore, Mr. Ramamurthy is not correct in submitting that a charge-sheet ought to be issued prior to commencement of a second stage inquiry as provided under the CCS (CCA) Rules if applicable, which is not the case in the given facts.

57. At this juncture it would be apposite to refer to the decision of the Supreme Court in ***Dilip Paul*** (Supra). The Supreme Court has by referring to the earlier decision in ***Aureliano Fernandes*** (supra) in the context of allegations of sexual harassment at workplace, held that non-framing of articles of charge by the Committee cannot be treated as fatal. Nor can the Appellant be heard to state that he was completely in dark as to the nature of allegations levelled against him and was not in a position to respond appropriately. These observations are apposite and applicable in the given factual matrix.

58. Mr. Ramamurthy has sought to distinguish the judgments cited by Mr. Mishra in ***Dilip Paul*** (supra) and ***Aureliano Fernandes*** (supra). This on the basis that the instances of sexual harassment are to be examined on the anvil of pre and post enactment of the POSH Act. However, for the reasons set out (supra) such distinction sought to be drawn by Mr.

Ramamurthy would not be determinative, much less relevant, for the purposes of addressing the issues/controversy, arising in the present proceedings.

59. In fact, we find that in the present facts, adequate opportunity was afforded to the Petitioner not just by the ICC but also by the Respondent No.1-Disciplinary Authority at every stage, including issuance of show cause notice, responding to the same, after which the Impugned Order was passed. This is not a case of deprivation of opportunity to the Petitioner but a case of complete opportunity and fair hearing to the Petitioner, before imposing the major penalty on him. Thus, in our view no prejudice whatsoever has been caused to the Petitioner in the given case where the procedure to be followed and the manner in which it has to be followed under the said/applicable special statutes, has been fully complied with by the Respondents. The inquiry would embrace all stages from the report of the ICC to its culmination in the Impugned Order leaving no ambiguity and/or necessity to fall back on CCS (CCA) Rules, 1965, which in any event, will have no application, for the reasons elucidated above.

60. We have duly noted the reliance placed by Mr. Ramamurthy on the decision in *Dr. Vijaykumaran C. P* (supra). A careful perusal of paragraph 12 on which Mr. Ramamurthy placed emphasis would indicate that the Supreme Court has held that it may not be advisable to confer the benefit on such employee by merely passing an order of termination. To take such

complaints to its logical conclusion, the Supreme Court has referred to initiating a departmental inquiry or regular inquiry as per Service Rules which ought to be followed by other actions as the law would mandate. However, in the given case, we are confronted with a situation, where even as per the Petitioner, there are no specific Rules under the statutes of IIT which refer to the procedure under the CCS Rules, for conducting an inquiry to impose major penalty. In such situation, one ought to take recourse to and be guided by Section 13(3)(i) of the POSH Act which refers to an action for sexual harassment as a misconduct to be taken in such manner as may be prescribed. In our view, the procedure in the manner prescribed is succinctly laid down in the IIT Bombay Policy/Attendant Rules to be read in sync with the IIT Act which cannot be departed from. Moreover, the IIT Bombay Policy/Attendant Rules are in conformity with the IIT Bombay Statutes.

61. Similarly, we have also considered Mr. Ramamurthy's emphasis and reliance on the decision in *Nisha Priya Bhatia* (supra), more particularly paragraph 97 of the said judgment. There is no quarrel with what the Supreme Court has stated that two inquiries cannot be mixed up with each other and similar procedural standards cannot be prescribed for both. It is equally pertinent to note that in this context, the Supreme Court refers to departmental inquiries, prosecution, penalties, proceedings and action on inquiry report initiated in accordance with the CCS (CCA) Rules, 1965.

This for the reasons discussed above are not applicable to the given case. The said decision thus being distinguishable in the given facts, does not assist Mr. Ramamurthy.

62. We may now advert to a recent Supreme Court decision in ***Dr. Sohail Malik*** (supra). The Supreme Court has *inter alia* taken note of the Office Memorandum dated 16 July 2015 on which Mr. Ramamurthy has placed much reliance. It has duly observed that particular reference, in this context, must be made to Section 13(3)(i) of the POSH Act. The ICC upon reaching the conclusion that the allegations against the Respondents are proved, shall recommend to the employer to take disciplinary action for sexual harassment as a misconduct in accordance with the provisions of the applicable Service Rules of the Respondent. Juxtaposing this to the given facts, it is clear that the action for such misconduct *qua* the Petitioner is resolved to be taken by Respondent No.1-Disciplinary Authority. It is not the ICC which itself has taken the disciplinary action against the Petitioner. The Respondents have, therefore, acted in conformity with Section 13(3)(i) of the POSH Act read with the POSH Rules and the procedure prescribed in such manner as stipulated under the IIT Bombay Policy/Attendant Rules. For such reasons, the steps taken, procedure followed by the Respondents would once again pass the muster and meet the required statutory criteria, as discussed (supra).

63. We have also examined Mr. Ramamurthy's stand on the judgment of

a co-ordinate Bench of this Court in ***Prof. (Dr.) D. Ramakrishnan*** (supra). Considering the submissions advanced, read with the judgments which have now been cited before us, in our view the said decision is distinguishable in the given factual matrix and does not take the case of the Petitioner any further.

64. We now advert to the submission of Mr. Mishra for the Respondents to the effect that sub-statute 10, 11 and 12 of Statute 13 (Terms and conditions of service of permanent employees) of the IIT Bombay Statutes provides for a statutory Appeal to the Visitor which is against the orders passed by the Respondent No. 1- Disciplinary Authority. From such statutory scheme it appears that an equally efficacious remedy is provided under the said IIT Bombay Statutes. The grievances of the Petitioner can be appropriately addressed by resorting to such appellate remedy, as provided under the said statute.

65. Accepting the contentions as advanced by Mr. Ramamurthy would militate against the very object, purpose and purport of the POSH Act and Rules, specifically addressing the issue of sexual harassment, given that the Act is a complete code. It contemplates a comprehensive statutory mechanism for undertaking an inquiry and taking action in the manner/procedure prescribed under Section 13(3)(i) of the POSH Act, when the allegation of sexual harassment is proved. Accordingly such procedure in the manner prescribed is laid down in the IIT Bombay

Policy/Attendant Rules to be read harmoniously with the IIT Act and IIT Bombay Statutes.

66. It is settled that special laws would always prevail over the general laws and that general provisions should yield to the specific provisions. In view thereof, the general provision under Rule 14 of the CCS (CCA) Rules, 1965 or its proviso is not required to fill in the gaps when there are none. This is not a case of “*unoccupied interstices*” where any gap in the Rules and/or instructions is to be filled. This principle was duly considered by the Supreme Court in *Institute of Chartered Accountants of India v/s. L. K. Ratna and Ors.*⁹ and *S. L. Kapoor vs Jagmohan and Ors.*¹⁰

67. Before parting, we may observe that in the case of special statutes like the present and the Rules framed thereunder, a party like the Petitioner has participated duly and fully in a comprehensive inquiry. This is right from the report of the ICC, Show Cause Notice/Memorandum, Reply resulting in the Impugned Order. The statutory scheme under the POSH Act, POSH Rules read with the IIT Act, IIT Bombay Statutes, IIT Bombay Policy/Attendant Rules do not contemplate the rigmarole of another inquiry, on the very same subject matter. We are reminded of the adage that ‘*procedure is the handmaiden of justice*’ which ought to be applied so as to subserve substantial justice. In view thereof, accepting the contentions of the Petitioner which would amount to permitting a double

9 (1986) 4 SCC 537

10 (1980) 4 SCC 379

inquiry on the very same subject matter, shall undermine the avowed object of special statutes like the POSH Act, applicable in the given case. Taking such course would lead to an absurdity, not being conducive to both the Petitioner and Respondent No.4. We are not inclined to countenance such a stand/approach which would compel us to take a hyper technical view of the matter in the given case, which even the law does not mandate. Therefore, we find no merit in the case put up by the Petitioner. Besides it being legally vulnerable, it neither appeals to our conscience, nor would, in our considered view, meet the ends of justice. We make it clear that we have not examined the merits of allegations against the Petitioner in these proceedings.

68. In light of the foregoing discussion we pass the following order:-

O R D E R

- a) Petition is dismissed. Rule is discharged.
- b) No order as to costs.

[ADVAIT M. SETHNA, J.]

[R.I. CHAGLA, J.]

After Pronouncement:-

69. At this juncture, we have considered the request of Mr. Ramamurthy. Though we have not delved into the merits of the matter, needless to clarify that in the event the Petitioner decides to avail of the alternate

statutory remedy of Appeal against the Impugned Order dated 18 June 2024, the Appeal, if filed, shall be considered on its own merits and decided in accordance with law.

[ADVAIT M. SETHNA, J.]

[R.I. CHAGLA, J.]