

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 29th January, 2021.**

+ **W.P.(C) 5390/2020 & CMs No.19419/2020 & 24864/2020 (both for stay)**

DR. P.S. MALIK

..... Petitioner

Through: Mr. Varinder Kumar Sharma, Adv.

Versus

HIGH COURT OF DELHI

..... Respondent

Through: Mr. Rajshekhar Rao, Ms. Gauri Puri,
Mr. Vinayak Mehrotra and Mr. Areeb
Amanullah, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner, an ex-officer of the Delhi Higher Judicial Services (DHJS), has filed this petition (i) impugning the letter dated 17th April, 2020 of this Court forwarding the letter dated 16th March, 2020 of the Government of NCT of Delhi (GNCTD) of dismissal of petitioner from service, to the petitioner; (ii) impugning the order dated 16th March, 2020 of GNCTD of approving of dismissal of the petitioner from service, on the recommendation of this Court; (iii) impugning the disciplinary proceedings against the petitioner; and, (iv) seeking restoration of the petitioner in service, with all consequential benefits.

2. The petition came up first before this Bench on 18th August, 2020 and thereafter on 26th August, 2020, when notice of the petition was ordered to be issued and pleadings ordered to be completed.

3. The counsel for the petitioner was heard on 3rd November, 2020 and 20th November, 2020, when the counsel for the respondent in reply and the counsel for the petitioner in rejoinder were also heard and orders reserved.

4. The petition was filed, pleading (i) that the petitioner was appointed in the Delhi Judicial Services (DJS) in the year 1997 and promoted to the DHJS in 2008; (ii) that the petitioner, in the year 2016 was posted in District Court, Dwarka; (iii) that in the morning of 5th July, 2016, when the petitioner was holding Court, he observed that some papers were missing from a judicial file pending in the Court of the petitioner; (iv) that on explanation being sought from the Ahalmad, it was reported that the file concerned pertained to the previous Ahalmad Ms. M (name concealed) in the petitioner's Court and clarification should be sought from her; (v) that Ms. M stood transferred out from the Court of the petitioner and thus notice was directed to be issued to her and served on her on 5th July, 2016; (vi) that annoyed by the said notice, Ms. M, as a counterblast, in the evening of 5th July, 2016 itself, filed a complaint of sexual harassment at work place against the petitioner; (vii) that Ms. M, on 11th July, 2016 made another complaint of the Court notice aforesaid issued to her from the Court of the petitioner; (viii) that both the aforesaid complaints filed by Ms. M were without any supporting affidavit, as was required vide Circular No.87/CJS-III/Compt./2016 dated 17th May, 2016 providing that complaints against the Judicial Officers should not be entertained and no action taken thereon,

unless accompanied by a duly sworn affidavit and verifiable material to substantiate the allegations made therein; (ix) that the petitioner, on 14th July, 2016 received a letter dated 13th July, 2016, placing the petitioner under suspension, pending disciplinary proceedings; however the grounds of suspension were not intimated and the complaints aforesaid not brought to the notice of the petitioner; (x) that the Registrar General of this Court, also directed the local Police for registration of criminal case against the petitioner; (xi) that on 19th July, 2016, an Internal Complaint Committee (ICC) under Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Sexual Harassment Act) was appointed; (xii) that at the end of August, 2016, the petitioner was called by the ICC, which supplied the complaints of Ms. M to the petitioner, including another complaint dated 28th July, 2016; (xiii) that the ICC held an inquiry and gave its report on 5th November, 2016 but no copy of the report was supplied to the petitioner; (xiv) that the ICC, in its report did not find any "proved allegation" within the meaning of Section 13 of the Sexual Harassment Act against the petitioner; (xv) that though the petitioner should have been exonerated, but was not; (xvi) that on 16th November, 2016, this Court resolved to initiate disciplinary proceedings for major penalty under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 (AIS Rules) against the petitioner and the ICC was constituted as the Inquiring Authority within the meaning of Rule 8 of AIS Rules and held inquiry from 19th September, 2017 to 19th February, 2018; (xvii) that on 16th May, 2018, the petitioner under a cover of a letter dated 15th May, 2018 received a copy of the Inquiry Report dated 9th March, 2018, asking the petitioner to make his written submissions qua the report dated 9th March, 2018; (xviii) that the

petitioner preferred Writ Petition No.705/2018 before the Supreme Court, challenging the entire process, right from the reception of complaint dated 5th July, 2016 till the service of the Inquiry Report dated 9th March, 2018 on the petitioner; (xix) that this Court filed a counter affidavit in the aforesaid writ petition, admitting (a) that the provisions of the Sexual Harassment Act were applicable to the facts of the case; (b) that the Delhi Higher Judicial Services Rules, 1970 (DHJS Rules) were applicable to the petitioner; and, (c) that the AIS Rules were part of the DHJS Rules; and in the said counter affidavit, reliance was also placed on the Minutes of the Meeting dated 25th May, 2015; (xx) that this Court along with the said counter affidavit also filed a Resolution dated 1st August, 2018 of this Court to the effect that the Inquiry Report dated 5th November, 2016 had not been relied upon against the petitioner; (xxi) that after the petitioner had filed Writ Petition No.705/2018 in the Supreme Court, a charge sheet was filed in the Court of Metropolitan Magistrate, Dwarka, without arrest of the petitioner and the petitioner joined trial pending in the Court of Additional Sessions Judge/District Court, Dwarka, Delhi; (xxii) that this Court, vide letter dated 17th July, 2019 again sought submissions/representations of the petitioner qua the Inquiry Report dated 9th March, 2018 and in reply where to a letter dated 29th July, 2019 was sent by the petitioner; (xxiii) that the Supreme Court, vide judgment dated 21st August, 2019 disposed of Writ Petition No.705/2018 with the directions that Inquiry Report dated 9th March, 2018 was a report under Section 13 of the Sexual Harassment Act and was appealable under Section 18 of the said Act; it was further clarified in the said judgment that it was open to the petitioner to raise all pleas of facts and law before appropriate authority; (xxiv) that on 27th August, 2019, the

petitioner filed a Civil Appeal under Section 18 of the Sexual Harassment Act before the Supreme Court but the same was withdrawn on 27th September, 2019 and instead, on the same day, filed W.P.(C) No.10653/2019 and FAO No.403/2019 in this Court; (xxv) that W.P.(C) No.10653/2019 was withdrawn on 30th September, 2019, with liberty to file a fresh writ petition, if needed; (xxvi) that FAO No.403/2019 was disposed of vide order dated 9th October, 2019; (xxvii) that the counsel for the petitioner, after some hearing, had withdrawn FAO No.403/2019, reserving the right to make the same contentions as made therein, in appropriate proceedings, in the event of this Court on the administrative side taking an adverse decision against the petitioner on the basis of the report of ICC under the Sexual Harassment Act; (xxviii) that the petitioner made a representation dated 11th October, 2019 to this Court, also seeking reinstatement in service and dropping of disciplinary proceedings against him; (xxix) that this Court vide letter dated 18th October, 2019 again sought a response from the petitioner to the Inquiry Report dated 9th March, 2018 and the petitioner, in response thereto, submitted a representation dated 30th October, 2019; (xxx) that though the Inquiry Report dated 9th March, 2018, prior to the judgment dated 21st August, 2019 supra of the Supreme Court "was a "Penalty Imposing Inquiry Report"" under the AIS Rules but once the Supreme Court held the said report to be a report under Section 13 of the Sexual Harassment Act, this Court from the said report was only required to see whether the allegations of sexual harassment against the petitioner were proved or not and the said report ceased to be a "Penalty Imposing Inquiry Report"; (xxxi) that once as per the dicta of the Supreme Court, the Inquiry Report dated 9th March, 2018 was a report under Section 13 of the Sexual

Harassment Act, if the allegations of sexual harassment against the petitioner were found to be not proved, the proceedings under the Sexual Harassment Act should have been dropped and if this Court had found the allegations proved, this Court was required to make a recommendation for taking action against the petitioner for sexual harassment, as a misconduct, in accordance with the AIS Rules and DHJS Rules; (xxxii) that it was always the stand of the petitioner that the matter was required to be dealt with under the provisions of the Sexual Harassment Act and this Court also had initiated inquiry proceedings by constituting an ICC in accordance with Section 4 of the said Act; (xxxiii) that the ICC so constituted rightly observed in its report that there was no provision in the DHJS Rules or AIS Rules for inquiry into the allegations of sexual harassment at work place but wrongly adopted the Office Memorandum (OM) dated 16th July, 2015 for inquiry into the allegations of sexual harassment against the petitioner; the OM dated 16th July, 2015 was "legally prohibited" under Rule 3(1)(b) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 [CCS CCA Rules]; (xxxiv) that though ICC was initiated under the provisions of the Sexual Harassment Act but in the midst of the inquiry, this Court stopped following the Sexual Harassment Act and bypassed the statutory mandate of Sections 13 & 18 of the said Act; (xxxv) that be that as it may, the ICC submitted a report dated 5th November, 2016 finding the allegations against the petitioner to be not proved; (xxxvi) that though on receipt of report dated 5th November, 2016, the proceedings against the petitioner ought to have been dropped under Section 13(2) of the Act but without having anything against the petitioner on record, disciplinary proceedings for major penalty under Rule 8 of the AIS Rules, were commenced against

the petitioner and the petitioner served with a charge memo; (xxxvii) that the inquiry was conducted in violation of the said Rule 8 and at the conclusion thereof the Inquiry Report dated 9th March, 2018 was submitted, imposing a penalty on the petitioner, meaning that procedure different from the procedure required to be followed under Sections 11 & 13 of the Sexual Harassment Act was followed; (xxxviii) that this arbitrary selection of wrong procedure has denied the petitioner equality before law and equal protection of law; (xxxix) that the Supreme Court in its judgment dated 21st August, 2019 held the report dated 9th March, 2018 to be a report under Section 13 of the Sexual Harassment Act, appealable under Section 18 of the Act; (xl) that in appeal preferred by the petitioner under Section 18 of the Act, this Court observed that there was no proved allegation against the petitioner and as and when this Court took an adverse view of the Inquiry Report, the petitioner could prefer an appeal; (xli) that the impugned order dated 17th April, 2020 of dismissal of the petitioner from service is in violation of the judgment dated 21st August, 2019 of the Supreme Court as well as the order dated 9th October, 2018 of this Court in FAO No.403/2019; and, (xlii) that the petitioner, on 21st April, 2020 filed a writ petition before the Supreme Court but the Supreme Court vide order dated 10th August, 2020 observed that the petitioner was to first seek remedy before this Court.

5. This Court, in its counter affidavit has pleaded (a) that the petition is bad on account of non-joinder of GNCTD which has issued the order of dismissal of the petitioner and though the petitioner has in addition to the communication dated 17th April, 2020 also impugned the order dated 16th March, 2020 of the GNCTD but not impleaded GNCTD as a respondent; (b) that the scope of a writ petition apropos an order of dismissal of a judicial

officer is no longer *res integra*; this Court in exercise of jurisdiction under Article 226 of the Constitution of India, 1950 is to only determine, whether there is legally acceptable evidence to sustain a charge of misconduct and ought not to interfere, unless the finding is perverse; (c) that this Court in exercise of powers under Article 226 cannot substitute its opinion for that of the concerned disciplinary authority; (d) that the view of this Court on the administrative side, as expressed by the Full Court, though is justiciable, ought to be given due weightage and consideration and the opinion of the Full Court ought not to be interfered with, unless found to be arbitrary, capricious or irrational; (e) that the exercise undertaken by the Full Court cannot be upset merely due to the existence of another possible view; (f) that this Court, in exercise of powers under Article 226, is to confine itself to examining the legality of the process to reach the eventual decision and whether the principles of natural justice have been followed; (g) that the petitioner has been subjected to a fair process, complying with the applicable service rules and principles of natural justice and there is no infirmity in the order of dismissal of the petitioner on the recommendation of this Court; (h) that the petitioner all along participated in the inquiry, with detailed evidence and arguments and did not make any challenge to the process; the petitioner is now estopped from raising a challenge to the process or procedure at this belated stage; (i) that the Full Court in its meeting dated 13th July, 2016, after considering the complaints dated 5th July, 2016 and 11th July, 2016 against the petitioner, directed immediate suspension pending disciplinary proceedings, initiation of disciplinary proceedings against the petitioner and intimation to Police to take appropriate action in accordance with law; (j) that on 19th July, 2016, ICC

comprising of four Hon'ble Judges of this Court and a Senior Advocate was constituted by the Full Court and initiated a preliminary inquiry; (k) that the petitioner, from time to time appeared before the ICC and filed a detailed statement and replies to the complaints dated 5th July, 2016, 11th July, 2016 and 28th July, 2016; (l) that the ICC met both, the petitioner as well as Ms. M and submitted a Preliminary Inquiry Report dated 5th November, 2016 to the Full Court; (m) that the Full Court accepted the Preliminary Inquiry Report of the ICC and resolved that disciplinary proceedings for major penalty under Rule 8 of the AIS Rules be started against the petitioner; (n) that Memorandum dated 23rd February, 2017 of charges was issued to the petitioner in accordance with AIS Rules and to which the petitioner submitted his written statement of defence dated 14th March, 2017; (o) that no challenge to the maintainability of the inquiry or the procedure adopted was made by the petitioner; (p) that the Full Court, on 16th July, 2017, considered the aforesaid written statement of defence of the petitioner and resolved to hold an inquiry and in terms of Proviso to Rule 8(2) of the AIS Rules and appointed the ICC as the Inquiring Authority to inquire into the charges framed against the petitioner and a Presenting Officer was appointed to present the case on behalf of this Court; (q) that a full-fledged inquiry was conducted by the ICC between 19th September, 2017 and 19th February, 2018, in accordance with the applicable Rules and comprising of detailed hearings with extensive evidence and cross-examination; (r) that the petitioner, though submitted a list of 18 witnesses but produced only two witnesses; (s) that written submissions were filed by the Presenting Officer as well as the petitioner; (t) that the petitioner, in his written submissions did not make any challenge to the maintainability of the inquiry or the procedure

adopted therein; (u) that the Inquiry Report dated 9th March, 2018 of the ICC was considered by the Full Court on 25th April, 2018 and the petitioner called upon to submit written representation or submissions, if so desired, against the findings of the Inquiring Authority, in accordance with Rule 9(2) of the AIS Rules; (v) that the petitioner then filed Writ Petition (C) No.705/2018 before the Supreme Court, challenging the proceedings initiated against him including the Inquiry Report dated 9th March, 2018; (w) that nearly simultaneously with so approaching the Supreme Court, the petitioner vide his two verbatim letters sought certified copies of some documents from this Court, to enable him to furnish his written representation against the findings of the Inquiring Authority and assured this Court that he would submit a detailed and complete response/comments on each aspect related to assessment of evidence and findings of the Inquiring Authority as mentioned in the Inquiry Report dated 9th March, 2018; (x) that the petitioner, on 27th August, 2018, was supplied with the certified copies of the documents sought and again asked to, if so desired, submit written representation against the findings of the Inquiring Authority; (y) that the petitioner sought three month's extension to file his written representation against the Inquiry Report dated 9th March, 2018 and at that time also did not make any grievance with respect to the procedure adopted or its tenability; (z) that the Supreme Court, in its judgment dated 21st August, 2019, held (i) that this Court is the disciplinary authority for the petitioner and merely because the order of dismissal of the petitioner from service was issued by the Lt. Governor of GNCTD, in no manner denuded the disciplinary control of this Court; (ii) that there was no infirmity in the order of suspension of the petitioner; (iii) that no prejudice has been caused

to the petitioner by non-supply of Inquiry Report dated 5th November, 2016; and, (iv) that right of appeal to an aggrieved person is available only when report is submitted under Section 13 of the Sexual Harassment Act to the employer; (za) that FAO No.403/2019 preferred by the petitioner, ostensibly under Section 18 of the Sexual Harassment Act, was withdrawn by the petitioner reserving the contentions set out in the appeal, to be agitated in appropriate proceedings, in the event of the Full Court on the administrative side taking an adverse decision against the petitioner on the basis of the report of the ICC under the Sexual Harassment Act; (zb) that the petitioner, after failing before the Supreme Court as well as this Court, to have the proceedings against him quashed, finally submitted representations (three) against the Inquiry Report dated 9th March, 2018; (zc) that the Full Court considered the three representations of the petitioner against the Inquiry Report dated 9th March, 2018 and rejected the said representations and decided to take further action as per the procedure laid down in Rule 9 of the AIS Rules and accepted the Inquiry Report dated 9th March, 2018 and decided to recommend imposition of major penalty of dismissal from service on the petitioner; (zd) that the contention of the petitioner, of non-compliance with the Sexual Harassment Act as well as the Service Rules applicable to the petitioner, is baseless and misconceived, inasmuch as the statutory scheme and rules would apply to a member of the DHJS with respect to any disciplinary action; (ze) that Article 235 of the Constitution of India vests control over officers belonging to the judicial service of a State in the High Court; (zf) that the DHJS Rules do not expressly provide a procedure for disciplinary inquiry into allegations of misconduct (sexual or otherwise) by DHJS Officers and recourse has to be had to the residuary

Rule 27 of the DHJS Rules which provides that for all matters for which no/insufficient provision is made in the DHJS Rules, the rules applicable to officers of comparable status in the Indian Administrative Service (IAS) shall apply; (zg) that this Court, on 27th July, 2015 resolved, that for the purposes of disciplinary action against a DHJS Officer on allegations of sexual misconduct, the AIS Rules would be applicable, as they would be the Rules applicable to officers of comparable status in the IAS; (zh) that the Supreme Court also in its judgment dated 21st August, 2019 has held that the rules and procedure for dealing with the allegations of sexual harassment against DHJS Officer are the AIS Rules and in the event of any conflict between AIS Rules and the Sexual Harassment Act, the AIS Rules would override; Section 28 of the Sexual Harassment Act also clarifies the position that the said Act is in addition to and not in derogation of any other law for the time being in force; (zi) that thus the provisions of the Sexual Harassment Act are not in supersession of the service rules; (zj) that in fact there is no conflict between the Sexual Harassment Act or the AIS Rules; (zk) that Section 11 of the Sexual Harassment Act mandates that upon receipt of a complaint of sexual harassment from an aggrieved woman at the hands of an employee, the ICC shall proceed to make inquiry into the complaint in accordance with the service rules applicable to the said employee and which in the case of DHJS Officers are the DHJS Rules and which in turn incorporate the AIS Rules for matters not covered therein such as for disciplinary action; (zl) that axiomatically, in accordance with the Sexual Harassment Act, the ICC to be constituted by this Court was mandated to inquire into the allegations of sexual harassment, in accordance with the AIS Rules; (zm) that the ICC constituted vide Resolution dated 19th

July, 2016 of the Full Court, to look into the complaint of sexual misconduct against the petitioner, comprised of four Judges (of which two were women) and a Senior Advocate (also a woman) and summoned the petitioner and asked for his statement of defence which the petitioner submitted; (zn) that the said ICC conducted a preliminary inquiry and submitted a Report dated 5th November, 2016 recommending a full-fledged inquiry; (zo) that the Full Court, after the consideration of the Report dated 5th November, 2016, resolved that disciplinary proceedings for imposition of major penalty under Rule 8 of AIS Rules be initiated against the petitioner; (zp) that it was at that stage that the inquiry in terms of Rule 8 of the AIS Rules began; the Proviso to Rule 8(2) of the AIS Rules provides that in case of a complaint of sexual harassment [within the meaning of Rule 3 of All India Services (Prevention of Sexual Harassment) Regulations, 1998 (Regulations)], the Complaints Committee for such complaints, shall be deemed to be the Inquiring Authority appointed by the disciplinary authority for the purposes of the AIS Rules and will conduct the inquiry, where separate rules have not been so prescribed, in accordance with the procedure laid down under the AIS Rules; (zq) that in the said enquiry in terms of Rule 8 of the AIS Rules, distinct articles of charge along with statements and evidence substantiating the charges were drawn up and delivered to the petitioner, who submitted his statement of defence thereto; (zr) that the said defence of the petitioner was not accepted by this Court and in terms of Rule 8 of the AIS Rules read with Rule 8(6)(a), an Inquiring Authority (deemed ICC) was appointed to inquire into the charges framed against the petitioner; (zs) that the petitioner duly participated in the proceedings before the Inquiring Authority which conducted a thorough and detailed inquiry, from 19th September, 2017 to

19th February, 2018 and during which proceedings, eight departmental witnesses and two defence witnesses were examined and cross-examined; (zt) that the petitioner cross-examined the complainant Ms. M at length, on seven different occasions; (zu) that the inquiry also involved minute examination of bulky Call Data Records pertaining to five mobile numbers and detailed examination of technical assistants of telecommunication companies as well; (zv) that as many as eighteen hearings took place and the petitioner was also represented by a Senior Advocate and at no time challenged the procedure adopted by the Inquiring Authority; (zw) that the Inquiring Authority, in accordance with Rule 8(24) of the AIS Rules, drew up the Report dated 9th March, 2018 containing the articles of charge, statement of imputations of misconduct, the defence of the petitioner, the assessment of the evidence by the Inquiring Authority in respect of each article of charge and the findings on each article of charge with reasons; (zx) that the Inquiring Authority returned a finding that there was "sufficient material brought on record to establish the unwelcome sexually determined behaviour on the part of the charged officer and he is therefore, liable for disciplinary action"; (zy) that the Inquiry Report dated 9th March, 2018 was not only compliant with Rule 8 of the AIS Rules but also satisfied the requirements of Section 13(1) and (3) of the Sexual Harassment Act, inasmuch as it returned a categorical finding that the allegations against the petitioner had been proved and he was liable for disciplinary action; (zz) that the Inquiry Report dated 9th March, 2018 was placed before the Full Court which sought the written representation of the petitioner thereagainst; (zza) that the petitioner, instead of filing representation against the report, approached the Supreme Court by way of Writ Petition No.705/2018, which

culminated in the judgment dated 21st August, 2019; (zzb) that even if FAO No.403/2019 preferred by the petitioner were to be treated as an appeal under Section 18 of the Sexual Harassment Act, the petitioner, by withdrawing the same, waived his right to challenge the recommendations and would only be entitled to challenge the decision to dismiss him from service, in accordance with law; (zzc) that the petitioner, after withdrawing FAO No.403/2019, filed three representations against the Inquiry Report dated 9th March, 2018 and which representations were rejected by the Full Court and the report accepted and imposition of major penalty of dismissal recommended against the petitioner; (zzd) that there is thus no non-compliance with any law or rule in the matter of dismissal of the petitioner; (zze) that the argument of the counsel for the petitioner, that the order of dismissal of petitioner from service has been passed prior to the petitioner having an opportunity to prefer an appeal under Section 18 of the Sexual Harassment Act, is misconceived; the liberty granted to the petitioner in the order dated 9th October, 2019 in FAO No.403/2019, could only be a reference to the petitioner filing his written representation against the report in accordance with Rule 9(2) of the AIS Rules and which liberty was duly availed of by the petitioner, after withdrawing FAO No.403/2019 with liberty aforesaid; (zzf) that the Circular dated 17th May, 2016, of complaints against Judicial Officers to be supported by affidavit, does not apply in the cases of complaints of sexual harassment as the Sexual Harassment Act itself contains a provision for taking action against the complainant, if the complaint is found to be false or malicious; also the power under Article 235 of the Constitution of India cannot in any manner be circumscribed by any rule, order or notification and the Courts, in complaints of sexual

harassment, should not allow justice to fail on account of procedural technicalities; and, (zzg) that non-compliance with Circular dated 17th May, 2016 does not vitiate the inquiry against the petitioner.

6. The petitioner, in response to the 27 page counter affidavit of the respondent, has filed a 60 page rejoinder. However the need to refer to the contents thereof is not felt, as the counsel for the petitioner has also filed written arguments and all that is pleaded in the rejoinder is covered by the said written arguments. Suffice it is to state that the petitioner, in paragraph 4 of the preliminary submissions in his rejoinder has admitted that the Inquiry Report dated 9th March, 2018 was considered by the Full Court on 25th April, 2018 and vide letter dated 15th May, 2018 of this Court, a copy of the Inquiry Report dated 9th March, 2018 forwarded to the petitioner and the petitioner called upon to submit his written submissions against the findings in the said report and also informed that on his failure to so make written representation, it shall be presumed that the petitioner has nothing to say in his defence and further action against petitioner taken in accordance with AIS Rules.

7. The counsel for the petitioner has argued, (i) that the Supreme Court, in the judgment dated 21st August, 2019 in Writ Petition No.705/2018 preferred by the petitioner has held that the Inquiry Report dated 9th March, 2018 is an ICC report under Section 13 of the Sexual Harassment Act; (ii) that this Court was bound to take all steps qua the ICC Inquiry Report dated 9th March, 2018 which it had earlier taken qua the ICC Inquiry Report dated 5th November, 2016 i.e. to hold a Full Court parallel to the Full Court dated 16th November, 2016 and consider the ICC Inquiry Report dated 9th March,

2018; (iii) that it was the Full Court which was to decide, whether or not the ICC Inquiry Report dated 9th March, 2018 was to be accepted or not, just like the Full Court qua the ICC Inquiry Report dated 5th November, 2016 had taken a decision on 16th November, 2016 to accept the same; (iv) that no Full Court meeting was called qua the ICC Inquiry Report dated 9th March, 2018 and the same was not submitted to the Full Court within 60 days, as required under Section 13(4) of the Sexual Harassment Act; (v) that the ICC Inquiry Report dated 9th March, 2018, beyond 60 days, is not actionable; (vi) that under Section 13 of the Sexual Harassment Act, whether there is a 'proved allegation', is to be decided by the employer upon consideration of the ICC report; however the ICC Inquiry Report dated 9th March, 2018 was never placed before the employer i.e. the Full Court and there was no occasion for the employer i.e. the Full Court to decide, whether there is proved allegation against the petitioner; (vii) that the proceedings never entered the domain of Section 13(3)(i) of the Sexual Harassment Act lest thereafter of the AIS Rules; (viii) that had the ICC report been accepted by the Full Court, the Full Court would have ordered a departmental inquiry under the AIS Rules against the petitioner; (ix) that though qua the ICC Inquiry Report dated 5th November, 2016 such an inquiry was ordered and held but not vis-à-vis the Inquiry Report dated 9th March, 2018; (x) that the Full Court, after the judgment dated 21st August, 2019 of the Supreme Court, did not appoint any Inquiring Authority under Rule 8(2) of the AIS Rules; (xi) that there was no Inquiring Authority till the impugned communication dated 17th April, 2020; (xii) that since there was no Inquiring Authority, there was no inquiry or inquiry report; (xiii) that the penalty imposed upon the petitioner is without any Inquiring Authority,

inquiry under the service rules and inquiry report against the petitioner; (xiv) that the impugned document dated 17th April, 2020 is an intimation that the petitioner was dismissed from service and no dismissal order was ever passed; (xv) that being a dismissal without a dismissal order, Article 311 of the Constitution of India has been violated; (xvi) that the complaint against the petitioner was false and for this reason only was not accompanied with any affidavit; (xvii) that the initial ICC held proceedings under the OM dated 16th July, 2015 and which is not permissible under Rule 3 of CCS CCA Rules; (xviii) that the initial ICC did not find anything against the petitioner; (xix) that ICC Inquiry Report dated 5th November, 2016 was concealed from the petitioner; and, (xx) that the Supreme Court, to cure the concealment of ICC Inquiry Report dated 5th November, 2016 and to cure the violation of the right of appeal under Section 18, held that the Inquiry Report dated 9th March, 2018 was the ICC report under Section 13 of the Sexual Harassment Act.

8. The counsel for the respondent has argued, (a) that the High Court's control on Judicial Officers is full and exclusive and powers under Article 235 of the Constitution of India are not circumscribed by any statute, rule or order, including the Sexual Harassment Act; reliance is placed on *State of West Bengal Vs. Nripendra Nath Bagchi* AIR 1966 SC 447; (b) that the scope of interference under Article 226 of the Constitution of India is very narrow in cases concerning Judicial Officers; reliance, besides on the judgment dated 21st August, 2019 of the Supreme Court in Writ Petition 705/2018, is also placed on *Rajendra Singh Verma Vs. Lieutenant Governor* (2011) 10 SCC 1, *Registrar General, High Court of Patna Vs. Pandey Gajendra Prasad* (2012) 6 SCC 357, *R.R. Parekh Vs. High Court*

of Gujarat (2016) 14 SCC 1 and *Rajasthan High Court Vs. Ved Priya* 2020 SCC OnLine SC 337; (c) that the standards of behaviour expected from a Judicial Officer are higher, as judicial service is not mere employment but public office of great trust and responsibility; reliance is placed on *High Court of Judicature at Bombay Vs. Shashikant S. Patil* (2000) 1 SCC 416; (d) that the Supreme Court, in its judgment dated 21st August, 2019 has already held that non-supply of Inquiry Report dated 5th November, 2016 did not prejudice the petitioner and that the Inquiry Report dated 9th March, 2018 was the relevant report envisaged under Section 13 of the Sexual Harassment Act; (e) that the Inquiry Report dated 9th March, 2018 was placed before and considered by the Full Court on 25th April, 2018, when vide Resolution of the said date, the petitioner was called upon by letter dated 15th May, 2018 to submit his written representation or submissions, if so desired, against the finding of the Inquiring Authority within the meaning of Rule 9(2) of the AIS Rules; (f) that the Inquiry Report dated 9th March, 2018, in paragraph 67 thereof specifically reports that “there is sufficient material brought on record to establish the unwelcome sexually determined behavior” and that the petitioner was “liable for disciplinary action”; (g) that thus the Inquiring Authority categorically concluded that the allegation of sexual harassment against the petitioner was proved; (h) that even though the respondent was not obligated to, in the interest of fairness, an initial fact finding exercise was done which culminated in the Inquiry Report dated 5th November, 2016 and whereafter a full-fledged inquiry, culminating in the Inquiry Report dated 9th March, 2018, was conducted; (i) that the ICC established under Section 4 of the Sexual Harassment Act and the Inquiring Authority under the service rules in cases pertaining to sexual harassment,

are one and the same body; (j) that the petitioner has been treated fairly in the inquiry process and has had the opportunity to examine and cross-examine witnesses with the benefit of assistance of counsel and senior counsel; (k) that the inquiry was in accordance with the applicable rules; (l) that there was no need for two separate inquiries; reliance is placed on *Sonali Badhe Vs. Ashish Chandra Singh* MANU/DE/3852/2015 (DB); (m) that a belated challenge to the inquiry, after participating in the same, is not permissible; reliance is placed on *Additional District & Sessions Judge 'X' Vs. Registrar General, High Court of Madhya Pradesh* (2015) 4 SCC 91; (n) that a technical infirmity cannot be allowed to defeat a legitimate complaint, the veracity of which has been extensively scrutinized; reliance is placed on *Pankaj Kumar Vs. Union of India* 2017 SCC OnLine Tri 57; (o) that the Full Court, in its meeting held on 20th January, 2020 considered the representations dated 11th October, 2019, 30th October, 2019 and 9th December, 2019 filed by the petitioner and again perused the Inquiry Report dated 9th March, 2018 and resolved, in view of the gravity of the charge and the evidence adduced, to impose major penalty of dismissal from service; (p) that accordingly, vide letter dated 16th March, 2020, the Hon'ble Lt. Governor, GNCTD communicated his approval to the petitioner's dismissal and the same was communicated by the Registrar General of this Court vide impugned letter dated 17th April, 2020 to the District & Sessions Judge (HQs), Tis Hazari Courts, for onward delivery to the petitioner; and, (q) that the recommendation of the Full Court was binding on the Hon'ble Lt. Governor, GNCTD and letters dated 17th April, 2020 and 16th March, 2020 reflect the opinion of the Full Court and the same is not to be ordinarily interfered with; reliance is placed on *Rajendra Singh Verma* supra.

9. We have perused the pleadings and the documents. We have also considered the respective contentions.

10. The petitioner, in or about the month of June, 2018 i.e. after receiving a copy of the Report dated 9th March, 2018 under cover of Memorandum / Letter dated 15th May, 2018 of this Court, preferred Writ Petition No.705/2018 to the Supreme Court, seeking (a) quashing of the Resolution dated 13th July, 2018 of the Full Court as well as all subsequent Resolutions dated 19th July, 2016, 16th November, 2016, 23rd February, 2017 and 6th July, 2017 of the Full Court, in relation to the inquiry culminating in the Report dated 9th March, 2018, on the ground of the same being arbitrary, without jurisdiction and violative of the Sexual Harassment Act and Articles 14 and 21 of the Constitution of India; (b) quashing of the proceedings of the ICC; (c) quashing of the charge sheet dated 23rd February, 2017 issued to the petitioner; (d) quashing of the Report dated 9th March, 2018 of the ICC along with all proceedings leading thereto; and, (e) quashing of the Letter/Memorandum dated 15th May, 2018 of this Court, forwarding the Report dated 9th March, 2018 to the petitioner and giving opportunity to the petitioner to file representation thereagainst.

11. The Supreme Court, in its judgment dated 21st August, 2019 in the aforesaid petition, (a) in paragraph 2.4 has found/recorded that the Inquiry Report dated 9th March, 2018 was placed before the Full Court in its meeting held on 25th April, 2018 and the Full Court resolved to forward the inquiry report to the petitioner and to ask him to submit his written representations; (b) in paragraph 19 has recorded the contention of the petitioner that on the basis of the inquiry report by ICC, as envisaged in Sections 11 & 13 of the

Sexual Harassment Act, the High Court could not have taken a decision to initiate the inquiry or to suspend the petitioner and in paragraph 22 has rejected the said contention reasoning that the provisions of Sections 11 and 13 of the Sexual Harassment Act in no manner affect the control of the High Court with respect to the Judicial Officers, under Article 235 of the Constitution of India and that the Full Court of the High Court is in no manner precluded from initiating disciplinary inquiry against the petitioner and placing the petitioner under suspension, on being satisfied that sufficient material existed; (c) in paragraph 22 has held that there was no error in the decision dated 13th July, 2016 of the Full Court, to suspend the petitioner and initiate inquiry proceedings against the petitioner; (d) in paragraph 23 has recorded the contention of the petitioner that the copy of the report dated 5th November, 2016 was not supplied to him, denying to him the right to appeal thereagainst and in paragraph 24 rejected the said contention, holding that the Report dated 5th November, 2016 was a preliminary inquiry report, only opining that an inquiry should be held and was not a report under Section 13 of the Sexual Harassment Act; (e) in paragraph 24, to have further held that the Report dated 9th March, 2018, which had been admittedly supplied to the petitioner, was the report under Section 13 of the Sexual Harassment Act and whereagainst right of appeal was available under Section 18 of the said Act; and, (f) in paragraph 25, held that the said right of appeal under Section 18 of the Sexual Harassment Act is given only when the report is submitted under Section 13 to the employer and further held that no prejudice had been caused to the petitioner due to non-supply of Report dated 5th November, 2016.

12. Having considered the challenge made by the petitioner before the Supreme Court and the judgment thereon, we are of the view that the challenges as made in this petition, on the grounds of (a) action having been initiated against the petitioner on the basis of complaints of Ms. M which were not supported by affidavits; (b) the grounds of suspension having not been communicated to the petitioner and the complaints of Ms. M having not been furnished to the petitioner; (c) the copy of the Report dated 5th November, 2016 having not been furnished to the petitioner; and, (d) the petitioner having been exonerated after 5th November, 2016, are no longer available to the petitioner. The said grounds go to the root of initiation of proceedings against the petitioner and were agitated by the petitioner before the Supreme Court. The Supreme Court however held the proceedings culminating in the Report dated 9th March, 2018 to have been validly instituted against the petitioner.

13. Though the factual narration in the pleadings of the petitioner is lengthy but a perusal of the arguments including written arguments on behalf of the petitioner, as narrated above, shows the questions arising for adjudication in this petition to be limited. The arguments of the petitioner, as succinctly recorded in the written arguments of his advocate, are (I) that the Full Court, in the meeting on 16th November, 2016 accepted the Preliminary Inquiry Report dated 5th November, 2016 of the ICC and resolved that disciplinary proceedings for major penalty under Rule 8 of the AIS Rules be initiated against the petitioner; the Report dated 9th March, 2018 which was considered by the Full Court on 25th April, 2018 was the report of the said proceedings and considered by the Full Court from the said perspective; however the Supreme Court in its judgment dated 21st

August, 2019 held the Report dated 9th March, 2018 to be a report of the ICC under Section 13 of the Sexual Harassment Act; the Full Court, after the judgment dated 21st August, 2019, has not considered the Report dated 9th March, 2018 as a report of ICC under Section 13 of the Sexual Harassment Act and has not accepted the same as of "proved allegation" of sexual harassment against the petitioner and the time therefor has lapsed and thus the dismissal order as a consequence thereof is bad; and, (II) that if the Report dated 9th March, 2018, as a report under Section 13 of the Sexual Harassment Act, was considered by the Full Court and had been found to contain a "proved allegation" of sexual harassment against the petitioner, the Full Court was required to then appoint an Inquiring Authority and conduct inquiry under the AIS Rules.

Though the counsel for the petitioner in his written arguments has not crystallized but yet another argument arising from the pleadings of the petitioner and permeating through the verbal hearing, of the counsel for the petitioner is, that the petitioner has been denied right of appeal under Section 18 of the Sexual Harassment Act.

14. We now proceed to adjudicate hereunder the aforesaid arguments on behalf of the petitioner, to gauge whether there is any merit therein. If any merit were to be found therein and if it were to be found that the petitioner has not been dealt with in accordance with the procedure prescribed by law, undoubtedly the petitioner should get benefit thereof. Else, as far as the conclusion reached in the Report dated 9th March, 2018 that the allegations in the complaint of Ms. M against the petitioner, of sexual harassment at workplace, have been proved, is concerned, neither has the counsel for the

petitioner addressed any argument on the same nor do we, after having judicially examined the said report, find any flaw whatsoever therein; rather, having judicially examined the report, not only as to the procedure followed and opportunities at each and every stage provided to the petitioner but also on merits, we are more than convinced, of the conclusion having been rightly drawn on the basis of material on record, that the allegations of sexual harassment against the petitioner, stand proved.

15. As far as the first of the aforesaid arguments of the counsel for the petitioner is concerned, the counsel for the petitioner has not been able to controvert and could not have possibly controverted the contentions of the counsel for the respondent on the basis of statutory provisions, that (i) the DHJS Rules applicable to the petitioner do not expressly provide a procedure for disciplinary inquiry into allegations of misconduct by the DHJS Officers and in the absence whereof resort has to be had to Rule 27 thereof providing that for all matters for which no provision is made in the DHJS Rules, the Rules applicable to Officers of comparable status in the IAS, apply; (ii) vide Resolution dated 27th July, 2015, this Court resolved, that for the purposes of disciplinary action against a DHJS Officer on allegations of sexual misconduct, AIS Rules which are applicable to Officers of comparable status in the IAS, would apply; (iii) Rule 8 of the AIS Rules provides for the Disciplinary Authority to, if of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a member of the service, appoint an authority to inquire into the truth thereof; and, (iv) in accordance with the proviso to Rule 8(2) of the AIS Rules, in case of a complaint of sexual harassment, the Complaints Committee (ICC) for such complaints shall be

deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purposes of the AIS Rules.

16. Once such is the legal/statutory scheme, no error or irregularity can be found in, the Full Court, in its meeting dated 16th November, 2016, after considering the Report dated 5th November, 2016 of the ICC (which the Supreme Court has held was in the nature of Preliminary Inquiry Report, not required to be furnished to the petitioner), having resolved that disciplinary proceedings for imposition of major penalty under Rule 8 of the AIS Rules be initiated against the petitioner and in its meeting dated 6th July, 2017, after considering the written statement of defence of the petitioner to the Memorandum of Charges issued to the petitioner having resolved to hold an inquiry and having appointed the ICC as the Inquiring Authority to inquire into the charges framed against the petitioner and which ICC submitted the Report dated 9th March, 2018.

17. The Supreme Court also, though without expressly mentioning proviso to Rule 8(2) of the AIS Rules (albeit pleaded in the counter affidavit filed by this Court before the Supreme Court) held the Report dated 9th March, 2018 of the Inquiring Authority aforesaid, appointed pursuant to meetings supra held on 5th November, 2016 and 6th July, 2016, to be the report of the ICC.

18. Once the aforesaid position becomes clear, it shows the sheer hollowness of the first argument aforesaid of the counsel for the petitioner. The Inquiring Authority under the AIS Rules read into the DHJS Rules and the ICC under the Sexual Harassment Act, in the statutory scheme, are one and the same and not two separate entities, required to conduct two separate

inquiries/proceedings. The Supreme Court also, in its judgment dated 21st August, 2019 held the Report dated 9th March, 2018 to be the report of ICC. Thus, the Full Court, when in the meeting dated 25th April, 2018, after considering the Report dated 9th March, 2018, resolved to call upon the petitioner to submit his written representations/submissions against the findings of the Inquiring Authority (and which in law, as aforesaid, is also the ICC), accepted the Report dated 9th March, 2018 and was not required to, after the judgment dated 21st August, 2019 of the Supreme Court, again consider the Report dated 9th March, 2018 or to again accept the same. Merely because in the communication dated 15th May, 2018 to the petitioner in pursuance to the Resolution dated 25th April, 2018 of the Full Court, the petitioner was called upon to submit his written representation against the finding of the Inquiring Authority (and which in law, as aforesaid, is also the ICC) and did not call upon the petitioner to submit his written representation against the finding of ICC in the Report dated 9th March, 2018, is not an irregularity or infraction of the procedure prescribed by law, as sought to be made out by the counsel for the petitioner. Moreover, the counsel for the petitioner has stopped shy from arguing the prejudice if any suffered by the petitioner therefrom. As aforesaid, the petitioner made as many as three representations against the findings in the Report dated 9th March, 2018, all after the judgment dated 21st August, 2019 of the Supreme Court and wherefrom the petitioner knew that he was representing against the report of the ICC.

19. It may also be emphasized that the Supreme Court, at the time of pronouncing on 21st August, 2019, was seized of the Resolution dated 25th April, 2018 and the communication dated 15th May, 2018 to the petitioner in

pursuance thereto, but did not direct that the Full Court considers the Report dated 9th March, 2018 afresh, as a report of the ICC, having in the meeting held on 25th April, 2018 not considered the same as the report of the ICC but having considered the same as a report of the Inquiring Authority. Rather, the two are one and the same and the petitioner has made a bogey of the same being different.

20. We thus do not find any merit in the first of the aforesaid contentions of the counsel for the petitioner.

21. In the light of the above discussion, the second contention of the counsel for the petitioner also has to axiomatically fail. When under the proviso to Rule 8(2) of the AIS Rules, the ICC is deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purposes of AIS Rules, the Full Court, after considering and accepting the Report dated 9th March, 2018, which has been held by the Supreme Court to be the report of the ICC, was not required to appoint an Inquiring Authority under the AIS Rules. The law, as noticed above, in the case of DHJS Officers, does not provide for two rounds of inquiry, first by the ICC under the Sexual Harassment Act and thereafter by the Inquiring Authority under the DHJS Rules read with AIS Rules. We thus do not find any merit in the second contention also of the counsel for the petitioner.

22. That leaves the argument, though not made in the written arguments of the counsel for the petitioner, of the petitioner having been deprived of right of appeal under Section 18 of the Sexual Harassment Act.

23. In the context thereof, we find merit in the contentions of the counsel for the respondent, (a) of the petitioner having availed of the said right after

the judgment dated 21st August, 2019 of the Supreme Court, by filing W.P.(C) 10653/2019 and FAO No.403/2019 but both of which were withdrawn with liberty to take appropriate steps and whereafter representations against the findings in Report dated 9th March, 2018 were made and which were considered by the Full Court in its meeting dated 28th January, 2020 and having thus already exercised the said right; and, (b) the said right of appeal under Section 18 of the Sexual Harassment Act being required to be read in terms of Article 235 of the Constitution of India which vests the control over persons belonging to judicial service of a State in the High Court and which in the judgment dated 21st August, 2019 supra also has been reiterated to include disciplinary control over District Judges and Judges inferior to the post of District Judge.

24. Section 18 of the Sexual Harassment Act confers on any person aggrieved from the recommendation of the ICC (a) that the allegation of sexual harassment has not been proved; or, (b) that the allegation of sexual harassment has been proved and to take action for sexual harassment as misconduct in accordance with the provisions of the service rules applicable, a right of appeal to the Court or Tribunal in accordance with the provisions of the service rules applicable and where no such rules exist, in such manner as may be prescribed. The counsel for the petitioner has not cited any service rules applicable to DHJS Officers in this regard. We have even otherwise wondered, before which authority or body such appeal can be made by the DHJS Officers, considering the interpretation as noticed by the Supreme Court in the judgment dated 21st August, 2019 also, of Article 235 of the Constitution of India. We have further wondered whether not provision of such appeal before whichever body/authority would impinge

on Article 235. Though the Central Government, in exercise of powers under Section 29 of the Sexual Harassment Act, has made the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 and the same, in Rule 11, subject to the provisions of Section 18 of the Act, provides for appeal to the Appellate Authority notified under Clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946, but we have wondered, whether the finding if any returned by the said Authority would be binding on the High Court in exercise of its functions under Article 235 of the Constitution of India and are unable to persuade ourselves to hold so. In our opinion, though under the Sexual Harassment Act, on receiving the report of the ICC, of the allegations having been proved, the Disciplinary Authority is bound to take action for sexual harassment as a misconduct but the Full Court, as a Disciplinary Authority, in the light of Article 235, cannot be said to be so bound and would remain entitled to give an opportunity to a judicial officer to represent against the finding and after considering the representation, to take such action as the Full Court may deem apposite, notwithstanding the finding of ICC, and the said procedure, which has been followed in the present case, more than subserves the purpose of appeal under Section 18 of the Sexual Harassment Act. The Full Court as the Disciplinary Authority, under Rules 8 & 9 of the AIS Rules also, after receipt of report of the Inquiring Authority, was only required to give opportunity to the petitioner to represent thereagainst and to, after considering the said representation, impose penalty and which has also been done in the present case. Thus, no force is found in the said argument also of the counsel for the petitioner.

25. Notice may also be taken of *Dinesh Chandra Mishra Vs. India Council of Agriculture Research* 2019 SCC OnLine Del 8891 where a Coordinate Bench of this Court, dealing with a contention of Section 18 of the Sexual Harassment Act held that (i) Section 18 itself provides that the appeal has to be in accordance with the provisions of the Service Rules applicable to the person concerned; (ii) where the person concerned is governed by the CCS CCA Rules, the said Rules specifically provide that the inquiry conducted by the ICC would be treated as one held under the CCS CCA Rules by an Inquiring Authority appointed by the Disciplinary Authority and the same shall be acted upon in terms of the said Rules; (iii) the report of the ICC in respect of an employee governed by the CCS CCA Rules is not *per se* actionable and would be considered by the Disciplinary Authority; and, (iv) appeal under Section 18 of the Sexual Harassment Act is provided in cases where the recommendation of the ICC itself is final and is *ipso facto* binding and enforceable under Section 13(4) of the Sexual Harassment Act and which is not the position in case of a person governed by CCS CCA Rules. Thus, in accordance with the said judgment also, the petitioner had no right of appeal. Another Division Bench of this Court, in vide order dated 5th October, 2018 in LPA No.72/2018 titled *Dr. Tejinder Kaur Vs. Union of India*, dismissed the appeal against the dicta of the Single Judge in *Tejinder Kaur Vs. Union of India* 2017 SCC OnLine Del 12221 also holding that in case of the person concerned being governed by the CCS CCA Rules, the ICC has a dual role. Supreme Court also in *Medha Kotwal Lele Vs. Union of India* (2013) 1 SCC 297, before the coming into force of the Sexual Harassment Act, while issuing directions for implementation of *Vishaka Vs. State of Rajasthan* (1997) 6 SCC 241,

directed the States and the Union Territories, which till then had not carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules to in their Rules provide that the report of the ICC shall be deemed to be an inquiry report in a disciplinary action and that the Disciplinary Authority shall treat the report/findings etc. of the ICC as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. This again indicates that no two inquiries are contemplated.

26. Resultantly, the petition is dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JANUARY 29, 2021

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