2023 INSC 527

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2482 of 2014

AURELIANO FERNANDES .... APPELLANT

Versus

STATE OF GOA AND OTHERS .... RESPONDENTS

I N D E X

****

J U D G E M E N T

HIMA KOHLI, J.

A. SCOPE OF THE APPEAL

1. A challenge has been laid by the appellant to the judgment dated 15th March, 2012, passed by the High Court of Judicature at Bombay Bench, at Goa, dismissing a writ petition[1] preferred by him against an order[2] passed by the Executive Council[3] of Goa University (Disciplinary Authority) accepting the Report[4] of the Standing Committee for Prevention of Sexual Harassment at Work Place[5] and imposing upon him, a major penalty of dismissal from services and disqualification from the future employment under Rule 11(IX) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965[6] which was duly upheld by the Governor and the Chancellor of Goa University, being the Appellate Authority[7].

B. SEQUENCE OF EVENTS

(a) PROCEEDINGS BEFORE THE FIRST COMMITTEE:

2. The factual matrix of the case needs to be placed in a chronological sequence. The appellant commenced his career in the respondent no. 2 – Goa University as a Temporary Lecturer in the Department of Political Science, in the year 1996. He was

[1] W.P. No. 602 of 2011
[2] Dated 10th May, 2010
[3] For short 'EC'
[4] Dated 05th June, 2009
[5] For short ' The Committee'
[6] For short the CCS (CCA) Rules
[7] *Vide* Order dated 19th April, 2011

appointed as the Head of the said Department, in the year 2003. It is the appellant's version, which is strongly refuted by the other side, that aggrieved by the passing of a resolution by the Departmental Council of the Department of Political Science against them, two girl students along with their friends submitted a complaint to the respondent no.2 – University, alleging physical harassment at his hands. The said complaints[8] were the starting point of an inquiry initiated by the Committee on receiving complaints by the Registrar of the respondent no. 2 – University[9]. The Committee served a notice[10] on the appellant calling upon him to explain the charges levelled against him in nine complaints and to appear before it for a personal hearing on 24th April, 2009, a date that was subsequently changed to 27nd April, 2009. Contemporaneously, the Registrar of the respondent no. 2 – University directed the appellant to hand over charge and proceed on leave till the conclusion of the inquiry.

3. The appellant furnished a detailed reply to the Committee, running into fifty-three pages wherein he raised some preliminary objections to the inquiry being conducted by the Committee, alleged a well-organized conspiracy against him by some wayward students in connivance with the members of the faculty and refuted the contents of fourteen depositions of girl students forwarded to him by the Committee. He concluded by stating that the charges of sexual harassment levelled against him were completely false and baseless. The appellant also addressed a letter to the Registrar seeking

[8] Complaint dated 11.03.2009 & 17.03.2009
[9] Under cover of letter dated 08.04.2009
[10] Dated 17th April, 2009

removal of two Members of the Committee on the ground of bias and on a plea that being his subordinates, they were prone to bias.

4. The Committee called the appellant for a hearing on 27th April, 2009. It was alleged by the appellant that the deposition of all the complainants including the witness named by him were recorded while he was made to wait outside the Committee room. He was called later on and the Committee recorded his statement. Even on the next hearing, on 28th April, 2009, a similar procedure was adopted by the Committee. On 30th April, 2009, the appellant received a notice from the Committee enclosing therewith another complaint of sexual harassment received against him to which he was directed to respond and present himself on 6th May, 2009. *Vide* letter 2nd May 2009, the appellant sought more time to submit a reply to the additional complaint and permission to engage an Advocate to appear for him before the Committee.

5. The appellant submitted his reply to the notice on 8th May, 2009. On 6th May, 2009, the request of the appellant to engage a lawyer was declined by the Committee. On the same day, a corrigendum was issued by the Committee to the earlier letter[11] informing him that the next date fixed for filing his reply should be read as "12th May, 2009" instead of "12th June, 2009" and the date for further deposition should be read as "14th May, 2009" instead of "12th June, 2009".

[11] Dated 5th May, 2009

6. Vide letter dated 8th May, 2009, the appellant objected to the inquiry being conducted by the Committee on a complaint[12] received from an ex-student of the respondent no. 2 – University on the ground that she was neither a student nor an employee of the University. Additionally, he asked for a copy of the said complaint, besides the statement of deposition that had already been furnished to him.

7. On 12th May, 2009, the appellant forwarded an affidavit of a witness to refute some of the allegations levelled against him by the complainants. *Vide* letter of even date, the Committee forwarded an additional deposition of a member of the Faculty, Dr. Rahul Tripathi, who had stepped down from the Committee constituted to look into the complaints against the appellant and deposed as a witness.

8. The appellant wrote a letter dated 13th May, 2009 to the Committee seeking some time to appear before it on a plea that he was admitted in the hospital with a severe back-ache. *Vide* notice dated 14th May, 2009, the Committee directed the appellant to appear before it on 19th May, 2009 for recording his deposition and for submitting his written reply to the fresh deposition of the other complainant. Further extension of time, as requested, was however declined by the Committee.

9. In the meantime, *vide* letter dated 13th May, 2009, the appellant applied to the respondent no.2 – University seeking voluntary retirement on health grounds. However, the said application was withdrawn by him on 18th May, 2009. On the same date, an advocate engaged by the appellant's brother issued a notice to the respondents no.2 and

[12] Signed on 27th April, 2009

3 seeking extension of time by one month for the appellant to appear before the Committee.

10. In its letter dated 20th May, 2009, the Committee noted that though the appellant had failed to appear before it on 19th May, 2009 for recording his further deposition, he was being granted one last opportunity to present himself on 23rd May, 2009, for completing his deposition and for cross-examining the witness including the complainants. Alongside, six more depositions were forwarded to the appellant, seeking his reply by 22nd May, 2009.

11. The appellant addressed yet another letter[13] to the Committee expressing his inability to attend the proceedings on 23rd May, 2009, on health grounds and requested for postponement of the proceeding by 3-4 weeks. However, his request was turned down by the Committee on the very same day and the appellant was directed to remain present on 23rd May, 2009, failing which, he was informed that the Committee would proceed further with the inquiry. A second request[14] made by the appellant for seeking postponement of the proceedings of the Committee, met the same fate.

12. After about ten days, the appellant sent a letter[15] to the Chairperson of the Committee stating *inter alia* that he had partially recovered from his ailment and was in a position to depose. He sought fresh dates to enable him to furnish a reply to the additional depositions received by him. However, by then the Committee had proceeded

[13] Dated 22nd May, 2009
[14] Dated 23rd May, 2009
[15] Dated 4th June, 2009

ex-parte against the appellant and submitted its Report[16] to the Registrar of the respondent no. 2 – University stating that 18 meetings had taken place in connection with the inquiry that had established sexual harassment of the complaints by the appellant which act amounted to a grave misconduct and was in gross violation of Rule 3(1)(III) of the CCS Conduct Rules and consequently, recommended termination of his services.

(b) PROCEEDINGS BEFORE THE EXECUTIVE COUNCIL

13. The EC held a meeting on 13th June, 2009 wherein the Report submitted by the Committee was accepted and the appellant was placed under suspension with immediate effect. *Vide* Memorandum dated 8th September, 2009, the Chairman of the EC informed the appellant that the EC proposed to conduct an inquiry against him under Rule 14 of the CCS (CCA) Rules. Enclosed with the said Memorandum, was the statement of the Articles of Charge, statement of the imputation of the misconduct in support of each Article of Charge, list of documents and a list of witnesses for sustaining the said charges. The appellant was given ten days' time to submit a written statement of his defence and state whether he desired to be heard in person.

14. The appellant submitted a detailed reply to the aforesaid Memorandum, running into twenty pages and also demanded several documents and information relating to the complaints of sexual harassment made against him, on the plea that they were relevant

[16] Dated 5th June, 2009

for submitting his written statement which was turned down by the Vice Chancellor of the respondent no. 2 – University[17] and he was granted twenty days to respond.

15. On 15th October, 2009 the EC appointed a former Judge of the Bombay High Court to conduct an inquiry into the charges framed against the appellant and he was informed that the Inquiry Officer will hold a preliminary inquiry into the charges framed against him on 9th November, 2009. The first sitting of the Inquiry Committee conducted on 9th November, 2009, was duly attended by the appellant and his Advocate. The second meeting was scheduled on 7th December, 2009 on which date when the Presenting Officer appearing on behalf of the respondent no. 2 – University referred to the judgment dated 26th March, 2004, passed by this Court in the case of **Medha Kotwal Lele and Others v. Union of India and Others**[18] and the amendment[19] to the *proviso* to Rule 14(2) of the CCS (CCA) Rules that provides that where there is a complaint of sexual harassment within the meaning of Rule 3C of the Central Civil Services (Conduct) Rules, 1964[20], the Complaints Committee shall be deemed to be the inquiring authority for the purpose of imposing major penalties, the Inquiry Officer decided to keep the inquiry in abeyance, so as to ascertain as to whether any further directions had been issued by the Supreme Court in **Medha Kotwal's** case (supra).

16. On 15th December, 2009, the Registrar of the respondent no. 2 - University informed the appellant that the disciplinary proceedings initiated against him on the

[17] *vide* letter 17th September, 2009
[18] (2013) 1 SCC 297
[19] Dated 1st July, 2004
[20] CCS (Conduct) Rules

recommendations made by the EC in its meeting held on 12th December, 2009, stood terminated and the order appointing the Inquiry Officer had also been withdrawn in the light of the order dated 26th April, 2004, passed by the this Court in **Medha Kotwal's** case holding that the report of the Complaints Committee for Prevention of Sexual Harassment of Women at Workplace shall be deemed to be an Inquiry Report under the CCS (CCA) Rules which shall be binding on the disciplinary authority for initiating disciplinary action against the government servant. Describing the decision taken by the EC on 14th June, 2009 of appointing an Inquiry Officer to inquire into the charges framed against the appellant as inadvertent, the Registrar informed the appellant that the disciplinary authority will decide the further course of action against him under the extant rules.

C. DECISION OF THE DISCIPLINARY AUTHORITY AND THE APPELLATE AUTHORITY

17. This was followed by issuance of a Memorandum[21] by the Vice-Chancellor of the respondent no. 2 – University on behalf of the EC informing the appellant that in its meeting conducted on 28th January, 2010, the EC had accepted the report of the Committee and decided that he was unfit to be retained in service in view of the gravity of the charges levelled against him. Proposing to impose a major penalty of dismissal

[21] Dated 17th February, 2010

thereby disqualifying him from future employment as contemplated under the Rules[22], the appellant was granted two weeks to submit his representation.

18. The appellant submitted his reply on 13th March, 2010. After examining his reply, the disciplinary authority dismissed the appellant from service *vide* order dated 10th May, 2010. The appeal[23] preferred by the appellant against the said dismissal order was rejected by the order[24] of the Appellate Authority[25].

D. DECISION OF THE HIGH COURT

19. The said orders were challenged before the Bombay High Court. The High Court observed that the Committee had granted ample opportunities to the appellant to cross-examine the complainants and the witnesses, but he had deliberately elected not to appear before it. In such circumstances, the Committee could not be blamed for proceeding *ex-parte* against him and submitting its Report. It was also held that the Committee was justified in discarding the medical certificates submitted by the appellant as he kept on making flimsy excuses to stay away from the enquiry proceedings. The plea of the appellant that the Committee was improperly constituted or its composition was questionable as it comprised of persons who were junior to him in the Department, was rejected as meritless. Further, the contention that the enquiry had been conducted with undue haste, without giving a

[22] Rule 11 (IX) CCS CCA, 1965
[23] Appeal dated 25th June, 2010
[24] Dated 19th April, 2010
[25] Governor of Goa and Chancellor of Goa University

fair and reasonable opportunity to the appellant to defend himself, was also turned down. As a result, the High Court did not see any merits in the said writ petition which was dismissed holding that there was no breach of the principles of natural justice and the Service Rules in the case.

E. ARGUMENTS ADVANCED BY COUNSEL FOR THE PARTIES :

(a) COUNSEL FOR THE APPELLANT

20. Arguing on behalf of the appellant, Mr. Bishwajeet Bhattacharya, learned Senior counsel has assailed the impugned judgment on several counts. The main thrust of his arguments is that the dismissal order[26] passed by the Disciplinary Authority and upheld by the Appellate Authority is based solely on the Report submitted by the Committee which was nothing more than a fact-finding proceeding that had commenced on 17th March, 2009 and concluded on 5th June, 2009; that though the inquiry had purportedly commenced on 17th March, 2009, the first hearing had actually taken place only on 27th April, 2009 and the entire proceedings were hurriedly closed within a span of thirty-nine days, by relying on forty-eight documents and forty-three depositions in the course of eighteen meetings without affording the appellant adequate opportunity to defend himself and present his case. It was argued that though the Committee had acceded to the request of the appellant for extension of time[27] and had granted him time till 12th June, 2009, the period was abruptly curtailed by almost one month and the date was advanced to 14th May, 2009, without any justification and unmindful of the appellant's indisposition,

[26] Order dated 10th May, 2010
[27] Vide Letter dated 5th May, 2009

as was conveyed. Only when the appellant wrote to the Committee seeking a new date for his further deposition and for conducting further proceedings, did he come to know that the Committee had concluded its proceeding and submitted its Report on 5th June, 2009 itself. It is thus contended that the principles of natural justice have been grossly violated by the respondents and the appellant has been deprived of a reasonable opportunity of a fair trial, before passing the order of dismissal from service thereby causing him serious prejudice.

21. Citing the decision of this Court in ***Union of India and Another v. Tulsiram Patel***[28], learned Senior counsel argued that none of the three clauses to the second *proviso* to Article 311(2) of the Constitution of India that mandates that no person employed by the Union or the State shall be dismissed or removed from the service except after an inquiry, could have been resorted to by the respondents for having elected not to conduct a proper inquiry before proceeding to dismiss the appellant. It was vehemently contended that contrary to the procedure prescribed under the CCS (CCA) Rules, no proper inquiry was conducted by the respondents and no charges were framed by the first Committee till the date it had submitted its Report[29] and that the Articles of Charge that were framed by the respondents *vide* Memorandum dated 8th September, 2009, were subsequently dropped and the inquiry ordered was abandoned in favour of the Report submitted by the first Committee which was only a fact finding report that could not have been relied on as a final inquiry, particularly when it entailed serious

[28] (1985) 3 SCC 398

[29] Vide letter dated 5th June, 2009

consequences. Learned Senior counsel cited a decision of a learned Single Judge of the Delhi High Court in ***Sandeep Khurana v. Delhi Transco Ltd. And Others***[30] and of a Single Judge of the Karnataka High Court in ***Professor Giridhar Madras v. Indian Institute of Science represented by Chairman and Others***[31] to urge that the Report of the Committee could not be equated with the report of an Inquiry officer, as contemplated in the procedure prescribed in Rule 14 of the CCS (CCA) Rules. This non-adherence to the procedure prescribed has caused grave injustice to the appellant, it being a serious infraction of the principles of natural justice. Allegations of bias were also levelled by the appellant against some members of the first Committee.

22. Learned counsel further argued that none of the three clauses appended to the second *proviso* of Article 311(2) of the Constitution of India have been pressed against the appellant to justify the impracticability of holding a proper inquiry and that failure on the part of the Committee to follow the procedure as prescribed in the CCS (CCA) Rules itself vitiates the entire proceedings. In fact, it is the case of the appellant that at no stage was he informed by the Committee that the proceeding being conducted by it were disciplinary proceedings and therefore, the report submitted by the said Committee could not have been treated by the respondents as an Inquiry Report under CCS (CCA) Rules.

(b) COUNSEL FOR THE RESPONDENTS NO. 2 AND 3

23. On the other hand, Ms. Ruchira Gupta, learned counsel appearing for the respondents no.2 and 3 strongly refuted the arguments advanced on behalf of the

[30] ILR 2006 (11) Del 1313
[31] (2019) SCC Online Kar 3508

appellant. She submitted that the appellant having failed to challenge the decision taken by the respondent no.2 – University of dispensing with the inquiry contemplated in the Memorandum dated 8th September, 2009 at the appropriate stage, he is precluded from doing so belatedly. To substantiate this submission, she referred to the preliminary objections taken by the appellant in his letter dated 18th April, 2009 where he had raised five preliminary objections relating to the reconstitution of the Committee and its composition, the prejudice allegedly harboured against him by two members of the Committee and the fact that he was denied access to the records sought by him. But the grievance subsequently sought to be raised about the competence or jurisdiction of the Committee to conduct the inquiry and the procedure adopted by it, was never questioned by the appellant.

24. Referring to the correspondence exchanged between the Committee and the appellant, learned counsel submitted that the appellant was granted at least three opportunities to submit his reply and eighteen hearings were conducted by the Committee but he did not participate in the proceedings on several dates. Only after the appellant failed to turn up and made flimsy excuses of indisposition and repeatedly sought adjournments, did the Committee proceed *ex parte* against him and submitted its Report to the Registrar on 5th June, 2009. It was thus sought to be argued that the situation would not have changed in any manner had another opportunity been afforded to the appellant, as requested by him *vide* letter dated 4th June, 2009. In this context, the attention of the Court was drawn to the *proviso* to Rule 14(2) of the CCS (CCA)

Rules, which enjoins the Complaints Committee to hold an inquiry into the complaint of sexual harassment, *"as far as practicable",* in accordance with the procedure laid down in the Rules. The decision of the Division Bench of the Delhi High Court in ***Avinash Mishra v. Union of India***[32] has been cited to justify the stand of the respondents that the expression *"as far as practicable"* itself indicates that the Committee is vested with the discretion not to strictly follow the entire procedure as long as the officer charged has been afforded adequate opportunity to explain his stand in respect of the complaint and the relevant material has been disclosed to him.

25. Learned counsel for respondents no. 2 and 3 went on to state that the Committee had afforded adequate opportunities to the appellant to cross-examine the witnesses, produce his witnesses and complete his own deposition but he kept on delaying the proceedings under one pretext or the other. Referring to the Report, she stated that it shows that the Committee had taken note of the detailed reply submitted by the appellant on 25th April, 2009 and had dealt with the same at considerable length. Reliance has also been placed on the decisions of this Court in ***Hira Nath Mishra and Others v. Principal, Rajendra Medical College, Ranchi and Another***[33] and ***P.D. Agrawal v. State Bank of India and Others***[34] to argue that principles of natural justice is not an inflexible doctrine and the facts and circumstances of each case have to be examined to see whether the requirements of natural justice stand satisfied. In the present case,

[32] 2014 SCC Online Del 1856
[33] (1973) 1 SCC 805
[34] (2006) 8 SCC 776

having regard to the sensitivity of the matter where no less than seventeen students of the respondent no. 2 – University had submitted complaints of sexual harassment against the appellant, the Committee exercised its discretion by keeping a balance and conducted the proceedings without violating the principles of natural justice, which is amply borne out from a perusal of the Report itself.

26. Learned counsel also refuted the submission made by the other side that failure on the part of the Committee to frame Articles of Charge before conducting the inquiry had caused serious prejudice to the appellant. She submitted that the sum and substance of the complaints were well known to the appellant from the very beginning and all the relevant depositions of the complainants and other witnesses were duly furnished to him. He was afforded ample opportunity to respond to the said complaints, cross-examine the witnesses and produce his own witnesses in defence. Explaining the decision of the respondent no.2 – University to terminate the subsequently constituted inquiry proceedings against the appellant by virtue of the Memorandum dated 8th September, 2009, learned counsel alluded to the order dated 26th April, 2004, passed by this Court in **Medha Kotwal's case** (supra), which had clarified that the Complaints Committee as contemplated in **Vishaka and Others v. State of Rajasthan and Others**[35], will be the Inquiry Authority for the purposes of the CCS (CCA) Rules and the report of the said Committee will be deemed to be an Inquiry Report on which the Disciplinary Authority shall act in accordance with the Rules. It was submitted that the EC

[35] (1997) 6 SCC 241

had made a *bona fide* error by appointing an Inquiry Authority to inquire into the charges framed against the appellant and the said decision to recall the order dated 15th October, 2009 was duly communicated to the appellant on 15th December, 2009. Only thereafter, did the EC issue a fresh Memorandum[36] to the appellant calling upon him to submit his representation on the decision to accept the Report submitted by the Committee and impose on him, a major penalty of dismissal from service.

27. It was thus submitted that no prejudice was caused to the appellant and the Committee had observed the principles of natural justice *"as far as was practical*", in the given facts and circumstances of the case. Adequate opportunity was afforded to the appellant not just by the Committee, but also by the Disciplinary Authority and the Appellate Authority before taking any action against him. Therefore, this was not a case of "no opportunity" or "no hearing" but a case of "adequate opportunity" and "fair hearing" afforded to the appellant before imposing a major penalty of dismissal from service on him, as specified in Section 11 (9) of the CCS (CCA) Rules.

F. THE TRIAD : ARTICLES 309, 310 AND 311 OF THE CONSTITUTION OF INDIA

28. Services under the Union and the States are governed under Part XIV of the Constitution. Article 309 of the Constitution that provides for recruitment and conditions of service of persons serving the Union or a State, Article 310 that refers to the tenure of office of persons serving the Union or a State and Article 311 that deals with dismissal,

[36] dated 17th February, 2010

removal or reduction in rank of persons employed in civil capacities under the Union or a State are inter-linked and "form an integrated whole, there being an organic and thematic unity running through them"[37].

(a) ARTICLE 309: CONDITIONS OF SERVICE

29. Article 309 does not by itself provide for recruitment or conditions of service of Government servants, but confers this power on the appropriate legislature to make the laws and on the President and the Government of a State to make rules relating to these matters. The expression *"conditions of service"* in Article 309 takes in its sweep all those conditions that regulate holding of a post by a person which begins from the time he enters the service till his retirement and even post-retirement, in relation to matters like pension, pending disciplinary proceedings, etc. This expression also includes the right to dismiss such a person from service[38]. A Statute can be enacted by the appropriate Legislature or Rules can be made by the appropriate Executive under Article 309 for prescribing the procedure and the authority who can initiate disciplinary action against a Government servant[39]. It has further been held that any Act or Rule that violates the rights guaranteed to a government servant under Article 311, would be void[40]. Similarly, such an Act or Rule would be treated as void if it violates any of the fundamental rights guaranteed under Part III of the Constitution.

[37] Union of India and Another v. Tulsi Ram Patel, (1985) 3 SCC 398
[38] State of Madhya Pradesh and Others v. Shardul Singh, (1970) 1 SCC 108
[39] Bk. Sardari Lal v. Union of India and Others, (1971) 1 SCC 411
[40] Moti Ram Deka v. The General Manager, North East Frontier Railway, (1964) 5 SCR 683

(b) ARTICLE 310: DOCTRINE OF PLEASURE

30. Article 310 embodies the **"Doctrine of Pleasure**" and in the context of Government servants, relates to their tenure of service. Article 310(1) makes the tenure of Government servants subject to the pleasure of the President or the Governor of a State except as expressly provided for by the Constitution. This Article is analogous to the rights of the Crown in England where all public officers and servants of the Crown are appointed at the pleasure of the Crown and their services can be terminated at will, without assigning any cause[41]. That is the reason why the tenure of the Government servant is subject to the pleasure of the President or the Governor of a State, except as expressly provided for under the Constitution. All members of such services who receive their stipend from the public exchequer, whether at the top of the hierarchy or at the very bottom, are finally answerable to the public and expected to discharge their duties responsibly, efficiently, effectively and above all, for the higher good of the public. It can, therefore, be seen that though the origin of Government servants may be contractual, once appointed to the post or office, they acquire a status and their rights and obligations are no longer determined by the consent of both the parties, but are governed by the Statute or Statutory Rules[42].

[41] Union of India and Another v. Tulsi Ram Patel, (1985) 3 SCC 398
[42] Roshan Lal Tandon v. Union of India, (1968) 1 SCR 185

(c) ARTICLE 311 : A MANIFESTATION OF THE PRINCIPLES OF NATURAL JUSTICE

31. This Court has held that in matters of dismissal, removal or reduction in rank of public servants, Article 311 of the Constitution is a manifestation of the essential principles of natural justice. It imposes a duty on the Government to ensure that any such decision against the public servant is preceded by an inquiry that contemplates an opportunity of hearing to be granted to the public servant, who is also entitled to make a representation against such a decision[43]. Article 311 reads as under :

> **"311.** ***Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State***.—(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
>
> (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:
>
> Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:
>
> Provided further that this clause shall not apply—
>
> (*a*) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
>
> (*b*) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
>
> (*c*) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.
>
> (3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

[43] Nisha Priya Bhatia v. Union of India and Another, (2020) 13 SCC 56

32. To provide a sense of security of tenure to Government servants, the Framers of the Constitution have incorporated safeguards in respect of the punishment or dismissal or removal or reduction in their rank as provided for in Clauses (1) and (2) of Article 311. At the same time, being mindful of the very same public interest and public good which does not permit that Government servants found to be corrupt, dishonest or inefficient be continued in service, a remedy is provided under the second *proviso* to Clause (2) of Article 311 whereunder their services can be dispensed with, without conducting a disciplinary inquiry.

33. Thus, the golden thread that weaves through Articles 309, 310 and 311 is public interest, directed towards larger public good. Together, they form a triad and symbolize the overarching Doctrine of Public Policy.

G. ARTICLE 14 : BEDROCK OF THE PRINCIPLES OF NATURAL JUSTICE

34. Principles of natural justice that are reflected in Article 311, are not an empty incantation. They form the very bedrock of Article 14 and any violation of these principles tantamounts to a violation of Article 14 of the Constitution. Denial of the principles of natural justice to a public servant can invalidate a decision taken on the ground that it is hit by the vice of arbitrariness and would result in depriving a public servant of equal protection of law.

35. Article 14, often described as the 'Constitutional Guardian' of the principles of natural justice, expressly forbids the State, as defined in Article 12, from denying to any person, equality before the law or equal protection of the laws. Article 14 provides an

express guarantee of equality before the law to all persons and extends a protection to them against discrimination by any law. Article 13(3)(a) defines law to include any ordinance, order, bye-law, rule, regulation, notification, custom or usages having in the territory of India, the force of law. Thus, principles of natural justice guaranteed under Article 14, prohibit a decision-making adjudicatory authority from taking any arbitrary action, be it substantive or procedural in nature. These principles of natural justice, that are a natural law, have evolved over a period of time and been continuously refined through the process of expansive judicial interpretation.

H. THE TWIN ANCHORS : NEMO JUDEX IN CAUSA SUA AND AUDI ALTERAM PARTEM

36. The twin anchors on which the principles of natural justice rest in the judicial process, whether quasi-judicial or administrative in nature, are *Nemo Judex In Causa Sua,* i.e., no person shall be a judge in his own cause as justice should not only be done, but should manifestly be seen to be done and *Audi Alteram Partem,* i.e. a person affected by a judicial, quasi-judicial or administrative action must be afforded an opportunity of hearing before any decision is taken.

37. How deeply have Courts internalised and incorporated the principles of natural justice into the Constitution can be perceived from the seven Judge Bench decision in the case of ***Maneka Gandhi v. Union of India and Another***[44]. In this case, where a challenge was laid to the order of impounding the passport of the appellant, which was

[44] (1978) 1 SCC 248

silent on the reasons for such an action and the respondent–State had declined to furnish the reason therefor, it was held that life and liberty of a person cannot be restricted by any procedure that is established by law, but only by procedure that is just, fair and reasonable. Quoting the *audi alteram partem* rule and equating it with "fair play in action", Justice P.N. Bhagwati (as he then was) had authored the judgment for the majority and had observed that:

> "14. ……The *audi alteram partem* rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in **Russel v. Duke of Norfolk**[45] that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal : it may be a hearing prior to the decision or it may even be a post-decisional remedial hearing. The *audi alteram partem* rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise……."

38. In the captioned case, citing the judgment of a Constitution Bench of this Court in ***Rustom Cavasjee Cooper v. Union of India***[46], wherein it was held that fundamental rights are not a water tight compartment, the Court observed as under:-

> "The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14"

The emphasis was on the Court's attempt to expand the reach and ambit of the fundamental rights guaranteed in the Constitution rather than attenuate their meaning

[45] 1949 1 ALL ER 109
[46] (1970) 1 SCC 248

and content by a process of judicial construction. Relying on the minority judgment rendered by Justice Fazal Ali in the case of ***A.K. Gopalan v. State of Madras***[47], this Court went on to hold in ***Maneka Gandhi's case*** (supra) that the procedure required to be prescribed under Article 21 must include four essentials namely, notice, opportunity to be heard, impartial tribunal and ordinary course of procedure. It was observed that even on principle, having regard to the impact of Article 14 on Article 21, the concept of reasonableness must be projected in the procedure contemplated by Article 21.

39. In ***Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Others***[48], a five-Judge Bench of this Court highlighted how essential it is to afford a reasonable opportunity to an employee to put forth his case in a domestic inquiry and the requirement of an employer to comply with the principles of natural justice and fair play, in the following words :

> **"202.** ……It is now well settled that the *'audi alteram partem'* rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. **Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally…... Rule of law posits that the power is to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination…...**
>
> **[emphasis added]**

XXX XXX XXX

[47] 1950 SCC 228
[48] (1991) Supp (1) SCC 600

> **316.** Thus it could be held that Article 14 read with Article 16(1) accords right to an equality or an equal treatment consistent with the principles of natural justice. Any law made or action taken by the employer, corporate statutory or instrumentality under Article 12 must act fairly, justly and reasonably. Right to fair treatment is an essential inbuilt of natural justice. Exercise of unbridled and uncanalised discretionary power impinges upon the right of the citizen; vesting of discretion is no wrong provided it is exercised purposively judiciously and without prejudice. Wider the discretion, the greater the chances of abuse. Absolute discretion is destructive of freedom than of man's other inventions. Absolute discretion marks the beginning of the end of the liberty**. The conferment of absolute power to dismiss a permanent employee is antithesis to justness or fair treatment. The exercise of discretionary power wide off the mark would breed arbitrary, unreasonable or unfair actions and would not be consistent with reason and justice. The provisions of a statute, regulations or rules that empower an employer or the management to dismiss, remove or reduce in rank of an employee, must be consistent with just, reasonable and fair procedure. It would, further, be held that right to public employment which includes right to continued public employment till the employee is superannuated as per rules or compulsorily retired or duly terminated in accordance with the procedure established by law is an integral part of right to livelihood which in turn is an integral facet of right to life assured by Article 21 of the Constitution**. Any procedure prescribed to deprive such a right to livelihood or continued employment must be just, fair and reasonable procedure. In other words an employee in a public employment also must not be arbitrarily, unjustly and unreasonably be deprived of his/her livelihood which is ensured in continued employment till it is terminated in accordance with just, fair and reasonable procedure. Otherwise any law or rule in violation thereof is void."
>
> **[emphasis added]**

40. The significant role played by procedural fairness in the backdrop of internalising the principles of natural justice into the Constitution cannot be overstated. This aspect has been highlighted by a Division Bench of this Court of which one of us, [Hima Kohli, J], was a member, in ***Madhyamam Broadcasting Limited v. Union of India & Others***[49]**.** Speaking for the Bench, Chief Justice D. Y. Chandrachud stated :

> "53. The judgment of this Court in **Maneka Gandhi** (supra) spearheaded two doctrinal shifts on procedural fairness because of the constitutionalising of natural justice. Firstly, procedural fairness was no longer viewed merely as a means to secure a just outcome but a requirement that holds an inherent value in itself. In

[49] (2023) SCC Online 366

> view of this shift, **the Courts are now precluded from solely assessing procedural infringements based on whether the procedure would have prejudiced the outcome of the case. Instead, the courts would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome**. In compliance with this line of thought, the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds. Secondly, natural justice principles breathe reasonableness into the procedure. Responding to the argument that the principles of natural justice are not static but are capable of being moulded to the circumstances, it was held that the core of natural justice guarantees a reasonable procedure which is a constitutional requirement entrenched in Articles 14, 19 and 21. **The facet of *audi alterum partem* encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness.** The burden is on the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect, infringes upon the core of the right to a fair and reasonable hearing."
>
> - ***[emphasis supplied]***

41. In ***A.K. Kraipak and Others v. Union of India and Others***[50] quoting with approval the judgment ***In re: H.K. (All Infant)***[51], this Court held that :

> "20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules nameny: (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. **If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in**

[50] (1969) 2 SCC 262

[51] (1967) 1 All ER 226

> **character. Arriving at a just decision is the aim of both quasi- judicial enquiries as well as administrative enquiries. An unjust decision in an administrative inquiry may have more far reaching effect than a decision in a quasi- judicial inquiry**……."
>
> - ***[Emphasis supplied]***

I. FAIR ACTION AND IMPARTIALITY IN SERVICE JURISPRUDENCE:

42. In the context of service law, it is, therefore mandatory to afford a Government servant or an employee, a reasonable opportunity of being heard before an order is passed. In **Mangilal v. State of M.P.**[52]**,** this Court declared that even if a Statute is silent and there are no positive words in the Act or the Rules made thereunder, principles of natural justice must be observed. This is what the Court has held:

> "10….Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See **Swadeshi Cotton Mills v. Union of India**[53]) Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves….."

43. In ***Tulsiram Patel's case*** (supra), observing that violation of the rules of natural justice would result in arbitrariness which would amount to discrimination, the Constitution Bench made the following observations :

> "95. **The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that article.** Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14:

[52] (2004) 2 SCC 447
[53] (1981) 1 SCC 664

> therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. **The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of State in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.**
>
> 96. **The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the *audi alteram partem* rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence.** The process of a fair hearing need not, however, conform to the judicial process in a Court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry. If we look at clause (2) of Article 311 in the light of what is stated above, it will be apparent that that clause is merely an express statement of the *audi alteram partem* rule which is implicitly made part of the guarantee contained in Article 14 as a result of the interpretation placed upon that article by recent decisions of this Court. **Clause (2) of Article 311 requires that before a government servant is dismissed, removed or reduced in rank, an inquiry must be held in which he is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges**……."
>
> **- [*emphasis supplied]***

At the same time, a note of caution was added in the captioned case and the Court observed that the rules of natural justice are neither statutory rules nor are they cast in stone. They are flexible and can be adapted and modified by statutes, depending on the exigencies of different situations, the facts and circumstances of the case and the framework of the law[54].

[54] Also refer : A.K.Kraipak and others v. Union of India and Others, (1969) 2 SCC 262 and Union of India v. Col. J.N. Sinha and Another, (1970) 2 SCC 458

44. In **Swadeshi Cotton Mills v. Union of India**[55], in his dissenting judgment, Justice O. Chinnappa Reddy, had made the following pertinent observations :-

> "106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by **Dr. Bina pani**[56], **A.K. Kraipak**[57], **Mohinder Singh Gill**[58], **Maneka Gandhi**[59]. They are now considered so fundamental as to be "implicit in the concept of ordered liberty and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. **Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice.** The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced……"
>
> - [***emphasis supplied]***

45. Thus, ordinarily, courts interpret statutory provisions in sync with the aforesaid principles of natural justice on a premise that no statutory authority would violate the fundamental rights enshrined in the Constitution. When it comes to authorities that are expected to discharge judicial and quasi-judicial functions, the rule of a*udi alteram partem* applies with equal force. Reasonableness infuses lifeblood in procedural matters, be it elements of the notice, the contents of the notice, the scope of inquiry, the material available or an adequate opportunity to rebut such material. All of this is to avoid

[55] (1981) 1 SCC 664
[56] AIR 1967 SC 1269
[57] (1969) 2 SCC 262
[58] (1978) 1 SCC 405
[59] (1978) 1 SCC 248

miscarriage of justice at any stage. This is of course fluid and subject to adapting to the demands of a situation in the given facts of a case.

J. THE STATUTORY REGIME

(a) GOA UNIVERSITY STATUTE

46. In the above background, we may now proceed to examine the relevant Rules that govern the conditions of service of the appellant herein. The Statutory regime in respect of teachers employed in the respondent no. 2 – University is governed by the Goa University Statute SSB-1 (XXVI). SC-6(i) of the Statute contemplates as follows–

> "For disciplinary and departmental action, the teachers shall be governed under the CCS (CCA) Rules, 1965, Fundamental Rules and Supplementary Rules as applicable to the employees of the Goa Government".

(b) CCS (CCA) RULES :

47. The CCS (CCA) Rules mentioned above, have been enacted by the President of India in exercise of the powers conferred by the *proviso* to Article 309 and Clause 5 of Article 148 of the Constitution of India. Part VI of the CCS (CCA) Rules lays down the procedures for imposing penalties. Rule 3(C) has been incorporated in the CCS (CCA) Rules *vide* GSR 49 dated 7th March, 1998 and subsequently, vide GSR 823 (E) dated 19th November, 2014. The said provision states as follows: -

> **"3C. Prohibition of sexual harassment of working women**
>
> (1) No Government servant shall indulge in any act of sexual harassment of any women at any work place.
> (2) Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at the work place.
> Explanation – (1) For the purpose of this rule –
> (a) "sexual harassment" includes any one or more of the following acts or behaviour (whether directly or by implication), namely –

(i) physical contact and advances; or
(ii) a demand or request for sexual favours; or
(iii) making sexually coloured remarks; or
(iv) showing pornography; or
(v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature."

(c) PRAGMATIC APPLICATION OF THE "AS FAR AS IS PRACTICABLE" RULE

48. Rule 14 of the CCS (CCA) Rules stipulates the procedure for imposing major penalties and is extracted below :

"**14. Procedure for imposing major penalties**

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed- to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules."

- **[*emphasis supplied]***

49. As can be seen from the above, when the misconduct relates to a complaint of sexual harassment at the work place, the Complaints Committee constituted by the respondent no.2-University to examine such a complaint, dons the mantle of the inquiring authority and is expected to conduct an inquiry in accordance with the procedure

prescribed in the rules, as far as may be practicable. The use of the expression "as far as is practicable" indicates a play in the joints available to the Complaints Committee to adopt a fair procedure that is feasible and elastic for conducting an inquiry in a sensitive matter like sexual harassment at the workplace, without compromising on the principles of natural justice. Needless to state that the fact situation in each case will vary and therefore no set standards or yardstick can be laid down for conducting the inquiry in complaints of this nature. However, having regard to the serious ramifications with which the delinquent employee may be visited at the end of the inquiry, any discordant note or unreasonable deviation from the settled procedures required to be followed, would however strike at the core of the principles of natural justice, notwithstanding the final outcome.

K. JOURNEY FROM "VISHAKA" CASE TO THE PoSH ACT

(a) VISHAKA GUIDELINES : FILLING IN THE VACUUM :

48. The occasion to amend Rule 14 (2) of the CCS (CCA) Rules and append a *proviso* thereto was a direct consequence of judicial intervention by this Court in the case of ***Vishaka*** (supra), where the powers vested under Article 32 of the Constitution of India were exercised by a three-Judge Bench to enforce the fundamental rights of women to "gender equality and right to life and liberty", bestowed under Articles 14, 15, 19(1)(g) and 21 of the Constitution of India. Treating a set of writ petitions filed by some social activists and NGOs, who were agitating the brutal gang rape of a social worker in a

village of Rajasthan as a class action, this Court worked towards filling in the vacuum in the existing legislation. Noting the absence of any Statute enacted to provide for effective enforcement of the basic human right of gender equality and guarantee against sexual abuse, particularly against sexual harassment at work places, the Court drew strength from several provisions of the Constitution of India including Article 15[60], Article 42[61] and Article 51(A)[62] and with the aid of the relevant International Conventions and norms including the General Recommendations of the CEDAW[63] that had passed a Resolution on 25th June, 1993, resolving that an effective complaint mechanism be put in place to address sexual harassment in the work place, laid down a set of Guidelines and norms with a direction that they would be strictly adhered to at all work places and shall be binding and enforceable in law till the vacuum was filled and a legislation was enacted to occupy the field. The Guidelines directed creation of a complaints mechanism to ensure time bound treatment of complaints, constitution of a Complaints Committee and recommended, disciplinary action where such conduct amounted to misconduct in employment 'as defined by the relevant service rules'. The momentous judgment in ***Vishaka's case*** (supra) was delivered on 13th August,1997 and the Guidelines declared by the Court continued to hold the field till the Sexual Harassment of Women at

[60] Article 15: The State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth of any of them.
[61] Article 42: The State shall make provisions for securing just and humane conditions of work and for maternity relief.
[62] Article 51(A): (e) ……. It shall be the duty of every citizen of India to, amongst others, renounce practices derogatory to the dignity of women.
[63] The Convention on the Elimination of All Forms of Discrimination Against Women

Workplace (Prevention, Prohibition and Redressal) Act, 2013[64] was enacted on 22nd April, 2013.

(b) MEDHA KOTWAL LELE'S CASE : FOLLOW UP THROUGH CONTINUING MANDAMUS :

49. After ***Vishaka's case*** (supra), came the case of ***Medha Kotwal Lele and Others v. Union of India and Others***[65] (supra) where a grievance was raised by several petitioners that the Complaints Committees directed to be constituted in terms of the Guidelines laid down by this Court, had not been established to deal with cases of sexual harassment. Treating the said petition as a Public Interest Litigation, notices were issued to several parties including the Union of India and the State Governments and the following directions were issued :

> "2……"Complaints Committee as envisaged by the Supreme Court in its judgment in **Vishaka case** SCC at para 53, will be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 (hereinafter called the CCS Rules) and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the Rules."

A similar amendment was also directed to be carried out in the Industrial Employment (Standing Orders) Rules.

[64] For short 'PoSH Act'
[65] (2013) 1 SCC 311

50. On 17th January, 2006, in the very same case of ***Medha Kotwal Lele***[66], noting that there was no information available regarding implementation of the directions issued in ***Vishaka's case*** (supra), this Court issued the following directions :

> "2. It is not known whether the committees as suggested in Vishaka case have been constituted in all the departments/institutions having members of staff of 50 and above and in most of the district-level offices in all the States, members of the staff working in some offices would be more than 50. It is not known whether the committees as envisaged in Vishaka case have been constituted in all these offices. The number of complaints received and the steps taken in these complaints are also not available. We find it necessary to give some more directions in this regard:
>
> 2.1. We find that in order to coordinate the steps taken in this regard, there should be a State-level officer i.e. either the Secretary of the Women and Child Welfare Department or any other suitable officer who is in charge and concerned with the welfare of women and children in each State. The Chief Secretaries of each State shall see that an officer is appointed as a nodal agent to collect the details and to give suitable directions whenever necessary.
>
> 2.2. As regards factories, shops and commercial establishments are concerned, the directions are not fully complied with. The Labour Commissioner of each State shall take steps in that direction. They shall work as nodal agency as regards shops, factories and commercial establishments are concerned. They shall also collect the details regarding the complaints and also see that the required committee is established in such institutions."

51. Exercising its powers of a writ of continuing mandamus, the aforesaid petition was again taken up after the passage of over six years, on 19th October, 2012[67] when this Court examined the affidavits filed by each State Government to satisfy itself on the compliance of the Guidelines laid down in **Vishaka's case** (supra). On examining the position regarding amendments required to be carried out in the CCS(CCA) Rules and the Standing Orders as also the establishment and composition of the Complaints

[66] (2013) 1 SCC 312
[67] (2013) 1 SCC 297

Committees, the Court noted with great dismay that several State Governments had failed to make compliances. Extracted below are the observations made in this regard:

> "43. As the largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence—domestic violence, sexual assault, sexual harassment at the workplace, etc.—and provide new initiatives for education and advancement of women and girls in all spheres of life. After all they have limitless potential. Lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population—the women.
>
> 44. In what we have discussed above, we are of the considered view that guidelines in **Vishaka** should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place:
>
> 44.1. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (by whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings, etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.
>
> 44.2. The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in para 44.1 within two months.
>
> 44.3. The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and State level. Those States and/or Union Territories which have formed only one committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such committees an independent member shall be associated.
>
> 44.4. The State functionaries and private and public sector undertakings/organisations/ bodies/institutions, etc. shall put in place sufficient mechanism to ensure full implementation of Vishaka guidelines and further provide that if the alleged harasser is found guilty, the complainant victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.

> 44.5. The Bar Council of India shall ensure that all Bar Associations in the country and persons registered with the State Bar Councils follow **Vishaka** guidelines. Similarly, the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by **Vishaka**. To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as the Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with **Vishaka** and Others v. State of Rajasthan and Others (1997) 6 SCC 241, guidelines and the guidelines in the present order."

(c) ENACTMENT OF THE PoSH ACT AND RULES :

52. After the passage of fifteen years from the date of the verdict delivered in **Vishaka's case** (supra), the PoSH Act, was legislated on 22nd April, 2013 and finally notified on 9th December, 2013. The Act lays down a comprehensive mechanism for constitution of Internal Complaints Committee, Local Committee and Internal Committees, the manner of conducting an inquiry into a complaint received, duties of an employer, duties and powers of the District Officer and others, penalties for non-compliance of the provisions of the Act, etc. Accompanying the Act are the Rules, 2013[68] that have been framed in exercise of powers conferred under Section 29 of the PoSH Act and amongst others, lays down the manner in which an inquiry into a complaint of sexual harassment ought to be conducted (Rule 7), the interim reliefs that can be extended to the aggrieved women during the pendency of the inquiry (Rule 8), the manner of taking action for sexual harassment (Rule 9) etc. It is noteworthy that sub-rule (3) of Rule 7

[68] The Sexual Harassment of Women at Work Pace (Prevention, Prohibition and Redressal) Act, 2013

provides that the respondent shall file his reply to the complaint within a stipulated time along with the relevant documents and give details of the witnesses and sub-rule (4) stipulates that the Complaints Committee shall make an inquiry into the complaints "*in accordance with the principles of natural justice*".

(d) BREATHING REASONABLENESS INTO THE PROCEDURAL REGIME :

53. Thus, it can be seen that the journey from ***Vishaka's case*** (supra) that acted as a springboard and sowed the seeds of future legislation by structuring Guidelines to deal with cases of sexual harassment, blossomed into a comprehensive legislation with the enactment of the PoSH Act and Rules. At the same time, however, women centric the Guidelines and the Act may have been, they both recognize the fact that any inquiry into a complaint of sexual harassment at the workplace must be in accordance with the relevant rules and in line with the principles of natural justice. The cardinal principle required to be borne in mind is that the person accused of misconduct must be informed of the case, must be supplied the evidence in support thereof and be given a reasonable opportunity to present his version before any adverse decision is taken. Similarly, the concerned employer is also expected to act fairly and adopt a procedure that is just, fair and reasonable. The whole purpose is to breathe reasonableness into the procedural regime. But, the test of reasonableness cannot be abstract. It has to be pragmatic and grounded in the realities of the facts and circumstances of a case. When conducting an inquiry, it is the duty of the Inquiring Authority to proceed in a manner that is visibly free

from the taint of arbitrariness, unreasonableness or unfairness. An inquiry that can culminate into imposition of a major penalty like termination of service of an employee, must doubly conform to a just, fair and reasonable procedure. Any displacement of the principles of natural justice can only be in exceptional circumstances, as contemplated in the proviso to Article 311(2) of the Constitution of India and not otherwise. Wherever the rules are silent, principles of natural justice must be read into them and a hearing be afforded to the person who is proposed to be punished with a major penalty[69].

54. The four predominant purposes sought to be achieved by reading the principles of natural justice into law and into the conduct of judicial and administrative proceedings to achieve the underlying object of securing fairness have been concisely expressed by this Court as an assurance of a fair outcome by following the procedural Rules, an assurance of equality in the proceedings, legitimacy of the decision and decision- making authority thereby preserving the integrity of the system and finally, with the idea of preserving the dignity of individuals where citizens are treated with respect and the dignity they deserve in a society governed by the Rule of Law[70].

L. ANALYSIS AND DISCUSSION :

55. In the present case, the incidents in question relate to the period when the **Vishaka Guidelines** were in place and it had been clarified in ***Medha Kotwal Lele*** (supra) that the Complaints Committee will be deemed to be an inquiry authority for the

[69] State Bank of India and Others v. Ranjit Kumar Chakraborty and Another, (2018) 12 SCC 807
[70] Madhyamam Broadcasting Limited v. Union of India decided on 5th April 2023

purposes of the CCS Rules. Keeping this in mind, we may now proceed to ascertain as to whether the procedure adopted by the respondents No. 2 and 3 herein violated the principles of natural justice and thereby caused prejudice to the appellant, as has been alleged, for this Court to interfere in the impugned judgment.

(a) SCOPE OF INTERFERENCE BY THE HIGH COURT IN JUDICIAL REVIEW :

56. It may be clarified at the outset that to satisfy itself that no injustice has been meted out to the appellant, the High Court was required to examine the decision-making process and not just the final outcome. In other words, in exercise of powers of judicial review, the High Court does not sit as an Appellate Authority over the factual findings recorded in the departmental proceedings as long as those findings are reasonably supported by evidence and have been arrived at through proceedings that cannot be faulted on account of procedural illegalities or irregularities that may have vitiated the process by which the decision was arrived at.

57. The purpose of judicial review is not only to ensure that the individual concerned receives fair treatment, but also to ensure that the authority, after according fair treatment, reaches, a conclusion, which is correct in the eyes of law[71]. Notably, in **Apparel Export Promotion Council vs. A.K. Chopra**, a matter related to sexual harassment at the workplace[72] where, aggrieved by the decision taken by the Disciplinary Authority of accepting the report of the Inquiry Officer and removing the

71 (1999) 1 SCC 759

72 Chief Constable of the North Wales Police v. Evans, (1982) 3 ALL ER 141 HL. Also refer : B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749.

respondent therein from service on the ground that he had tried to molest a lady employee, this Court had set aside the order of the High Court that had narrowly interpreted the expression "sexual harassment" and held that in departmental proceedings, the Disciplinary Authority is the sole judge of facts and once findings of fact, based on appreciation of evidence are recorded, the High Court in its writ jurisdiction should not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The Court is under a duty to satisfy itself that an inquiry into the allegations of sexual harassment by a Committee is conducted in terms of the service rules and that the concerned employee gets a reasonable opportunity to vindicate his position and establish his innocence[73].

(b) EXTENT OF ADHERENCE TO THE "AS FAR AS PRACTICABLE" NORM

58. Assuming as correct, the submission made by learned counsel for the respondents no.2 and 3 that the Committee was not bound to strictly follow a step by step procedure for conducting an inquiry having due regard to the *proviso* to Rule 14(2) of the CCS (CCA) Rules that permits a Committee to enquire into a complaint of sexual harassment *'as far as practicable*', in accordance with the procedure laid down in the Rules, the question that would still beg an answer is

[73] Dr. Vijaykumaran C.P.V. v. Central University of Kerala and Others, (2020) 12 SCC 426

whether the inquiry conducted by the Committee in the instant case, would meet the '*as far as practicable*' norm?

59. Rule 14 prescribes the procedure required to be followed for conducting an inquiry by a Public Authority which entails issuance of a charge sheet, furnishing details of the Articles of Charge, enclosing statements of imputations in respect of each article of charge, forwarding of a list of witnesses and the documents sought to be relied upon by the Management/employer. The said procedure may not have been strictly followed by the Committee in the present case, but it is not in dispute that all the complaints received from time to time and the depositions of the complainants were disclosed to the appellant. He was, therefore, well aware of the nature of allegations levelled against him. Not only was the material proposed to be used against him during the inquiry furnished to him, he was also called upon to explain the said material by submitting his reply and furnishing a list of witnesses, which he did. Furthermore, on perusing the Report submitted by the Committee, it transpires that depositions of some of the complainants were recorded audio-visually by the Committee, wherever consent was given and the appellant was duly afforded an opportunity to cross-examine the said witnesses including the complainants. The charges levelled by all the complainants were of sexual harassment by the appellant with a narration of specific instances. Therefore, in

the given facts and circumstances, non-framing of the Articles of Charge by the Committee cannot be treated as fatal. Nor can the appellant be heard to state that he was completely in the dark as to the nature of the allegations levelled against him and was not in a position to respond appropriately. So far, so good.

(c) THE COMMITTEE'S UNDERSTANDING OF ITS MANDATE :

60. As noted above, when the Registrar of the respondent No. 2–University addressed a letter to the Chairperson of the Committee, he forwarded nine complaints of sexual harassment that had been received by the Vice Chancellor of the University. The process of the inquiry was set into motion on 17th March 2009 when the appellant was informed that on receiving complaints of sexual harassment against him, the Committee had conducted a preliminary verification of the complaints by recording the statements of the concerned students. Till then, no specific Articles of Charge were framed by the Committee and no imputation of charges were forwarded to the appellant. At the same time, copies of all the complaints received and the statements recorded were forwarded directly to the appellant calling upon him to explain the charges levelled against him.

61. The plea of the appellant that the Committee understood the remit of its inquiry as a 'fact-finding proceeding', can be discerned from the contents of the letters dated 17th March 2009 and 20th April 2009 addressed to the appellant. The

impression carried by the Committee that it was only required to submit a fact-finding report to the University was no different for the EC as is borne out from a perusal of the Memorandum dated 8th September 2009, issued by the Chairman of the EC who, after receiving the Committee's Report, informed the appellant that an inquiry was proposed to be conducted against him under Rule 14 of the CCS (CCA) Rules. This was the first time when the respondents informed the appellant that the EC had decided to follow the procedure prescribed under the rules of drawing up a Statement of Articles of Charge, imputation of misconduct in support of each Article of Charge and other documents and had granted the appellant time to submit his reply in defence. The appellant did submit a reply. But it is an admitted position that the said inquiry proceedings were aborted at the initial stage itself and it was the Report of the Committee submitted earlier, that was acted upon by the EC in terms of a decision taken on 28th January 2010. We are of the opinion that when the Committee itself was unclear as to the scope of its inquiry, the appellant cannot be blamed for harbouring an impression that the remit of the Committee was confined to fact finding alone and it was not discharging the functions of a disciplinary committee, as contemplated under the service Rules.

(d) WHIRLWIND PROCEEDINGS

62. On examining the records, it emerges that the point at which the Committee fell into an error was when it attempted to fast forward the entire proceedings after the first few hearings and declined to grant a reasonable time to the appellant to effectively participate in the said proceedings. It is noteworthy that the proceedings of the Committee had commenced on 16th April 2009 and stood concluded on 5th June, 2009. During this period, 18 meetings were conducted by the Committee. Following is the month-wise details of the dates on which the meetings of the Committee were conducted :

(i) April 2009 – On 16th,27th and 29th

(ii) May 2009 – On 6th,12th,13th,14th,19th,20th, 22nd,23rd,25th,27th,28th and 29th

(iii) June, 2009 – On 3rd,4th and 5th

63. It is also noteworthy that the time span prescribed under the CCS (CCA) Rules for concluding an inquiry is ordinarily within a period of six months from the date of receipt of the order of appointment. But, here, the entire process was wrapped up in flat 39 days. This shows the tearing hurry in which the Committee was to submit its Report. One such glaring instance of the over anxiety to conclude the proceedings is apparent from the letter dated 5th May 2009, addressed by the Committee to the appellant informing him that the next date for filing his reply and for recording further depositions was 12th June 2009. Surprisingly, on the very

next day, the Committee issued yet another letter advancing the said dates by claiming that an error had crept into the previous letter and informing the appellant that the date for filing his reply should be read as '12th May 2009' and the date for recording further depositions should be read as '14th May, 2009', thus moving the dates back by a whole month. Another egregious example of the hurry and scurry shown by the Committee can be gathered from the fact that on 20th May 2009, the Committee had written to the appellant giving him a last opportunity to present himself on 20th May 2009, not only to complete his deposition, but also to cross-examine the complainants and other witnesses. Simultaneously, the Committee forwarded six more depositions to the appellant and directed him to furnish his reply within 48 hours i.e. by 22nd May, 2009.

64. Even if this Court was to accept the submission made by learned counsel for the respondents that the appellant was offering flimsy excuses to somehow prolong the proceedings and the health ground taken by him was not genuine, it does not explain the approach of the Committee which was well aware of the fact that at least six more depositions had been handed over to the appellant as late as on 20th May 2009. Even if he had been hale and hearty, he would still have required a reasonable time to respond to the additional depositions and simultaneously, prepare himself for cross-examining the complainants and completing his

deposition. This can only be termed as an unreasonable and unfair direction by the Committee.

65. The undue haste demonstrated by the Committee for bringing the inquiry to a closure, cannot justify curtailment of the right of the appellant to a fair hearing. The due process, an important facet of the principles of natural justice was seriously compromised due to the manner in which the Committee went about the task of conducting the inquiry proceedings. As noted above, when the proceedings, subject matter of the present appeal had taken place, the PoSH Act was nowhere on the horizon and the field was occupied by the **Vishaka** Guidelines**.** The said Guidelines also did not exclude application of the principles of natural justice and fair play in making procedural compliances. The silence in the Guidelines on this aspect could not have given a handle to the Committee to bypass the principles of natural justice and whittle down a reasonable opportunity of affording a fair hearing to the appellant. This Court has repeatedly observed that even when the rules are silent, principles of natural justice must be read into them. In its keen anxiety of being fair to the victims/complainants and wrap up the complaints expeditiously, the Committee has ended up being grossly unfair to the appellant. It has completely overlooked the cardinal principle that justice must not

only be done, but should manifestly be seen to be done. The principles of *audi alterem partem* could not have been thrown to the winds in this cavalier manner.

(e) HOW DID THE EXECUTIVE COUNCIL FALTER?

66. The error committed on the part of the EC, is no less grave. It is apparent that the EC continued to remain under an impression that the First Committee to which the complaints were forwarded, was only a 'fact-finding Committee' and that a full-fledged inquiry was still required to be conducted subsequently, in the manner prescribed under Rule 14 of the CCS (CCA) Rules. The result was that though the Report of the First Committee was accepted and the EC proceeded to place the appellant under suspension, for the very first time, it decided to issue him Memorandum detailing the Articles of Charge and the imputation of charges and further appointed a Former Judge of the High Court as an Inquiry Officer to conduct the inquiry in terms of the Rules. Respondent Nos. 2 and 3 got wiser only when the said proceedings commenced and the Inquiry Officer was appraised of the directions issued in ***Medha Kotwal's*** *case* where it had been clarified by this Court that the Complaints Committee contemplated in ***Vishaka's*** *case (supra),* will be deemed to be an Inquiry Authority for the purposes of the CCS (Conduct) Rules and its report shall be deemed to be a Report under the CCS (CCA) Rules.

67. When the employer itself was oblivious to the remit of the Committee and the Committee remained under the very same impression having described its proceedings as fact-finding in nature, it was all the more incumbent for the respondents to have paused on receiving the Report of the First Committee and verify the legal position before taking the next step. In all this back and forth, it was the procedure prescribed under Rule 14 for conducting an inquiry of sexual harassment at the workplace that came to be sacrificed at the alter of expeditious disposal, which can neither be justified nor countenanced.

68. The intent and purpose of the *proviso* inserted in Rule 14(2) of CCS (CCA) Rules and Rule 3C of CCS (Conduct) Rules is that the procedure required to be adopted for conducting an inquiry into the complaint of sexual harassment that can lead to imposition of a major penalty under the Rules, must be fair, impartial and in line with the Rules. Pertinently, the emphasis on adhering to the principles of natural justice during an inquiry conducted by a Complaints Committee finds specific mention in Rule 7(4) of the subsequently enacted Rules of 2013. But the spirit behind the due process could never be suppressed or ignored even in the absence of the Statute or the Rules inasmuch as the principles of natural justice is the very essence of the decision-making process and must be read into every judicial or even a quasi-judicial proceeding.

69. This is not to say that the Committee even if described as an Inquiring authority, by virtue of the ruling in ***Medha Kotwal's*** *case (supra)* and required to follow the procedure prescribed under Rule 14, was expected to conduct the inquiry as if it was a full-fledged trial. The expression used in the *proviso* to Rule 14(2), '*as far as practicable*' has to be read and understood in a pragmatic manner. In any such proceedings initiated by the Disciplinary Authority, a calibrated balance would have to be struck between the rights of a victim of sexual harassment and those of the delinquent employee. At the same time, fairness in the procedure would have to be necessarily adopted in the interest of both sides. After all, what is sauce for the goose, is sauce for the gander.

M. CONCLUSION

70. In the instant case, though the Committee appointed by the Disciplinary Authority did not hold an inquiry strictly in terms of the step-by-step procedure laid down in Rule 14 of the CCS (CCA) Rules, nonetheless, we have seen that it did furnish copies of all the complaints, the depositions of the complainants and the relevant material to the appellant, called upon him to give his reply in defence and directed him to furnish the list of witnesses that he proposed to rely on. Records also reveal that the appellant had furnished a detailed reply in defence. He had also submitted a list of witnesses and depositions. This goes to show that he was

well-acquainted with the nature of allegations levelled against him and knew what he had to state in his defence. Given the above position, non-framing of the articles of charge cannot be said to be detrimental to the interest of the appellant.

71. In fact, the glaring defects and the procedural lapses in the inquiry proceedings took place only thereafter, in the month of May, 2009, when 12 hearings, most of them back-to-back, were conducted by the Committee at a lightning speed. On the one hand, the Committee kept on forwarding to the appellant, depositions of some more complainants received later on and those of other witnesses and called upon him to furnish his reply and on the other hand, it directed him to come prepared to cross-examine the said complainants and witnesses as also record his further deposition, all in a span of one week. Even if the medical grounds taken by the appellant seemed suspect, the Committee ought to have given him reasonable time to prepare his defence, more so when his request for being represented through a lawyer had already been declined. It was all this undue anxiety that had led to short-circuiting the inquiry proceedings conducted by the Committee and damaging the very fairness of the process.

72. For the above reasons, the appellant cannot be faulted for questioning the process and its outcome. There is no doubt that matters of this nature are sensitive and have to be handled with care. The respondents had received as

many as seventeen complaints from students levelling serious allegations of sexual harassment against the appellant. But that would not be a ground to give a complete go by to the procedural fairness of the inquiry required to be conducted, more so when the inquiry could lead to imposition of major penalty proceedings. When the legitimacy of the decision taken is dependent on the fairness of the process and the process adopted itself became questionable, then the decision arrived at cannot withstand judicial scrutiny and is wide open to interference. It is not without reason that it is said that a fair procedure alone can guarantee a fair outcome. In this case, the anxiety of the Committee of being fair to the victims of sexual harassment, has ended up causing them greater harm.

73. This Court is, therefore, of the opinion that the proceedings conducted by the Committee with effect from the month of May, 2009, fell short of the "*as far as practicable*" norm prescribed in the relevant Rules. The discretion vested in the Committee for conducting the inquiry has been exercised improperly, defying the principles of natural justice. As a consequence thereof, the impugned judgment upholding the decision taken by the EC of terminating the services of the appellant, duly endorsed by the Appellate Authority cannot be sustained and is accordingly quashed and set aside with the following directions:

(i) The matter is remanded back to the Complaints Committee to take up the inquiry proceeding as they stood on 5th May 2009.

(ii) The Committee shall afford adequate opportunity to the appellant to defend himself.

(iii) The appellant shall not seek any adjournment of the proceedings.

(iv) A Report shall be submitted by the Committee to the Disciplinary Authority for appropriate orders.

(v) Having regard to the long passage of time, the respondents are directed to complete the entire process within three months from the first date of hearing fixed by the Committee.

(vi) The procedure to be followed by the Committee and the Disciplinary Authority shall be guided by the principles of natural justice.

(vii) The Rules applied will be as were applicable at the relevant point of time.

(viii) The decision taken by the Committee and the Disciplinary Authority shall be purely on merits and in accordance with law.

(ix) The appellant will not be entitled to claim immediate reinstatement or back wages till the inquiry is completed and a decision is taken by the Disciplinary Authority.

N. EPILOGUE

74. Just as we celebrate a decade of the PoSH Act being legislated, it is time to look back and take stock of the manner in which the mandate of the Act has been given effect to. The working of the Act is centred on the constitution of the Internal Complaints Committees(ICCs) by every employer at the workplace and constitution of Local Committees(LCs) and the Internal Committees(ICs) by the appropriate Government, as contemplated in Chapters II and III, respectively of the PoSH Act. An improperly constituted ICC/LC/IC, would be an impediment in conducting an inquiry into a complaint of sexual harassment at the workplace, as envisaged under the Statute and the Rules. It will be equally counterproductive to have an ill prepared Committee conduct a half-baked inquiry that can lead to serious consequences, namely, imposition of major penalties on the delinquent employee, to the point of termination of service.

75. It is disquieting to note that there are serious lapses in the enforcement of the Act even after such a long passage of time. This glaring lacuna has been recently brought to the fore by a National daily newspaper that has conducted and published a survey of 30 national sports federations in the country and reported that 16 out of them have not constituted an ICC till date. Where the ICC have been found to be in place, they do not have the stipulated number of members or lack

the mandatory external member. This is indeed a sorry state of affairs and reflects poorly on all the State functionaries, public authorities, private undertakings, organizations and institutions that are duty bound to implement the PoSH Act in letter and spirit. Being a victim of such a deplorable act not only dents the self-esteem of a woman, it also takes a toll on her emotional, mental and physical health. It is often seen that when women face sexual harassment at the workplace, they are reluctant to report such misconduct. Many of them even drop out from their job. One of the reasons for this reluctance to report is that there is an uncertainty about who to approach under the Act for redressal of their grievance. Another is the lack of confidence in the process and its outcome. This social malady needs urgent amelioration through robust and efficient implementation of the Act. To achieve this, it is imperative to educate the complainant victim about the import and working of the Act. They must be made aware of how a complaint can be registered, the procedure that would be adopted to process the complaint, the objective manner in which the ICC/LC/IC is expected to function under the Statute, the nature of consequences that the delinquent employee can be visited with if the complaint is found to be true, the result of lodging a false or a malicious complaint and the remedies that may be available to a complainant if dissatisfied with the Report of the ICC/LC/IC etc.

76. However salutary this enactment may be, it will never succeed in providing dignity and respect that women deserve at the workplace unless and until there is strict adherence to the enforcement regime and a proactive approach by all the State and non-State actors. If the working environment continues to remain hostile, insensitive and unresponsive to the needs of women employees, then the Act will remain an empty formality. If the authorities/managements/employers cannot assure them a safe and secure work place, they will fear stepping out of their homes to make a dignified living and exploit their talent and skills to the hilt. It is, therefore, time for the Union Government and the State Governments to take affirmative action and make sure that the altruistic object behind enacting the PoSH Act is achieved in real terms.

O. DIRECTIONS

77. To fulfil the promise that the PoSH Act holds out to working women all over the country, it is deemed appropriate to issue the following directions :

(i) The Union of India, all State Governments and Union Territories are directed to undertake a timebound exercise to verify as to whether all the concerned Ministries, Departments, Government organizations, authorities, Public Sector Undertakings, institutions, bodies, etc. have constituted ICCs/LCs/ICs, as the case

may be and that the composition of the said Committees are strictly in terms of the provisions of the PoSH Act.

(ii) It shall be ensured that necessary information regarding the constitution and composition of the ICCs/LCs/ICs, details of the e-mail IDs and contact numbers of the designated person(s), the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations and internal policies are made readily available on the website of the concerned Authority/Functionary/ Organisation/Institution/Body, as the case may be. The information furnished shall also be updated from time to time.

(iii) A similar exercise shall be undertaken by all the Statutory bodies of professionals at the Apex level and the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres and educational institutions and by government and private hospitals/nursing homes.

(iv) Immediate and effective steps shall be taken by the authorities/ managements/employers to familiarize members of the ICCs/LCs/ICs with their duties and the manner in which an inquiry ought to be conducted on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the Report submitted.

(v) The authorities/management/employers shall regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the ICCs/LCs/ICs and to educate women employees and women's groups about the provisions of the Act, the Rules and relevant regulations.

(vi) The National Legal Services Authority(NALSA) and the State Legal Services Authorities(SLSAs) shall develop modules to conduct workshops and organize awareness programmes to sensitize authorities/managements/employers, employees and adolescent groups with the provisions of the Act, which shall be included in their annual calendar.

(vii) The National Judicial Academy and the State Judicial Academies shall include in their annual calendars, orientation programmes, seminars and workshops for capacity building of members of the ICCs/LCs/ICs established in the High Courts and District Courts and for drafting Standard Operating Procedures (SOPs) to conduct an inquiry under the Act and Rules.

(viii) A copy of this judgment shall be transmitted to the Secretaries of all the Ministries, Government of India who shall ensure implementation of the directions by all the concerned Departments, Statutory Authorities, Institutions, Organisations etc. under the control of the respective Ministries. A copy of the judgment shall also be transmitted to the Chief Secretaries of all the States and Union Territories

who shall ensure strict compliance of these directions by all the concerned Departments. It shall be the responsibility of the Secretaries of the Ministries, Government of India and the Chief Secretaries of every State/Union Territory to ensure implementation of the directions issued.

(ix) The Registry of the Supreme Court of India shall transmit a copy of this judgment to the Director, National Judicial Academy, Member Secretary, NALSA, Chairperson, Bar Council of India and the Registrar Generals of all the High Courts. The Registry shall also transmit a copy of this judgment to the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and the Engineering Council of India for implementing the directions issued.

(x) Member-Secretary, NALSA is requested to transmit a copy of this judgment to the Member Secretaries of all the State Legal Services Authorities. Similarly, the Registrar Generals of the State High Courts shall transmit a copy of this judgment to the Directors of the State Judicial Academies and the Principal District Judges/District Judges of their respective States.

(xi) The Chairperson, Bar Council of India and the Apex Bodies mentioned in sub-para (ix) above, shall in turn, transmit a copy of this judgment to all the State Bar Councils and the State Level Councils, as the case may be.

78. The Union of India and all States/UTs are directed to file their affidavits within eight weeks for reporting compliances. List after eight weeks.

79. The appeal is allowed on the above terms while leaving the parties to bear their own costs. Pending applications, if any, shall stand disposed of.

……..……J.
[A.S. BOPANNA]

……..……J.
[HIMA KOHLI]

NEW DELHI
MAY 12, 2023