
(2021) 03 TEL CK 0004
In the Telangana High Court
Case No : Writ Petition No. 26030 Of 2017

Dr. Duraisamy Baskaran

APPELLANT

Vs

M/s. GAIL (India) Limited

RESPONDENT

Date of Decision : 16-03-2021

Acts Referred:

Sexual Harassment Of Women At Workplace (Prevention, Prohibition and Redressal) Act, 2013 — Section 2(n), 9, 11
GAIL Employees' (CDA) Rules, 1986 — Rule 25, 30

Citation : (2021) 03 TEL CK 0004

Hon'ble Judges : Abhinand Kumar Shavili, J

Bench : Single Bench

Advocate : Deepak Bhattacharjee, S. Lakshmikanth, D.V.Seetharam Murthy, S.Sreenivasa Rao

Final Decision : Disposed Of

Judgement

Abhinand Kumar Shavili, J

1. This Writ Petition is filed seeking a Writ of Mandamus declaring the suspension order dt.06-07-2016 issued by the Disciplinary Authority, report dt.20-01-2017 of the Internal Complaint Committee (ICC), Memo dt.30-01-2017 of the Disciplinary Authority, order of removal dt.24-03-2017 of the Disciplinary Authority, order dt.29-06-2017 confirming the order of the Disciplinary Authority and also order dt.17-05-2017 of the Executive Director HR forfeiting the gratuity, as arbitrary, illegal and contrary to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for brevity 'the Act, 2013), Government of India OM No.11013/2/2014EsttAIII dt.16-07-2015, Guidelines on Sexual Harassment of Women at Work Place dt.04-05-2016 issued by the respondent Organization and also against the GAIL Employees' CDA Rules 1986, and set aside the same.

2. Heard Sri Deepak Bhattacharjee, learned Senior Counsel, representing Sri S.Lakshmikanth, learned counsel for the petitioner and Sri D.V.Seetharam

Murthy, learned Senior Counsel, representing Sri S.Sreenivasa Rao, learned counsel for the respondents.

3. It has been contended by the petitioner that initially he was appointed in the respondents-Corporation on 31-07-1995 as Deputy Manager (P&A) at Hazira, Surat and he has been discharging his duties to the best satisfaction of his superiors and everyone concerned. After rendering considerable length of service, the petitioner was promoted as Manager (HR) on 01-07-1999 and the petitioner was further promoted as Senior Manager (HR) on 01-04-2005. Thereafter, the petitioner was further promoted as Chief Manager (HR) during April 2010. The petitioner was actually entitled for promotion to E-6 Grade from 01-04-2009 but the respondents have not considered his case. Then challenging the action of the respondents in not considering his case for promotion to the E-6 Grade, the petitioner filed W.P.No.28699 of 2011 before the High Court of Madras, Chennai and the same is pending.

4. The petitioner has been transferred to various places and since he has raised the issue of corruption and illegalities in the Corporation, the respondents had a grudge against him and so he was subjected to series of transfers to Alibagh, Rajahmundry, Bangalore, Kochi, Bangalore, Ghandar and Pondicherry and finally, he was transferred to the Zonal Office, Hyderabad on 29-02-2016 as Chief Manager (HR) and the respondents have falsely implicated him in a sexual harassment case alleged to have been committed by the petitioner on the contract female workers working at Hyderabad. The case was referred to the Internal Complaints Committee (hereinafter referred to as 'ICC') as established under the Act, 2013.

5. The ICC undertook the preliminary enquiry on the basis of four complaints dt.29-05-2016, 02-06-2016, 08-06-2016 and 10-06-2016 and the report of the preliminary investigation conducted by the ICC was submitted to the disciplinary authority on 20-01-2017 with a finding that some of the allegations levelled against the petitioner were proved and in respect of some allegations, it was held as not proved. Even before the ICC would submit its report, the petitioner was placed under suspension vide proceedings dt.06-07-2016 under Rule 25 of the GAIL Employees' (CDA) Rules, 1986. Thereafter, the ICC report was communicated to the petitioner on 02-02-2017 so as to enable the petitioner to submit his objections by 15-02-2017 and personal hearing was fixed on 17-02-2017.

6 The petitioner has submitted his objections to the said ICC report on 22-02-2017 and the petitioner has also attended the personal hearing extended by the respondents on 27-02-2017. The petitioner has reiterated his defence saying that he is not responsible for any of the allegations levelled against him and contended that he was falsely implicated in the sexual harassment case as a counter blast, as on the earlier occasion, he has raised corruption allegations against his superiors and also maladministration in the organization.

7 The petitioner has further contended that thereafter, the disciplinary authority has not initiated any disciplinary proceedings against the petitioner in accordance with Regulation 30 of the GAIL Employees (Conduct, Disciplined and Appeal) Rules, 1986 (for brevity 'Rules, 1986'), which reads as follows:

"RULE - 30: PROCEDURE FOR IMPOSING MAJOR PENALTIES::

1. No order imposing any of the major penalties specified in Clause - (e), (ee), (f) and (g) of Rule 28 shall be made except after an enquiry is held in accordance with this Rule.

2. Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of any misconduct or misbehavior against an employee, it may itself inquire into, or appoint any serving or retired officers/ Directors of the Company; or any serving or retired public servant; or any serving or retired person including Director of the Public Sector Companies or of the Government/ Semi- Government/ Quasi-Government or a lawyer/ counsel or a Consultant (hereinafter called the Inquiring Authority) to inquire into the truth thereof. [No. Co/HR/Pol/P-11, dated 21.3.2002]

3. Where it is proposed to hold an inquiry, the Disciplinary Authority shall frame definite charges on the basis of the allegations against the employee. The charges, together with a statement of the allegations, on which they are based, a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained, shall be communicated in writing to the employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 15 days) a written statement whether he admits or denies any of or all the Articles of Charge.

Explanation

(Modified: 301st Meeting of the Board of Directors held on 18-08-2012, Item No.6)

4. On receipt of the written statement of the employee, or if no such statement is received within the time specified, an enquiry may be held by the Disciplinary Authority itself, or by any other person appointed as an Inquiring Authority under sub clause (2).

Provided that it may not be necessary to hold an inquiry in respect of the charges admitted by the employee in his written statement. The Disciplinary Authority shall, however, record its findings on each such charge. [No. Co/HR/Pol/P-11, dated 21.3.2002]

5. Where the Disciplinary Authority itself inquires or appoints an inquiring Authority for holding an enquiry, it may, by an order appoint an employee of the Company or a nominee of CBI (only in respect of cases investigated by CBI) to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge. [No. Co/HR/Pol/P-11, dated 21.3.2002]

6. The employee may take the assistance of any employee of the Company or any other Public Servant. (only in respect of cases where the Presenting Officer appointed is a nominee of CBI) to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the "Presenting Officer" appointed by the Disciplinary Authority is a legal practitioner or the Disciplinary Authority, having regard to the circumstances of the cases, so permits, provided that an employee shall not take the assistance of any employee of the Company or any other public servant (only in respect of cases where the presenting officer appointed is a nominee of CBI) who has already two pending Disciplinary cases in hand in which he is to function as Defence Assistant. [No. Co/HR/Pol/P-11, dated 21.3.2002]

7. On the date fixed by the Enquiring Authority, the employee shall appear before the Inquiring Authority at the time, place and date specified in the notice. The Inquiring Authority shall ask the employee whether he pleads guilty or has any defense to make and if he pleads guilty to any of the articles of charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the employee concerned thereon. The Inquiring Authority shall return a finding of guilt in respect of those articles of charge to which the employee concerned pleads guilty.

8. If the employee does not plead guilty, the Inquiring Authority shall adjourn the case to a later date not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his defense:

1. inspect the documents listed with the charge-sheet;
2. Submit a list of additional documents and witnesses that he wants to examine; and
3. be supplied with the copies of the statements of witnesses, if any listed in the charge-sheet;

Note:

Relevance of the additional document and the witnesses referred to in sub-clause 8 (ii) above will have to be given by the employee concerned and the documents and the witnesses shall be summoned if the Inquiring Authority is satisfied about their relevance to the charges under inquiry.

9 The Inquiring Authority shall ask the authority in whose custody or possession the documents are kept, for the production of the documents on such date as may be specified.

10 The authority in whose custody or possession the requisitioned documents are shall arrange to produce the same before the Inquiring Authority on the date, place and time specified in the requisition notice.

Provided that the authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be

against the public interest or the interest of the Corporation/Company. In that event, it shall inform the Inquiring Authority accordingly.

11 On the date fixed for the enquiry, the oral and documentary evidence by which other articles of charges are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross examined by or on behalf of the employee. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on a new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

12. Before the close of the prosecution case, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the charge-sheet or may itself call for new evidence or recall or re-examine any witness. In such case, the employee shall be given opportunity to inspect the documentary evidence before it is taken on record; or to cross-examine a witness, who has been so summoned.

13 When the case for the Disciplinary Authority is closed, the employee may be required to state his defense, orally or in writing, as he may prefer. If the defense is made orally, it shall be recorded and the employee shall be required to sign the record. In either case a copy of the statement of defense shall be given to the Presenting Officer, if any appointed.

(xiv) The evidence on behalf of the employee shall then be produced. The employee may examine himself in his own behalf if he so prefers. The witnesses produced by the employee shall then be examined and shall be liable to cross-examination, re-examination and examination by Inquiring Authority according to the provision to the witnesses for the Disciplinary authority.

(xv) The Inquiring Authority may, after the employee closes his case, and shall, if the employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling him to explain any circumstances appearing in the evidence against him.

(xvi) After the completion of the production of the evidence, the employee and the Presenting Officer may file written briefs of their respective cases within 15 days of the date of completion of the production of evidence, with a copy to the charged employee and thereafter, the charged employee may file his written brief within 15 days to the Inquiring Authority only.

17 If the employee does not submit the written statement of defence referred to in sub-rule (3) on or before the date specified for the purpose or does not appear in person, or through the assisting officer or otherwise fails or refuses to comply with any of the provisions of these Rules, the Inquiring Authority may hold the enquiry ex-parte.

Whenever any Inquiring Authority, after having heard and recorded the whole or

any part of the evidence in an inquiry, ceases to exercise jurisdiction therein, and is succeeded by any other Inquiring Authority which has, and which exercises, such jurisdiction, the Inquiring Authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself.

Provided that if the succeeding Inquiring Authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

18 i) After the conclusion of the enquiry, report shall be prepared and it shall contain:

1. an introductory paragraph in which references to the orders of appointment of IA and PO land engagement of Defense Assistance will be made;
2. brief account of hearing, marking of exhibits, recording of evidence;
3. Reproduction of articles of charge (s);
4. Indication about charges which are dropped, or admitted, or have been inquired into;
5. Brief statement of the case of the Disciplinary Authority in respect of the charges inquired into;
6. Brief statement of the case of the charged officer;
7. For each charge inquired into-
 - i) the case in support of the charge;
 - ii) the case of defence;
- 3 assessment of evidence; and 4 the findings on each article of charge and the reasons therefore,
- h) A brief summary of the findings,

(Modified: 301st Meeting of the Board of Directors held on 18-08-2012, Item No.6)

Explanation If in the opinion of the Inquiring Authority the proceedings of the enquiry establish any article of charge different from the original articles of the charges, it may record its findings on such articles of charge.

Provided that the findings on such article of charge shall not be recorded unless the employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

18. ii) The Inquiring Authority, where it is not itself the Disciplinary Authority,

shall forward to the Disciplinary Authority the records of enquiry which shall include:

- : the report of the enquiry prepared by it under sub-clause (i) above;
- : List of exhibits produced by the presenting officer;
- : List of exhibits produced by the charged officer, if any;
- : List of prosecution witness;
- : List of defence witnesses, if any;
- : A folder containing deposition of witness in the order in which they were examined;

g) A folder containing daily order sheets;

8. A folder containing the written statement of defence, if any submitted the employee referred to in sub rule (13);

9. Written briefs of both sides as referred to in sub rule (16), if any; and

10. Correspondence folder."

A charge memo was issued to the petitioner in accordance with Regulation 30 of the Rules, 1986 and straight away, major penalty of removal from service was imposed on the petitioner. Aggrieved by the said order, the petitioner has preferred appeal to the appellate authority. The appeal preferred by the petitioner was considered by the appellate authority and the same was rejected upholding the punishment imposed by the disciplinary authority vide orders dt.29-06-2017. Challenging the same, the present Writ Petition is filed.

Learned counsel for the petitioner had contended that when Regulations contemplate that for imposing any major penalty, a standard procedure has to be followed in accordance with Regulation 30 of the Rules, 1986, but no disciplinary proceedings were initiated and straight away, a major penalty was imposed. He further contended that without initiating disciplinary proceedings, the respondents could not have imposed a major penalty of removal. If any regular departmental enquiry was conducted, the petitioner could get an opportunity to submit his explanation. The ICC report was treated as a final report and based upon the ICC report, the petitioner was removed from service without following the Regulations. He further contended that the Act, 2013 has come into force from 2013 onwards and the Central Government i.e. Ministry/Department and Organizations has framed guidelines as to how the sexual harassment cases have to be dealt with at work places and accordingly, the GAIL authorities have also issued elaborate guidelines pursuant to the above Act, 2013 and the service rules were also amended accordingly.

10. Learned counsel for the petitioner had further contended that the petitioner has filed those guidelines for sexual harassment cases as to how they have to be

dealt with, issued by the GAIL authorities and those guidelines were annexed to the copy of the Writ Petition at page No.212 and guideline No.8 deals with the enquiry report and as per guideline No.8, the ICC cannot recommend the penalty for misconduct. ICC shall only recommend whether charges have been proved or partially proved or not proved. Thereafter, the ICC may recommend to take action against the complainant in accordance with Rules, 1986, if the allegations against the employee are malicious, or the complainant knows it to be false, or has produced any forged or misleading document. Thereafter, the disciplinary authority had to initiate disciplinary proceedings for imposing any penalty in accordance with Regulation 30 of the Rules, 1986.

11. Learned counsel for the petitioner pointed out to a chart which was annexed to the guidelines framed by the GAIL wherein it categorically states that after enquiry report is submitted by the ICC, the disciplinary authority may act as per Section 11 of the Act, 2013 and also follow Rule 30 of the Rules, 1986. He further contended that since no disciplinary proceedings were initiated against the petitioner in accordance with Regulation 30, major penalty of removal ought not to have been imposed on the petitioner. The disciplinary authority ought to have initiated disciplinary proceedings against the petitioner and after giving opportunity to the petitioner in the regular departmental enquiry, and if the charges are proved in the departmental enquiry, the disciplinary authority can impose any punishment. But without following the procedure, the respondents ought not to have imposed a punishment of removal. Therefore, the impugned orders dt.24-03-2017 as confirmed by the appellate authority on 29-06-2017 are liable to be set aside and let the matter be remanded to the disciplinary authority for initiating disciplinary proceedings in accordance with Regulation 30 of the Rules, 1986.

He further contended that in a similar issue fell for consideration before the Supreme Court in *Dr.Vijayakumaran CPV v. Central University of Kerala and others* (2020) 12 S.C.C. 426 = Civil Appeal No.777 of 2020 dt.28-01-2020, the appellant therein was terminated based on the report of ICC and the Supreme Court has held as under:

"10. In *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences*, the Court observed thus:

"21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

11. In the present case, all the three elements are attracted, as a result of which it must follow that the stated order is *ex facie* stigmatic and punitive. Such an

order could be issued only after subjecting the incumbent to a regular inquiry as per the service rules. As a matter of fact, the Internal Complaints Committee had recommended to proceed against the appellant appropriately but the Executive Council proceeded under the mistaken belief that in terms of Clause 7 of the contract, it was open to the Executive Council to terminate the services of the appellant without a formal regular inquiry as per the service rules. Indisputably, in the present case, the Internal Complaints Committee was constituted in reference to the complaints received from the girl students about the alleged misconduct committed by the appellant, which allegations were duly inquired into in a formal inquiry after giving opportunity to the appellant and culminated with the report recording finding against the appellant with recommendation to proceed against him.

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

13. Learned counsel for the petitioner had further contended that in that case, it was adjudicated by the Supreme Court that the appellant therein was only a temporary employee and the Supreme Court has set aside the orders of termination and directed for conducting regular departmental enquiry. Here, the petitioner stands on a better footing because the petitioner is a regular employee and based upon the above judgment contends that the respondents ought not have removed the petitioner from service without initiating any disciplinary proceedings.

14. He has further relied upon the judgment rendered by the Supreme Court reported in Bhajan Singh v. State of Uttarakhand and others (2013) 14 S.C.C.

32, wherein the Supreme Court has held as under:

"11. Various affidavits were filed on behalf of the respondents in the High Court:

11.1. One Shri S. Raju s/o Shri S. Subbiah affirmed two affidavits on 26-6-2012. One affidavit he affirmed in his capacity as Principal Secretary, Department of Peyjal, on behalf of Respondent 1 Government of Uttarakhand. In Para 17 thereof he stated as follows:

"17. That perusal of the letters dated 5-12-2011, 3-3-2012 and 9-4-2012 do not mention that these letters have been issued, or the alleged charge-sheets with these letters have been issued, under any disciplinary proceedings. These letters do not also mention that prior to issuance of these letters at any point of time an explanation from Respondent 4 was called for or any order of initiating disciplinary proceeding was issued, as such the Principal Secretary or the Government on receiving the proposal came to the conclusion that the said letters/alleged charge-sheets cannot be deemed to have initiated any disciplinary proceeding against Respondent 4 and accordingly the same was not mentioned in the note before the Selection Committee."

The officer has sought to contend that these charge-sheets do not mention that they have been issued under any disciplinary proceedings. By stating so he has betrayed his ignorance of the legal position that the disciplinary proceedings begin with the issuance of the charge-sheet. He has further stated that prior to issuance of the charge-sheets no explanation was called from Respondent 4, nor any order of initiating disciplinary proceedings was issued. Now, this is a matter of the procedure to be followed by the authority concerned while initiating the disciplinary proceeding. In a given case a show-cause notice may be issued, prior to the issuance of the charge-sheets, but that is not the rule. In any case, it is the Principal Secretary of the Department who in his capacity as the Chairman of the Nigam was the disciplinary authority. He has countersigned on the charge-sheet. The affidavit is a miserable attempt to explain as to why the charge-sheets were not mentioned in the note placed before the Selection Committee by the then Secretary of the Department.

11.2. In another affidavit affirmed by Shri Raju on the same day in his capacity as the Chairman of the Nigam, he stated in Para 4 thereof that he had joined the duties on the present post on 1-5-2012, and his predecessor-in-office at the relevant point of time, was one Mr Utpal Kumar Singh, IAS. In Para 5 of this affidavit he stated that he had gone through the file concerned and upon perusal of the files it appeared to him that the three draft charge-sheets were prepared. He has further stated that the three draft charge-sheets were sent to the then Chairman for approval by the petitioner, and the then Chairman had approved the same and sent it with his covering letter to Respondent 4 for calling his explanation before initiation of any disciplinary proceeding in the matter. In Para 9 he specifically stated amongst others as follows:

"9. ... The said charge-sheets appear to have been approved and sent by the

then Chairman to Respondent 4 for calling his explanation before commencing any disciplinary proceedings in the matters. No enquiry officer has been appointed in the matter till now."

Thus, in so many words, while explaining his own position, he has contradicted the previous Secretary through this affidavit. On reading these two affidavits one thing is very clear that charge-sheets were approved by the then Chairman and thereafter sent to Respondent 4 calling for his explanation, though for the reasons best known to the Nigam the disciplinary proceedings have not proceeded thereafter.

11.3. As far as Respondent 4 is concerned Shri Raju affirmed an affidavit-in-reply and amongst others gave an explanation on the allegations contained in the three charge-sheets. He has however not denied having received these charge-sheets. He has also not stated that he has filed any reply to these charge-sheets."

15. Learned counsel for the petitioner had contended that the disciplinary proceedings would have been initiated only from the date of issuance of charge sheet. In the instant case, since no charge memo was issued to the petitioner, the question of initiation of disciplinary action against the petitioner would not arise and since no disciplinary proceedings were initiated, the petitioner could not have been imposed with a major penalty of removal.

16. Learned counsel for the respondents had contended that a regular enquiry was conducted and every opportunity was given to the petitioner in the enquiry conducted by the ICC and the petitioner was allowed to cross examine the witnesses. The entire principles of natural justice were extended and the ICC report would itself be treated as enquiry report under disciplinary proceedings and to strengthen his argument, the learned counsel for the respondents had relied upon the judgment of the Supreme Court in *Medha Kotwal Lele and others v. Union of India and others* (2013) 1 S.C.C. 297., wherein, it was held as under:

"44. In what we have discussed above, we are of the considered view that guidelines in *Vishaka* [*Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] 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 [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] 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 [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] 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 [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] . 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 [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] guidelines and the guidelines in the present order."

17. He further contended that the Supreme Court held that 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.

18. Since a regular enquiry was conducted by the ICC, no disciplinary enquiry is necessary and based upon ICC enquiry officer's report, the respondents have

rightly removed the petitioner from service. Therefore, there are no merits in the Writ Petition and the same is liable to be dismissed.

19. This Court, having heard the rival submissions made by both parties, is of the considered view that the petitioner was placed under suspension on 06-07-2016 in exercise of the powers conferred under Regulation 25 of the Rules, 1986 and the case of the petitioner was referred to ICC to conduct enquiry and thereafter, the disciplinary authority is bound to follow Regulation 30 of the Rules, 1986 and initiate disciplinary proceedings against the petitioner. The guidelines were framed by the Ministry, Department of Personnel and Trainee. It has categorically held that elaborate guidelines were issued to all the establishments and the GAIL has also adopted the said guidelines and after promulgation of the Act, 2013, the GAIL has also amended the regulations and the amended regulations of GAIL categorically contemplate to initiation of action under Section 11 of the Act, 2013 as well as initiation of the proceedings under Regulation 30 of the Rules, 1986 and even while communicating the ICC enquiry report to the petitioner, the disciplinary authority has communicated the said enquiry report in accordance with Regulation 31 (a) of the Rules, 1986. Though in some portion of actions, the respondents have followed the Rules, 1986, but while removing the petitioner from service, the respondents have not initiated the disciplinary proceedings against the petitioner in accordance with Regulation 30 of the Rules, 1986.

20. Therefore, this Court is of the considered view that imposing a major penalty of removal from service on the petitioner is contrary to Regulation 30 of the Rules, 1986. In respect of contention of the respondents with regard to the judgment in *Medha Kotwal Lele* (3 supra) is concerned, at para No.44 (1) therein, it is stated that the States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Service 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 reports/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 reports 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.

21. This judgment was delivered by the Supreme Court prior to enactment of the Act, 2013 and after the enactment, the respondents have amended the regulation in 2015 and the Supreme Court had considered the issue in *Dr.Vijayakumaran CPV* (1 supra) and set aside the orders of termination as the said termination orders were passed based on ICC report and the Supreme Court held that without conducting the regular departmental enquiry, the respondent-

University therein could not have imposed punishment of termination as the said termination of the petitioner therein was without subjecting the petitioner to a regular inquiry and without giving any opportunity as per the service rules.

22. In the instant case, petitioner was a regular employee and stands on a better footing, but straight away, he was removed from service without initiating any disciplinary proceedings which is contrary to the Regulations. Regulation 30 is in the nature of substantive law where the Regulation 30 mandates that no order of imposing any of the major penalties specified in Regulation 28 shall be made, without holding enquiry in accordance with this Rule. So, Regulation 30 is a substantive law in nature and is not a procedural aspect. When the procedure of law complied or not complied, then the concept of the prejudice might have caused to the petitioner would arise. But here, the respondents have violated the substantive requirement of Regulation 30 which makes it clear that no orders imposing any major penalty can be imposed against any employee without conducting an enquiry in accordance with Regulation 30 which mandates that initiation of disciplinary proceedings is a mandatory requirement and without conducting any enquiry, no employee can be imposed any major penalties as contemplated under Regulation 30.

23. The reliance placed by the learned counsel for the respondents in respect of the judgment delivered by the Supreme Court in *Medha Kotwal Lele* (3 supra) is concerned, the judgment also makes it clear that the ICC enquiry report would be treated as enquiry report in a disciplinary proceedings. Now the issue is whether the respondents have initiated disciplinary action against the petitioner or not in accordance with Regulation 30 of the Rules, 1986. Had the respondents initiated disciplinary action in accordance with Regulation 30, then the ICC report could not have been treated as enquiry report in disciplinary case. But in the instant case, the respondents have not initiated any disciplinary proceedings against the petitioner in accordance with Regulation 30 of the Rules, 1986 and in the absence of the same, the question of treating ICC report as disciplinary proceedings, would not arise.

24. Looking from any angle, the orders of removal passed on 24-03-2017 by the disciplinary authority and the proceedings dt.29-06-2017 confirmed by the appellate authority are liable to be set aside and accordingly they are set aside as the said proceedings were issued by the respondents without initiating any disciplinary action against the petitioner and accordingly the Writ Petition is allowed. It is always open for the disciplinary authority to initiate disciplinary proceedings against the petitioner in accordance with Regulation 30 of the Rules, 1986 and pass appropriate orders in accordance with law. No costs.

25. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.