19.01.2016 and charge sheet has been issued on 16.07.2024 i.e. after about thirteen years from the alleged incident. The aforesaid inordinate delay initiating the departmental proceedings has been rejected and disapproved by the Apex Court in re; **Bani Singh** (supra) by observing vide para-4 that "there is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage." The judgment of the Apex Court in re; **Bani Singh** (supra) has consistently been followed by the Apex Court and this Court in so may cases. Since the departmental inquiry is treated to have been initiated w.e.f. the date the charge sheet is issued, so the inordinate delay initiating the departmental inquiry in the present case would vitiate the entire purpose to conduct the departmental inquiry.

20. Therefore, in view of what has been considered above including the case laws so cited by the parties, it is crystal clear that the departmental inquiry would be treated to have been initiated from the date when the charge sheet is issued to the charged employee seeking defence reply. In the present case, limitation of four years under Regulation 351-A of CSR has not been followed by the competent authority as the departmental inquiry has been initiated on 16.07.2024 when the charge sheet has been issued to the petitioner i.e. after about thirteen years from the incident in question, which is not permissible under the law. Not only the above, the order to initiate the departmental inquiry dated 19.01.2016 is also beyond the period of four years from the date of alleged incident which is of the year 2010-11, therefore, the impugned order dated 19.01.2016 under challenge in Writ-A No.4265 of 2024 and the charge sheet dated 16.07.2024 under challenge in Writ-A No.6945 of 2024 are nullity in the eyes of law, therefore, the same are liable to be set aside/quashed.

21. Accordingly, both the writ petitions are **allowed**. A writ in the nature of certiorari is issued quashing the order dated 19.01.2016 and the charge sheet dated 16.07.2024.

22. A writ in the nature of mandamus is issued directing the opposite parties to pay all consequential service benefits to the petitioner including arrears of pension, all retiral dues, if the same has not been paid as yet, with interest at the rate of 7% per annum from the date those dues accrued till the date of actual payment within a period of two months from the date of receipt of certified copy of this order, failing which the petitioner shall be entitled for the interest at the rate of 10% per annum on the delayed payment.

23. No order as to costs.

Writ A No. 6945 of 2024

Allowed vide my order of date passed on separate sheets in Writ A No. 4265 of 2024.

(2025) 5 ILRA 427
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.05.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 4492 of 2023
Connected with Writ A No. 2273 of 2023

Prof. Anandh Subramaniam ...Petitioner
Versus
Union of India & Ors. ...Respondents

Counsel for the Petitioner:
Sri Avneesh Tripathi

Counsel for the Respondents:
A.S.G.I., Sri Ashok Kumar Srivastava, Sri Jatin Kumar Mishra, Sri Rohan Gupta, Sri Manish Goyal (Sr. Advocate)

Service Law – Disciplinary Proceedings – IIT Kanpur Statutes, Statute 13(9)(b) – Misconduct by Professor – Allegations of disparaging remarks against a colleague belonging to SC category and convening of an unauthorized faculty meeting questioning appointment – Inquiry held, charges found proved – Board of Governors imposed penalty of withholding two increments without cumulative effect for two years and debarment from holding administrative responsibilities for three years – Validity.

Held: The charges established derogated from discipline and constituted service misconduct; penalty of withholding increments is permissible under Statute 13(9)(b)(ii). However, debarment from holding administrative responsibilities for a period of three years is not one of the penalties enumerated under Statute 13(9)(b). The said punishment is beyond the authority of the IIT, manifestly illegal, and stands quashed. Penalty of withholding two increments without cumulative effect sustained.

Writ Petition partly allowed.

(Delivered by Hon'ble J.J. Munir, J.)

1. This judgment will decide Writ-A No.4492 of 2023 and connected Writ-A No.2273 of 2023. Writ-A No.4492 of 2023 shall be treated as the leading case. Nevertheless, facts and materials, wherever necessary, shall also be noticed in the connected writ petition.

2. Anandh Subramaniam, a Professor in the Department of Material Science and Engineering at the Indian Institute of Technology, Kanpur is a respectable man, who has fallen from grace. He has been proceeded with against under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short, 'the PoSH Act'), held guilty on charges of sexual harassment of a scholar of his and punished with 'compulsory retirement' by the Board of Governors of the Indian Institute of Technology, Kanpur (for short, 'the IIT') vide resolution dated 22.02.2023. The said resolution was notified by the Director of the IIT vide order dated 01.03.2023.

3. In the leading writ petition, the petitioner challenges the order dated 01.03.2023 passed by the Director of the IIT as also the resolution of the Board of Governors of the said Institution dated 22.02.2023. He has further prayed, in substance, through two reliefs, myriadly worded, that the decision to retire him compulsorily from service be not given effect to in any manner whatsoever. The connected writ petition was instituted by the petitioner at a time when proceedings under the PoSH Act had not reached a terminus. The said petition, therefore, impugns determinations interlocutory, but still decisive like the inquiry report dated 30.09.2022 submitted by the Internal Complaints Committee (for short, 'ICC') of the IIT, the memorandum dated 01.11.2022 issued by the Director of the IIT, calling upon the petitioner to submit his representation against the inquiry report and the memorandum dated 22.12.2022, also issued by the Board of Governors of the IIT, requiring the petitioner to show cause against the proposed punishment of compulsory retirement from service. There is a more profound challenge by the petitioner in this petition and that is to the validity of the Indian Institute of Technology Kanpur (Inquiry into

Complaints of Sexual Harassment of Women at Workplace) Rules, 2021 (for short, 'the IITK Rules'), questioning the said Rules as *ultra vires* the PoSH Act. It is this challenge to the validity of the IITK Rules that has kept the connected writ petition vibrant and alive, even if one were to regard the other interlocutory orders/ determinations merged in the final resolution/ orders of compulsory retirement passed against the petitioner.

4. The complainant in this case against the petitioner is a Ph.D. scholar of the IIT, whose research the petitioner was guiding. Proceedings under the PoSH Act commenced on a complaint laid against the petitioner by the Ph.D. scholar under reference, who has been impleaded as respondent No.7 to the writ petition, anonymously described as 'complainant to be served through the Director, Indian Institute of Technology, Kanpur'. This complaint, which is one dated 24.06.2022, was submitted by the complainant to the Presiding Officer, ICC, constituted for the IIT under the PoSH Act. The petitioner, as he says, received an email dated 30.06.2022 from the Presiding Officer of the ICC, comprising a copy of the complaint dated 24.06.2022 and a notice dated 30.06.2022, requiring him to appear before the ICC on 15.07.2022.

5. It is the petitioner's case that the notice did not indicate the rule or statute, in terms of which it was issued, and this led the petitioner to address a letter dated 06.07.2022 to the Presiding Officer of the ICC. In response, the Presiding Officer of the ICC issued summons to the petitioner dated 12.07.2022, inter alia, indicating the authority of the ICC to act in the matter against him. It was indicated in the summons that the notice dated 30.06.2022 had been issued under Rule 18 of the IITK Rules. It was further said in the summons that the petitioner was called upon to appear before the ICC at 16:00 hours on 15.07.2022 at a venue described as 'FB212' in person along with his reply, if any, to the complaint. The petitioner appeared before the ICC on 15.07.2022 and put in a reply of two short paragraphs: in the first, he acknowledged the summons, and in the second, he denied the allegations in the complaint. He said that the complaint was false and motivated.

6. The ICC commenced an inquiry into the complaint on 15.07.2022. The petitioner says that during the hearing held on 15.07.2022, he requested the ICC, by a letter of that day, to permit him to appoint a legally trained person to defend him, as one of the members on the ICC was an Advocate. It is the petitioner's case that during the hearing, he was informed that he is not allowed to consult on any matter relating to the complaint. It is also said that the complainant was asked to sit in a different room and questions could be asked of her in writing. According to the petitioner, upon conclusion of the hearing on 15.07.2022, the ICC declined to provide a copy of the daily order-sheet on the pretext that it was a confidential document. Immediately after the conclusion of the hearing as aforesaid, the petitioner sent a letter to the ICC, bringing on record the illegalities in the proceedings. He says that on the same day, to wit, 15.07.2022, the petitioner received a reply from the Director of the IIT, informing him that the inquiry will be done in accordance with the IITK Rules, inasmuch as the IIT was not governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, 'the CCS Rules'). This reply of the Director came in response to

the petitioner's letter dated 15.07.2022, already mentioned, where a clarification was sought by him in the following terms:

"4) It is requested to clarify urgently whether,-

(a) A punishment will straight away be imposed under the newly notified IITK ICSH Rules on an employee against whom the inquiry is held by ICC under the newly notified Indian Institute of Technology Kanpur (Inquiry into Complaints of Sexual Harassment of Women at Workplace) Rules, 2021

OR

(b) After the inquiry by the ICC, the report of ICC will be placed before the Disciplinary Authority for considering and deciding under rule 14(2) of CCS (CCA) Rules, 1965 whether there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against the employee and, if the Disciplinary Authority decides that an inquiry is required, to hold the inquiry into the imputations of misconduct or misbehaviour in accordance with the procedure laid down in Rule 14 of CCS (CCA) Rules, 1965."

7. The petitioner asserts that the statutes of the IIT are silent as regards the manner in which a domestic inquiry is to be conducted against an employee or teacher, and, therefore, it is Rule 14 of the CCS Rules that would apply. It is also his case that in cases of misconduct against employees of the IIT, domestic inquiries have always been conducted in accordance with the CCS Rules, and this course of action has been upheld by Courts. The petitioner particularly pleads that in view of the proviso to sub-Rule (2) of Rule 14 of the CCS Rules, the procedure for holding an inquiry into complaints of sexual harassment is provided. Therefore, there was absolutely no occasion or need for the IIT to frame the IITK Rules to conduct an inquiry under the PoSH Act. If the IIT still wished to frame their own rules for holding inquiries into complaints of sexual harassment, it was incumbent to frame rules that provided for the manner in which an inquiry would be held, instead of merely providing what Rule 30 says in vague terms, to wit, *'the inquiry into the complaint shall be made by the Committee in accordance with the principles of natural justice'.*

8. On 16.07.2022, the petitioner received an email from the Presiding Officer of the ICC, enclosing a list of witnesses provided by the complainant at the time of filing the complaint. It was said that this list could not be attached to the complaint at the time when a copy thereof was sent to the petitioner on 30.06.2022 due to oversight. The petitioner was asked to submit his detailed reply in six copies along with a list of witnesses and documentary evidence that he may seek to rely upon, on the next scheduled date of hearing set down for the 18th of July at 4:00 p.m. The petitioner addressed a letter dated 18.07.2022 to the Director of the IIT, saying that the complaint against him be placed before the Disciplinary Authority in the first instance in order to enable that Authority to form an opinion on the complaint and to order an inquiry, if warranted, in the manner envisaged under Rule 14 of the CCS Rules. The petitioner said in his letter that if an inquiry was found fit to be held by the Disciplinary Authority, a proper charge-sheet in the prescribed format had to be issued to the petitioner to enable him to defend properly. This request of the petitioner was also rejected by the Director promptly on the same day, to wit, the 18th of July, 2022.

9. Regular hearing before the ICC commenced on 27.07.2022, where the petitioner alleges breach of such fundamental procedures, which, according to him, violated natural justice and resulted in grave prejudice to his case. According to the petitioner, he was asked to cross-examine the complainant, who had appeared as her own witness as CW-1, without recording her examination-in-chief. The ICC disallowed a large number of questions that the petitioner asked of the complainant as part of the cross-examination. He says that the ICC itself answered for the complainant, completing and improving upon her answers to several questions. The ICC did not ensure that the complainant answered some of the questions that had been allowed to be put to her. The ICC also readily accepted additional documents and a list of new witnesses given by the complainant on 27.07.2022, that were never cited along with the complaint, without asking her the reason for not submitting these documents or citing witnesses before commencement of the inquiry. There is also this case by the petitioner that the ICC carried out a raid on the lab, where the petitioner worked and did an illegal search and seizure on three dates, to wit, 08.08.2022, 10.08.2022 and 05.09.2022 in order to help the complainant produce a document. Proceedings were held *ex parte,* denying opportunity to the petitioner, when he could not attend due to compelling circumstances.

10. It is also said that the petitioner was denied the opportunity to examine one of the complainant's witnesses, namely, CW-3. The ICC is blamed by the petitioner of asking the complainant's witnesses before, during and after their cross-examination numerous questions, purporting to seek clarifications, but in fact, reconciling discrepancies in their depositions and bringing up additional materials and allegations against the petitioner, as he chooses to describe it. It is also pleaded by the petitioner that on 01.08.2022, after the testimony of CW-1 was over, the ICC directed the petitioner to submit his deposition for cross-examination on 04.08.2022. He says that this was the most anomalous procedure to adopt, because the stage for the petitioner's deposition had not yet reached, the complainant's case having just begun. It is also said that after the commencement of regular hearing on 28.07.2022, copies of the daily order-sheet and depositions of witnesses were not supplied to the petitioner. After repeat requests, the ICC supplied a copy each of the daily order-sheet dated 05.08.2022 and the deposition recorded on that date, but copies of order-sheets of previous days and depositions recorded were not supplied. Those were supplied on 16.08.2022, after an undue and unconscionable delay of three weeks, as the petitioner chooses to call it. Again, on one of the dates of the scheduled hearing, that is to say, 23.08.2022, the petitioner was suddenly taken ill. He informed the ICC about his illness and requested adjournment by an email sent at 8.35 a.m. on 23.08.2022. The request for adjournment was rejected and evidence heard *ex parte* on 23.08.2022. The ICC went on further to commence hearing the defence evidence in the petitioner's absence on 23.08.2022 and before closure of the complainant’s case.

11. It is also the petitioner's case that when he submitted the list of documents required to be produced in his defence, the ICC orally directed him to indicate the relevance of each of those documents. It is for the said reason that the petitioner submitted a letter dated

27.08.2022 to the ICC, indicating the relevance of documents. The petitioner also complains that the ICC failed and avoided to summon documents that the petitioner sought, despite repeated requests and reminders.

12. The prayer was considered only on the last date of hearing i.e. 14.09.2022 and on that day, the ICC declined to summon 10 out of the 11 documents the petitioner desired to produce. The inquiry was then closed without production of the solitary document that the ICC permitted on the petitioner's behalf, crippling his defence, as the petitioner says. It is then the petitioner's case that of the 24 witnesses who were produced on his behalf as RW-1 to RW-24, he was not permitted to lead evidence. The ICC did not permit the petitioner to do the examination-in-chief of his witnesses. Instead, the ICC examined all the 24 witnesses themselves, recording those statements as their examination-in-chief. The petitioner's witnesses were then cross-examined, not only by the complainant, but also the ICC. It is, therefore, the petitioner's case that the ICC proceeded in violation of principles of natural justice, denying him a fair hearing, and acted with bias and *mala fides* in the conduct of the inquiry. They dealt with the inquiry in an arbitrary fashion in order to give undue advantage to the complainant and utterly prejudiced the petitioner's defence. There are many more details of violations of the same genre, where the petitioner calls natural justice a causality, resulting in prejudice to him. These would be noticed later in this judgment.

13. The petitioner has particularly pleaded a case that the IIT had no jurisdiction to frame the IITK Rules under the PoSH Act in view of the provisions of Section 11(1) thereof. According to the petitioner, an inquiry into a complaint under the PoSH Act can be made in accordance with the provisions of the service rules applicable to the employer, and where no such rules have been framed, it is to be done in the manner prescribed. The ‘manner prescribed’ is defined under Section 2(k) of the PoSH Act to mean prescribed by rules made under the last mentioned Act. The power to make rules under the PoSH Act vests in the Central Government, which is to be done by that Government by a notification in the official gazette. The Central Government has made rules under the PoSH Act, in exercise of their powers under Section 29, that is to say, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (for short, 'the PoSH Rules'). Therefore, inquiry into a complaint under the PoSH Act can either be held according to the service rules applicable to the employer’s establishment, and where no such rules exist, in accordance with the PoSH Rules. There is no jurisdiction with the employer to frame rules under the PoSH Act to hold an inquiry into a complaint under the said statute. It is, therefore, urged on behalf of the petitioner that the inquiry held in the petitioner’s case in accordance with the IITK Rules, which have been made by the IIT under the PoSH Act, is ultra vires the Act last mentioned, rendering the proceedings void.

14. The petitioner submitted his written brief of defence on 26.09.2022. The petitioner received a memo dated 01.11.2022, with the Director of the IIT forwarding a copy of the ICC's report dated 30.09.2022. The petitioner was directed to submit his representation against the said report, if any, by 16.11.2022. The petitioner

submitted a detailed representation dated 16.11.2022 against the report of the ICC, followed by a further letter dated 30.11.2022. He then received a memo dated 22.12.2022 from the Director of the IIT, saying that the Board of Governors of the IIT in their 251st Meeting held on 11.12.2022, had carefully considered the inquiry report and the petitioner's representations dated 04.11.2022, 08.11.2022 and 16.11.2022, along with another representation dated 30.11.2022, and after due deliberations, unanimously decided to reject the representations and accept the inquiry report submitted by the ICC.

15. It was also noticed in the memo dated 22.12.2022 that the petitioner had earlier been held guilty of sexually harassing another student working under his supervision, where the Board of Governors, in their 242nd Meeting held on 03.09.2021, had resolved to impose the penalty of withholding increments with cumulative effect for three years and that the said order of punishment was still in force. The memo under reference went on to say that considering the petitioner's previous misconduct as well as the one now arising, the Board, after extensive deliberations, had come to the conclusion that he was not a fit person to be retained in service of the IIT. The Board had, therefore, proposed to award the penalty of compulsory retirement in terms of Statute 13(9)(b)(b)(v) of the Statutes of the IIT. The Board had, accordingly, directed the issue of a show cause notice to the petitioner, seeking his clarification/ representation within 15 days as to why the penalty proposed be not awarded. The matter was directed to come up before the Board for a final decision along with the petitioner's representation, if any. The petitioner was, therefore, called upon to submit a representation against the penalty proposed to be awarded to him.

16. The petitioner instituted Writ-A No.121 of 2023, challenging the inquiry report dated 30.09.2022, the resolution of the Board of Governors of the IIT dated 27.10.2022, the memorandum dated 01.11.2022, the resolution of the Board of Governors dated 11.12.2022 and the memorandum dated 22.12.2022. The aforesaid writ petition was dismissed as withdrawn with liberty to file a fresh petition on 01.02.2023. The petitioner then submitted representations, numbering four, against the memorandum dated 22.12.2022, issuing him a show cause notice against the proposed penalty. These four representations were dated 4th, 5th, 6th and 7th January, 2023. In addition to these representations against the show cause dated 22.12.2022, the petitioner lodged an appeal under Rule 45 of the IITK Rules on 29.01.2023, challenging the inquiry report dated 30.09.2022 submitted by the ICC. In this appeal, the report was questioned on jurisdictional errors as well as the merits of the findings.

17. The Board of Governors, by their resolution dated 22.02.2023, which is quite eloquent, rejected the petitioner's appeal under Rule 45 in the first part, and in the second, his representations – all four against the show cause notice dated 22.12.2022, and punished the petitioner with an order for compulsory retirement from service. In accordance with the resolution of the Board of Governors dated 22.02.2023, the Director of the IIT issued an office order dated 01.03.2023, formally notifying the decision of the Board, punishing the petitioner with compulsory retirement, with effect from the date of the Director's order.

18. Aggrieved by the resolution of the Board of Governors of the IIT dated

22.02.2023 and the order of the Director, notifying it dated 01.03.2023, the petitioner has instituted the present petition under Article 226 of the Constitution.

19. A counter affidavit has been filed on behalf of respondent Nos.2 to 6, and another, on behalf of respondent No.7. A rejoinder has been filed by the petitioner in reply to the counter on behalf of respondent Nos.2 to 6 and one separately to the counter affidavit on behalf of respondent No.7. In addition, there are supplementary counter affidavits dated 09.11.2023, 22.11.2023 and 28.07.2024, all filed on behalf of respondent Nos.2 to 6.

20. In the counter affidavit filed on behalf of respondent Nos.2 to 6, it is pleaded that the PoSH Rules have been approved by the Board of Governors of the IIT in exercise of their powers under Section 13(1) of the Institutes of Technology Act, 1961 (for short, 'the Act of 1961'). These Rules were necessitated in view of the provisions of Section 11(1) of the PoSH Act. The CCS Rules, according to the respondents, are not applicable to the IIT, nor is there any provision under the Act of 1961 or the Statutes of the IIT, providing for the procedure and the manner of holding an inquiry into a complaint of sexual harassment. There are then pleadings to show that natural justice has been adhered to at various stages, consistent with the IITK Rules and the sensitive nature of the inquiry, where the rights of a woman, complaining of sexual harassment, were involved. It is emphasized that the procedure to hold an inquiry under the IITK Rules is flexible. It has been pleaded that the petitioner, by raising technical objections, wanted to procrastinate proceedings and violate the time limit of 90 days to complete an inquiry mandated by Section 11(4) of the PoSH Act.

21. The allegations of bias against the ICC have also been repelled, saying that it was a multi-membered body, drawing its members from different departments. The petitioner's conduct was found blameworthy and his defence unsubstantiated by the ICC upon a consideration of evidence. The findings of the ICC, after due opportunity to the petitioner, have been accepted by the Board of Governors of the IIT. The question of quantum of punishment to be meted out to the petitioner too was carefully considered by the Board of Governors before the impugned order was passed.

22. The petitioner's appeal under Rule 45 of the IITK Rules was duly considered and disposed of. It is highlighted that an appeal from the findings of the ICC to the Disciplinary Authority, that is to say, the Board of Governors, is a unique feature of the IITK Rules with no *pari materia* provisions in the PoSH Rules framed under the PoSH Act or the CCS Rules. The petitioner, therefore, had all protection in the matter of defending himself under the PoSH Rules, which he availed. It had been pleaded more than once that the CCS Rules do not apply to the IIT at all and the Board of Governors of the IIT are empowered under Section 13(1) of the Act of 1961 to make rules for proper and smooth functioning of the institution.

23. It must be recorded here that from a clarification matter arising out of Writ-A No.4878 of 2021, which pertains to an earlier proceeding against the petitioner with regard to sexual harassment, an order dated 25.04.2023 was passed by the learned Single Judge, post judgment. The order of

the learned Single Judge dated 25.05.2023, passed on the clarification application in the writ petition aforesaid, was challenged in Special Appeal No.338 of 2023, where the Division Bench set aside the order passed by the learned Single Judge. The petitioner moved the Supreme Court by a petition for Special Leave to Appeal No.14058 of 2023, wherein, their Lordships issued notice and ordered that until the next date of hearing, the petitioner shall not be evicted from the residential premises in his occupation. Later on, while hearing Special Leave Petition No.14058 of 2023, the following order was passed by the Supreme Court on 11.09.2023:

"After hearing learned counsel for the parties, we find that the interim order dated 25.04.2023 passed in Writ Application No. 4878 of 2021 was challenged in Special Appeal No. 338 of 2023 wherein the impugned order dated 25.05.2023 has been passed allowing the said appeal. The Division Bench set aside the order dated 25.04.2023 of learned Single Judge passed on Modification Application – I.A.No. 7 of 2023.

During hearing, it is conceded before us that the present Special Leave Petition is arising out of an interim proceedings, however, maintaining the interim order passed by this Court on 10.07.2023, the Writ Court may be requested to decide the Writ Petition No. 4492 of 2023 on its own merits, uninfluenced by the observations made in the impugned order dated 25.05.2023 and the order passed by the learned Single Judge on 25.04.2023.

We find substance in the submissions jointly made by the parties. Accordingly, we defer hearing of this Special Leave Petition and request the High Court to decide the Writ Petition No. 4492 of 2023 as expeditiously as possible, uninfluenced by the observations made in the impugned order dated 25.05.2023 and the order dated 25.04.2023 passed by the learned Single judge. We further request the High Court to decide the said Writ Petition within a period of three months from the date of production of a copy of this order as far as possible.

Re-list this Special Leave Petition in the month of February, 2024."

24. This Court must notice that so far as this petition is concerned, the proceedings of the present matter have been expedited by the Supreme Court with the clarification that we would not take into account the orders passed by the learned Single Judge and the Division Bench in Writ-A No.4878 of 2021 and Special Appeal No.338 of 2023, respectively. We have, therefore, proceeded accordingly in this matter.

25. Heard Mr. Avneesh Tripathi, learned Counsel for the petitioner, Mr. Manish Goyal, learned Senior Advocate, assisted by Mr. Rohan Gupta, learned Counsel appearing on behalf of respondent Nos. 2 to 6 and Mr. Ashok Kumar Srivastava, learned Counsel appearing for respondent No. 7.

26. This Court must remark that the hearing in this matter ran into minute details and most of the time, learned Counsel for both sides attempted to charm this Court into entering the arena of appreciating the evidence of parties for and against the charge dealt with by the ICC and the Disciplinary Authority. Bearing in mind our limitations in a writ petition, we cannot arrogate to ourselves the powers of a first appellate Court, as if it were.

27. Broadly, there are two issues, amongst the many vociferously canvassed before us, that can legitimately be examined in the present writ petition. The first is: Whether the IIT was empowered to frame the IITK Rules under the PoSH Act? A corollary of this issue is: If the IIT did not have powers under the PoSH Act to make Rules, would the resultant inquiry under those rules be vitiated? The other substantial issue is: Whether the inquiry held was one in breach of principles of natural justice and the salutary procedure to hold an inquiry into misconduct involving the imposition of a major penalty?

28. So far as the first issue is concerned, there is little doubt that the inquiry here is one under the PoSH Act. Section 11 of the PoSH Act reads:

"11. Inquiry into complaint.—(1) Subject to the provisions of Section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under Section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of Section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in Section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of Section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days."

29. Section 11 (1) is relevant to the first issue. A bare reading of the statute would show that an ICC, where the respondent (delinquent) is an employee, is obliged to inquire into the complaint in accordance with the service rules

applicable to the employer's establishment and in the contingency, where no such rules exist, the Internal Committee must proceed in such manner as prescribed. Section 2(k) defines "prescribed'" in the following terms:

"2. Definitions.—In this Act, unless the context otherwise requires,—

(k) "prescribed" means prescribed by rules made under this Act;"

30. The power to make rules under the PoSH Act is provided under Section 29 thereof. Section 29 of the PoSH Act reads:

"29. Power of appropriate Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(a) the fees or allowances to be paid to the Members under sub-section (4) of Section 4;

(b) nomination of members under clause (c) of sub-section (1) of Section 7;

(c) the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of Section 7;

(d) the person who may make complaint under sub-section (2) of Section 9;

(e) the manner of inquiry under sub-section (1) of Section 11;

(f) the powers for making inquiry under clause (c) of sub-section (2) of Section 11;

(g) the relief to be recommended under clause (c) of sub-section (1) of Section 12;

(h) the manner of action to be taken under clause (i) of sub-section (3) of Section 13;

(i) the manner of action to be taken under sub-sections (1) and (2) of Section 14;

(j) the manner of action to be taken under Section 17;

(k) the manner of appeal under sub-section (1) of Section 18;

(l) the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of Section 19; and

(m) the form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (1) of Section 21.

(3) Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Any rule made under sub-section (4) of Section 8 by the State Government shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of

two Houses, or where such Legislature consists of one House, before that House."

31. The submission of the petitioner on the applicability of the IITK Rules is firstly premised on ground that there are service rules applicable to the respondent's establishment and these are the CCS Rules. The learned Counsel for the respondent IIT, on the other hand, has urged that the CCS Rules do not apply to the IIT, inasmuch as the IIT is governed by the Act of 1961, the Statutes framed thereunder, besides the rules and regulations made by the Statutory Authorities of the IIT. The learned Counsel for the petitioner, during the course of his submissions, said that a number of inquiries under the PoSH Act, that were held earlier against various employees, were conducted according to the provisions of the CCS Rules. It is pointed out by the learned Counsel for the petitioner that an earlier inquiry under the PoSH Act held against the petitioner was undertaken in accordance with the CCS Rules. It is urged that these apply because no service rules, governing the holding of disciplinary proceedings, have been framed by the IIT.

32. The further submission is that since the CCS Rules would apply to the holding of an inquiry under the PoSH Act, the formality of procedure under Rule 14 of those Rules has to be observed. It is also emphasized that under the CCS Rules, a charge-sheet has to be issued, reducing the allegations against a delinquent into a definitive Article of charges, along with the imputations of misconduct. The list of documents and witnesses in support of each charge too has to be supplied to the delinquent. In this case, nothing of this kind has been done and the allegations in the complaint, which are interlapping and vague, have been determined by the ICC following a procedure not authorized by the law. It has resulted in prejudice to the petitioner as well. So far as this part of the petitioner's submission is concerned, we are afraid that it cannot be accepted. The reason is that the IIT functions under the Act of 1961 and the CCS Rules, that apply to a government servant, as defined under Rule 2(h) thereof, would not apply *proprio vigore*. Rule 2(h) of the CCS Rules reads:

"2. Interpretation.– In these rules, unless the context otherwise requires, -

(h) "Government servant' means a person who –

(I) is a member of a Service or holds a civil post under the Union, and includes any such person on foreign service or whose services are temporarily placed at the disposal of a State Government, or a local or other authority;

ii) is a member of a Service or holds a civil post under a State Government and whose services are temporarily placed at the disposal of the Central Government;

iii) is in the service of a local or other authority and whose services are temporarily placed at the disposal of the Central Government;"

33. The petitioner, who is an employee of the IIT, governed by the Act of 1961, is, by no stretch of imagination, a government servant within the meaning of the CCS Rules. Merely because in the past or intermittently, there have been instances where the IIT have followed or applied the provisions of the CCS Rules to conduct disciplinary proceedings, or for that matter, even inquiries under the PoSH Act, would not make the CCS Rules applicable to the IIT or entitle its employees to claim that these apply.

34. The learned Senior Advocate for the respondent-IIT has said that in the earlier inquiry under the PoSH Act, which was undertaken against the petitioner, though done under the CCS Rules, the resort to those rules was at a time when the IITK Rules were not made and enforced. We do not wish to countenance or endorse in any manner the course of action hitherto adopted by the IIT in holding inquiries under the PoSH Act, or otherwise in accordance with the CCS Rules. We do not wish to comment on that issue at all because it is not necessary to do so. All that is relevant, in our opinion, is that the CCS Rules do not apply *proprio vigore* to a disciplinary proceeding held by the IIT or one under the PoSH Act. The Act of 1961 is a self-contained enactment providing for the establishment of the Institutes of Technology, including the IIT. Section 13(1) of the Act of 1961 confers residual powers on the Board of Governors, as defined under Section 3(a) of the said Act to exercise all powers of the IIT, not otherwise provided for by the Act of 1961. The Board of Governors also have the power to make statutes and ordinances. Apparently, they also have the power to make rules. The power to make rules includes the power to make service rules for their employees.

35. What is not in dispute here is that the IIT, or so to speak, the Board of Governors of the IIT, have not framed or made any service rules for its teachers and employees. They have, in the past held disciplinary inquiries or those under the PoSH Act, drawing upon the provisions of the CCS Rules. May be, that course of action in the past has not been frowned upon by Courts or held invalid, but that does not make the CCS Rules applicable to the IIT proprio vigore, as already said. Also, the fact remains that no service rules have been framed or made by the IIT, in accordance with which, disciplinary proceedings against employees and teachers may be conducted. The question that then falls for consideration is: If in the absence of a charter of service rules made by the IIT in exercise of their powers under the Act or the Statutes, providing for the holding of disciplinary proceedings generally, can the IIT specifically make rules for the conduct of inquiries under the PoSH Act? We do not think so. While it is true that the IIT have all powers, including residual powers, enabling them in this behalf to make rules governing the holding of disciplinary proceedings against their employees and teachers under Section 13(1) of the Act of 1961, the said power would not be available to frame rules only for the purpose of holding an inquiry under the PoSH Act.

36. It is quite another matter that if the IIT, in the exercise of their powers under the Act, make service rules, or particularly rules dealing with the conduct of disciplinary proceedings against their teachers and other employees, and as part of those rules, also provide for inquiry into charges of sexual harassment etc., an inquiry under the PoSH Act may be held in accordance with such rules. But, unless there are duly framed rules generally applicable to the IIT providing for the holding of disciplinary proceedings against their employees and teachers, they would have no power to frame rules to conduct inquiries under the PoSH Act alone. This is the irresistible conclusion that can be drawn from a bare reading of Section 11 of the PoSH Act. Section 11(1) envisages that an internal committee probing a complaint against an employee, called a respondent there, may make the inquiry in accordance

with the provisions of service rules applicable to that employee or respondent, and then provides that if no such rules exist, in such manner as may be prescribed. The PoSH Act is a special Act and though not given overriding effect over other laws, is nevertheless a special Statute. It caters to a particular purpose and designed to curtail an emergent mischief in society. It is a legislation, primarily moved by judicial intervention in the much celebrated **Vishaka and others v. State of Rajasthan and others**, (1997) 6 SCC 241. Eschewing a chronological and searching perspective into the background that led to enactment of the PoSH Act, suffice it to say that it was enacted to promote security and gender equality for women in workplace, a phenomenon, need and necessity, that was the fallout of more women coming out to join all kinds of professions, jobs and callings, and work shoulder to shoulder with men.

37. Now, Section 28 of the PoSH Act provides:

"**28. Act not in derogation of any other law.—**The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."

38. All that Section 28 means is that where any other statute or provision is made to safeguard the interest of women, that statute would not stand ousted from the field by the PoSH Act. But, this does not mean that anything provided by the PoSH Act to be done in a particular manner can be done in any other. Section 11(1) of the PoSH Act, as already said, envisages two situations for an establishment, where an employee working is complained of for sexual harassment etc. by a co-employee. The first is where service rules governing the holding of disciplinary proceedings made in exercise of their statutory powers by the establishment, already exist, and, the other, where no such service rules exist. If no service rules generally dealing with disciplinary proceedings exist in the establishment, the employer would have no jurisdiction under the PoSH Act to frame rules for the purpose. The Rules that would be attracted to a case of the latter kind would be rules made in the manner prescribed. Those rules are ones made in accordance with Section 29 of the PoSH Act by the Central Government. The PoSH Rules are already there, framed under the PoSH Act. Since we have already held on the basis of the material on record and the stand of parties that there are no service rules framed by the IIT, generally applicable to their employees and teachers in the matter of holding disciplinary proceedings, the IIT would not have the competence to make rules for dealing with complaints under the PoSH Act. That power, in the absence of existing service rules in the establishment, would vest in the Central Government and the rules made by them alone would apply.

39. It is next submitted by Mr. Manish Goyal that the IITK Rules have been made by the IIT in aid of the PoSH Act and the PoSH Rules; not contrary to them. These are rules adopted and modified to suit the organizational structure of the IIT. The IITK Rules were notified and circulated to all concerned vide notification dated 01.12.2023, with no objection from anyone, including the petitioner. It is also urged that an inquiry done under the rules, like the one under consideration here, causes no prejudice to the petitioner, if one were to compare the procedure envisaged under the PoSH Rules and that under the

IITK Rules. So far as the first part of these submissions goes, we do not think that the IITK Rules, which have been avowedly made for the purpose of providing for the manner of holding inquiries under the PoSH Act, can be regarded as *"the service rules applicable to the respondent",* envisaged under sub-Section (1) of Section 11 of the Act, last mentioned. The words *"service rules"* are words of wider import and generic connotation, signifying a reference to rules governing service conditions or matters relating to service in an establishment. It cannot be regarded to mean rules made by an employer for the purpose of inquiry into complaints under the PoSH Act alone. To construe the words *"service rules applicable to the respondents",* occurring in sub-Section (2) of Section 11 also as rules essentially framed to inquire into complaints under the PoSH Act, would be doing violence to the unequivocal intendment of the statute.

40. Therefore, to suggest that the PoSH Rules, purporting to be made by the IIT in the exercise of their powers under Section 13(1) of the Act of 1961 should be regarded as "service rules applicable to the respondent", as envisaged under sub-Section (1) of Section 11 of the PoSH Act, is a proposition difficult to accept. While it is true that if there were existing services rules applicable to the establishment, generally dealing with service matters of employees and teachers of the IIT in this case, a complaint under the PoSH Act could very well be dealt with under those rules. But, it is clearly beyond the competence of the IIT, like any other establishment or employer, specifically to make rules under the PoSH Act in the exercise of their powers of rule-making, that do not generally qualify as service rules. The Rules under the PoSH Act, where there are no existing service rules generally applicable to the service conditions of employees of an establishment, can only be made in the manner prescribed, that is to say, by the Central Government. The inescapable conclusion, therefore, is that the IITK Rules made by the IIT are ultra vires the provisions of Section 11(1) of the PoSH Act.

41. So far as the issue of the IITK Rules being notified and circulated to all concerned vide notification dated 01.12.2023 with no objection from any quarter, including the petitioner, is concerned, there cannot be any acquiescence or estoppel in the matter. If the rules are beyond the competence of the IIT to make under Section 11(1) of the PoSH Act, as already held, a non-protest or even express acceptance thereof by the employees, including the petitioner, cannot validate the rules or imbue them with life. After all, the power to make rules under an Act is a matter of legislative competence and if the Authority making the rules has not been given the power to make rules, no amount of acceptance, acquiescence or an act of estoppel would avail the respondents.

42. So far as the last limb of the submissions advanced by Mr. Goyal is concerned, for a first, it must be remarked that it is a salutary principle of the law that where a statute prescribes a particular thing to be done in a particular manner, it must be done in that manner alone or not at all. The inquiry here is not on a charge of misconduct, arising out of sexual harassment, generally under the service rules, if any, applicable to the IIT. It is an inquiry under the PoSH Act, a special statute. That statute directs the inquiry to be undertaken under Section 11(1) and its

various other provisions in a particular manner. We have found, on an analysis of the matter, that in the present case, it was incumbent for the IIT to have followed the procedure envisaged under the PoSH Rules, framed under the PoSH Act. The inquiry, therefore, had to be held in the manner prescribed, that is to say, under the PoSH Rules and in no other manner. Therefore, in the background of the special statute and its provisions, the way they apply to the IIT, the question of prejudice may not be very relevant. After all, the IIT under the PoSH Act are obliged to follow the rules framed under the Act last mentioned, if they are to hold an employee or a teacher, like the petitioner, guilty under the provisions of the said Act. They could not have followed or applied any other kind of rules to the proceedings.

43. Assuming that the question of prejudice is still relevant, we proceed to examine the said issue. In support of this submission of his, Mr. Goyal has urged that invalidation of proceedings, inquiring into sexual misconduct, based on a hyper-technical interpretation of the applicable service rules should be eschewed. In aid of his submission on the point, Mr. Goyal has placed reliance upon the decision of the Supreme Court in **Union of India and others v. Mudrika Singh, (2022) 16 SCC 456.** He has particularly drawn our attention to paragraph Nos.38, 39, 41, 42, 44 and 45 of the report, which read:

"38. Accordingly, on an analysis of the scope and statutory purpose of the Army Act, 1950, the Constitution Bench in S.N. Mukherjee [S.N. Mukherjee v. Union of India, (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242] concluded that there was no requirement of furnishing reasons.

39. After adverting to the principles enunciated by the Constitution Bench in *S.N. Mukherjee [S.N. Mukherjee v. Union of India*, (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242] and *Som Datt Datta* [Som Datt Datta v. Union of India, 1968 SCC OnLine SC 73 : AIR 1969 SC 414] , this Court in *Dinesh* Kumar [Union of India v. Dinesh Kumar, (2010) 3 SCC 161 : (2010) 1 SCC (L&S) 1135] in the context of Rule 149 of the BSF Rules, 1969, held : (Dinesh Kumar case *[Union of India v. Dinesh Kumar,* (2010) 3 SCC 161 : (2010) 1 SCC (L&S) 1135] , SCC pp. 168-69, para 23)

"23 [Ed. : Para 23 corrected vide Official Corrigendum No. F.3/Ed.B.J./46/2010 dated 7-4-2010.] . In this backdrop, it is clear that the provisions for the SSFC and the appellate authority are *pari materia*, more particularly in case of Rule 149 and Section 117(2) of the Act, with the provisions which were considered in both the above authorities. Therefore, there cannot be any escape from the conclusion that as held by the Constitution Bench, the reasons would not be required to be given by the SSFC under Rule 149 or by the appellate authority under Section 117(2) of the Act. This position is all the more obtained in case of SSFC, particularly, as the legislature has chosen not to amend Rule 149, though it has specifically amended Rule 99 w.e.f. 9-7-2003. It was pointed out that in spite of this, some other view was taken by the *Delhi High Court in Nirmal Lakra v. Union of India* [Nirmal Lakra v. Union of India, 2002 SCC OnLine Del 1134 : (2003) 102 DLT 415] . However, it need not detain us, since Rule 149 did not fall for consideration in that case. Even otherwise, we would be bound by law declared by the Constitution Bench in *S.N. Mukherjee v.*

Union of India [S.N. Mukherjee v. Union of India, (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242] ."

(emphasis supplied)

41. In the above circumstances, the High Court was in error on both the grounds which have weighed in its ultimate decision. There was no error of jurisdiction on the part of the Commandant in seeking clarification in regard to the date of the incident by calling for an additional RoE. As we have noted, the respondent was not prejudiced since he understood the allegations against him as pertaining to the events which transpired on the night when he was on duty, intervening 16-4-2006 and 17-4-2006, and more specifically in the early hours of 17-4-2006.

42. On the second aspect, the decision of the High Court has failed to notice the judgment of this Court in Dinesh Kumar [Union of India v. Dinesh Kumar, (2010) 3 SCC 161 : (2010) 1 SCC (L&S) 1135] [which in turn is based on para 40 of the principles enunciated by the Constitution Bench in S.N. Mukherjee [S.N. Mukherjee v. Union of India, (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242]]. The charge against the respondent was found to have been duly substantiated by evidence on the record. While dealing with the respondent's statutory petition under Section 117, the Director General of BSF, reduced the quantum of sentence. He was empowered to do so in accordance with the provisions of Section 48 of the BSF Act, 1968.

44. Before we conclude our analysis, we would also like to highlight a rising trend of invalidation of proceedings inquiring into sexual misconduct, on hypertechnical interpretations of the applicable service rules. For instance, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 penalises several misconducts of a sexual nature and imposes a mandate on all public and private organisations to create adequate mechanisms for redressal. However, the existence of transformative legislation may not come to the aid of persons aggrieved of sexual harassment if the appellate mechanisms turn the process into a punishment. It is important that courts uphold the spirit of the right against sexual harassment, which is vested in all persons as a part of their right to life and right to dignity under Article 21 of the Constitution. It is also important to be mindful of the power dynamics that are mired in sexual harassment at the workplace. There are several considerations and deterrents that a subordinate aggrieved of sexual harassment has to face when they consider reporting sexual misconduct of their superior.

45. In the present case, the complainant was a constable complaining against the respondent who was the head constable — his superior. Without commenting on the merits of the case, it is evident that the discrepancy regarding the date of occurrence was of a minor nature since the event occurred soon after midnight and on the next day. Deeming such a trivial aspect to be of monumental relevance, while invalidating the entirety of the disciplinary proceedings against the respondent and reinstating him to his position renders the complainant's remedy at naught. The history of legal proceedings such as these is a major factor that contributes to the deterrence that civil and criminal mechanisms pose to persons aggrieved of sexual harassment. The High

Court, in this case, was not only incorrect in its interpretation of the jurisdiction of the Commandant and the obligation of the SSFC to furnish reasons under the BSF Act, 1968 and Rules therein, but also demonstrated a callous attitude to the gravamen of the proceedings. We implore courts to interpret service rules and statutory regulations governing the prevention of sexual harassment at the workplace in a manner that metes out procedural and substantive justice to all the parties."

44. The facts giving rise to the issue involved in **Mudrika Singh** *(supra)* can best be recapitulated from the succinct description of these in the report of their Lordships' judgment. These read:

"1. The Union of India and officials of the Border Security Force ("BSF") are in appeal against a judgment of a Division Bench of the Calcutta High Court dated 18-12-2018 [*Union of India v. Mudrika Singh, 2018 SCC OnLine Cal* 16862] which quashed disciplinary proceedings against the respondent and reinstated him to his initial position in the BSF.

2. In April 2006, at the time of the alleged misconduct, the respondent was a Head Constable in the BSF and was deployed to the Seventy-second Battalion. On 2-5-2006, the Commandant directed the Deputy Commandant to prepare a record of evidence ("RoE") against the respondent for an offence constituting "disgraceful conduct" under Section 24(a) of the Border Security Force Act, 1968 ("the BSF Act, 1968"). The specific allegation, as set out in the order, was as follows:

"disgraceful conduct of an unnatural kind

In that he, between 0200 hrs to 0600 hrs on 16-4-2006 while on Naka duty under BOP Sahab Khan committed sodomy on the person of No. [xyz] Const [xyz] of the sam(e) Battalion."

3. The incident in question is alleged to have taken place on the night intervening 16-4-2006 and 17-4-2006. The complainant, a Constable in the BSF, was on Naka duty between 0200 to 0600 hrs when the respondent is alleged to have committed an act of sexual assault on him. The complainant submitted a written complaint on 19-4-2006. Under the BSF Act, 1968, such conduct is liable to be prosecuted under Section 24(a) which reads as follows:

"24. Certain forms of disgraceful conduct.—Any person subject to this Act who commits any of the following offences, that is to say—

(a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or

(b)-(c)***

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned."

4. The RoE was prepared by the Deputy Commandant and submitted to the Commandant. On 10-6-2006, the Commandant noted that on a scrutiny of the RoE proceedings, it was found that there was an inconsistency in the statements of the witnesses as regards the date on which the incident had occurred. Hence, on 10-6-2006, the Commandant called for the preparation of an additional RoE. Following the receipt of the additional RoE, the Commandant issued an order to convene a Summary Security Force Court ("SSFC") to try the respondent. In the course of the evidence which was recorded

pursuant to the direction of the Commandant seeking an additional RoE, the complainant stated that the incident took place on 17-4-2006. The respondent was provided with copies of the RoE, additional RoE and the charge-sheet on 3-8-2006.

5. On 7-8-2006, the SSFC convened at the Headquarters of the Seventy-second Battalion of the BSF, at Narayanpur, Malda (West Bengal) for enquiring into the charge under Section 24(a) of the BSF Act, 1968. The respondent pleaded not guilty to the charge. Four prosecution witnesses were examined and the respondent was furnished with an opportunity to cross-examine them and to call for defence witnesses. The SSFC found the respondent guilty of the charge and demoted him to the rank of a Constable as a punishment.

6. On 6-9-2006, the respondent filed a statutory petition under Section 117 ***["117. Remedy against order, finding or sentence of Security Force Court***.—(1) Any person subject to this Act who considers himself aggrieved by any order passed by any Security Force Court may present a petition to the officer or authority empowered to confirm any finding or sentence of such Security Force Court, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any Security Force Court which has been confirmed, may present a petition to the Central Government, the Director General, or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Director General, or the prescribed officer, as the case may be, may pass such order thereon as it or he thinks fit."] of the BSF Act, 1968 before the Director General of the BSF to challenge the conviction recorded by the SSFC on 7-8-2006. The statutory petition was heard by the appellate authority—the Director General of BSF and was disposed of by an order dated 18-10-2006. While the charge against the respondent was found to have been established, the punishment of reduction to the rank of Constable was commuted, having regard to the fact that the respondent had over 22 years of unblemished service with 21 rewards to his credit. The respondent was informed that the Director General of the BSF had commuted the sentence of reduction to the rank of Constable by substituting it with the following:

"(i) 'To forfeit 5 years services for the purpose of promotion';

(ii) 'To forfeit 7 years past service for the purpose of pension'; and

(iii) 'To be severely reprimanded'."

7. The respondent moved the High Court of Calcutta under Article 226 of the Constitution. A Single Judge of the High Court, by an order dated 7-5-2009 *[Mudrika Singh v. Union of India,* 2009 SCC OnLine Cal 1079] , set aside the order of punishment on the ground that:

(i) The original RoE was insufficient to prove the charge; and

(ii) The order of the Commandant for preparing an additional RoE was beyond jurisdiction.

8. The judgment [*Mudrika Singh v. Union of India*, 2009 SCC OnLine Cal 1079] of the Single Judge has been upheld by the impugned judgment of the Division Bench of the High Court on 18-12-2018 [Union of India v. Mudrika Singh, 2018

SCC OnLine Cal 16862] on the ground that:

(i) The Commandant did not have jurisdiction to direct the preparation of an additional RoE under Rule 51 of the Border Security Force Rules, 1969 ("the BSF Rules, 1969") as it stood at the relevant time; and

(ii) No reasons were furnished by the SSFC or the appellate authority—Director General of BSF—for holding the respondent guilty."

45. On the submissions of parties, the questions that arose for consideration before their Lordships are detailed in the report thus:

"12. Essentially, down to its core, the controversy in the present case turns upon two aspects : firstly, whether the Commandant prior to the amendment of Rule 51 in 2011 had jurisdiction to direct the preparation of an additional RoE; and secondly, whether the finding of guilt which has been recorded by the SSFC stands vitiated in the absence of reasons. Now, before we analyse the first of the above two facets, it becomes necessary to understand the circumstances in which the Commandant directed the Assistant Commandant to prepare an additional RoE on 10-6-2006."

46. In answering the questions involved, their Lordships were of opinion that the amendment to Rule 51 of the BSF Rules, 1969 was clarificatory in nature and the Commandant always had the power to direct under the unamended BSF Rules, 1969, the preparation of an additional RoE or abstract of evidence. This power was inferred by their Lordships as one implicit in Rules 48 and 51 read with Rule 6 of the BSF Rules, 1969 as these stood before the amendment. The amendment to the BSF Rules, 1969 made after the offence was regarded as clarificatory and, therefore, retrospective.

47. So far as the other issue, which fell for consideration of their Lordships in **Mudrika Singh**, the holding was that going by consistent authority and on the terms of the statute involved, a Summary Security Force Court was not required to give reasons for the punishment awarded, though a General Security Force Court and a Petty Security Force Court were so obliged. It is on the foot of the said conclusions that the remarks of their Lordships, particularly in paragraph Nos.44 and 45 of the report, are based. Also, the remarks in paragraph Nos.44 and 45 have to be understood in the background of the fact that what was discrepant between the RoE, initially drawn up, and that done as the additional RoE was the date of the incident alone. The discrepancy was if the incident occurred on the 16th of April, 2006 or the 17th. It had happened in the night intervening 16th/ 17th April. In the RoE, there was a discrepancy in the statement of witnesses as regards the date of the incident leading the Commandant to direct an additional RoE. The additional RoE clarified the fact that the incident happened in the night intervening 16th / 17th of April, 2006, or to be more specific, as it appears, in the wee hours of the 17th of April. Their Lordships noticed that this was a position, which the charged employee confirmed in his evidence, but the High Court had found the discrepant version in the evidence earlier recorded about the date of the incident to be a vitiating factor. Their Lordships held this a minor discrepancy regarding the date of occurrence "since the event occurred soon after midnight and on the next day", to

borrow the words of their Lordships. It was in that context remarked that this small discrepancy was not of such significance as would invalidate the entire proceedings. The other remarks about furthering the purpose of rules meant to prevent sexual harassment at workplace came in the background of these particular features that were there in **Mudrika Singh**. This is hardly the case here. The case here is not based upon a hyper-technical objection, emanating from a minor discrepancy in evidence or the insistence on a requirement, like the one in **Mudrika Singh**, to write reasons for the decision that the statute did not warrant. The issue here is a substantial one; and, that is, the rules according to which inquiry into the case of sexual harassment was held not being made by the Authority competent under the law in the manner prescribed.

48. Now, to examine if the IITK Rules, according to which the inquiry was held, are, in any way, different from those framed under the PoSH Act in the manner prescribed, that is to say, the PoSH Rules made by the Central Government; and, if the two rules are different, would following the IITK Rules to hold an inquiry prejudice the petitioner? In order to answer this question, one has to look to the provisions of the PoSH Act and the PoSH Rules on one hand, juxtaposed against the relative provision under the IITK Rules and find out if there are such differences as might prejudice the petitioner in the matter of his defence. A comparison of the provisions of the PoSH Act and the PoSH Rules framed thereunder and the IITK Rules made by the IIT, may be summarized in tabular form thus:

Sr. No.	Particulars	PoSH Act and the PoSH Rules	IITK Rules
1.	Source of Power	PoSH Rules enacted under Section 29 of the PoSH Act	IITK Rules enacted under Section 13(1) of the Act of 1961 read with Section 11(1) of the PoSH Act.
2.	Constitution of ICC	The constitution of the Internal Complaints Committee is specified by Section 4 of the PoSH Act Constitution of the ICC according to Section 4 of the PoSH Act: 1. Presiding Officer (woman at a senior level) 2. Not less than two members from amongst employees committed to the cause of women/ experience in social work/ have legal knowledge 3. One member from amongst non-governmental organization or association committed to the cause of women or a person familiar with issues relating to sexual harassment. One half of the nominated persons as aforesaid to be women	The constitution of the Internal Complaints Committee has been prescribed by Rule 4 of the IITK Rules: 1. Presiding Officer, to be a senior woman Professor of the Institute; 2. one person from amongst the academic staff of the Institute; 3. one person from amongst the non-academic staff of the Institute; 4. two person from amongst academic/ non-academic staff of the Institute committed to the cause of women/ experience in social work/ have legal knowledge; and 5. one person from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. At least one-half of the total members to be so nominated shall be women.
3.	Manner of preliminary inquiry	No provision for a preliminary inquiry	Rule 16 envisages a preliminary inquiry and

			summary rejection of the complaint
4(a)	Statement of case of parties during regular inquiry	Rule 7. Manner of inquiry into complaint.— (1) Subject to the provisions of Section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses. (2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days. (3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).	Rule 18. On receipt of the complaint, the Committee shall as far as possible within seven working days, send a copy of the complaint along with the names and addresses of witnesses and supporting documents, received along with the complaint, to the respondent. At the same time, the Committee shall summon the respondent to appear in person and file his reply within a period not exceeding ten working days before the Committee. The summon notice shall contain the date, time and venue of the inquiry proceedings. Summon notice shall simultaneously be issued to the complainant as well for appearance in the hearing. 19. The respondent shall in compliance of the notice as above, submit his reply to the complaint in six copies together with his own list of witnesses stating in clear terms their relevance to his defense, their addresses and supporting documents to the Committee. 20. The Presiding Officer shall make available to the complainant a copy of the reply filed by the respondent along with the list of witnesses and the supporting documents. 21. The aggrieved woman shall thereafter be allowed to submit her rejoinder, if any.
4(b)	Procedure of holding regular inquiry	Rule 7. Manner of inquiry into complaint.— (4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice. (5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the	Rule 22. Both the parties, i.e., the aggrieved woman and the respondent shall be afforded reasonable opportunity to present and defend their case. 23. After the first date of hearing, subsequent hearing shall, as far as possible, be carried out on day-to-day basis. Should the respondent or the complainant fail, without valid ground or sufficient cause, to be present on any date of hearing before the Committee or the Presiding Officer, the Committee shall have the right to conduct ex-parte proceedings and to render ex-parte decision on the complaint. Provided that such termination or ex-parte order may not be passed without

		case may be: Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned. (6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee. (7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present.	giving a notice in writing at least three days in advance to the party concerned. 24. The Committee may suo-motto summon/call any person to appear as a witnesses if in its opinion, it shall be in the interest of justice. 25. The Committee shall have the right to summon, as many times as it deems necessary, the respondent, aggrieved woman and/or any witness for supplementary testimony and/or clarifications. 26. The Committee shall have the power to summon the production of any official paper or documents pertaining or related to the subject matter of complaint, which in its opinion may be of assistance to the inquiry. 27. The past sexual history of the aggrieved woman shall not be subjected to probe during the inquiry proceedings and any such information shall be deemed to be irrelevant for the purposes of complaint of sexual harassment. 28. The presence of a minimum of four members including the Presiding Officer

			shall be necessary for all inquiry proceedings. 29. All inquiry proceedings shall be recorded by the Committee in writing.
5.	Hearing evidence post closure of inquiry	There is no provision in the PoSH Act or the PoSH Rules to receive evidence after hearing before the ICC is over.	Rule 35. Nothing shall preclude the Committee or the Institute from taking cognizance of any new fact or evidence which may arise or be brought before it during the pendency of inquiry proceedings or even after the submission of findings/report to the appropriate authorities of the Institute. However, in such case, the committee shall be required to submit its supplementary report to the Director.
6.	Manner of taking action for sexual harassmen t	Rule 9. Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion,	Rule 39. The Committee shall after completion of inquiry submit a detailed and reasoned report to the Director at the earliest but not later than ten days after completion of the inquiry along with its recommendations thereto. a. If the Committee concludes that the allegations against the respondent stand proved, it shall submit its report to the Director for awarding appropriate punishment as

		withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.	per the Statutes of the Institute. b. If the Committee concludes that allegations against the responded are malicious or false or forged/misleading documents have been produced on the part of the aggrieved woman, it may recommend to the Director to take action against such act or falsification, on the part of the aggrieved woman. 40. The Institute authorities shall act upon the recommendations within 60 days of its receipt and inform the Committee of action taken.
5.	Appeal	Rule 11. Subject to the provisions of Section 18, any person aggrieved from the recommendations made under sub-section (2) of Section 13 or under clauses (i) or clause (ii) of sub-section (3) of Section 13 or sub-section (1) or sub-section (2) of Section 14 or Section 17 or non-implementation of such recommendations may prefer an appeal to the appellate authority	Rule 45. If the aggrieved woman/complainant or the respondent is not satisfied with the findings of the Committee, she/he may prefer an appeal before the Board of Governors along with all necessary documents. Provided the appeal must be filed within a period of ninety days of the recommendations / findings/ decision of the Committee.

		notified under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).	

49. The question that is material to the petitioner is, if the inquiry were held under the PoSH Rules instead of the IITK Rules, would it have made any difference to the outcome? Apart from the broad differences under the two sets of Rules, which may not prejudice the petitioner, there are prominent features under the IITK Rules, which would inevitably work to the petitioner's prejudice. The foremost, amongst these Rules, is Rule 23 of the IITK Rules, when compared with Rule 7 of the PoSH Rules. It has to be borne in mind that the question of prejudice under the IITK Rules is being judged on a comparison of the *pari materia* provisions in the PoSH Rules.

50. Rule 23 of the IITK Rules provides that after the first date of hearing, the subsequent hearing before the Committee would proceed on a day-to-day basis, as far as possible. A speedy inquiry, by itself, does not prejudice the delinquent, nor do we intend to say that when we note that under sub-Rule (5) of Rule 7 of the PoSH Rules, there is no provision for the inquiry to be held on a day-to-day basis, as far as possible. The point of prejudice, which seems to come in the case of an inquiry held under the IITK Rules, is where Rule 23 provides that if the respondents or the complainant fail, without valid ground or sufficient cause, to be present on any date of hearing before the Committee, the Committee shall have the right to conduct *ex parte* proceedings and render an *ex parte*

decision on the complaint. By contrast, under sub-Rule (5) of Rule 7 of the PoSH Rules, it is provided that if the complainant or the respondents fail, without sufficient cause to be present for three consecutive hearings before the Complaints Committee, the Committee may give an *ex parte* decision. Whereas under Rule 23 of the IITK Rules, the power to proceed *ex parte* and give an *ex parte* decision is given to the Committee by giving the absenting party a notice in writing, at least three days in advance, the proviso to sub-Rule (5) of Rule 7 of the PoSH Rules requires the Complaints Committee to give a notice in writing 15 days in advance to the party in default.

51. In our opinion, it would be a fallacious test to apply if the complainant and the delinquent are placed on the same pedestal under Rule 23 of the IITK Rules, as regards a single day's absence, to invite an *ex parte* decision or the notice period of three days. The correct test to determine this is if the procedure under the IITK Rules, when compared with the pari materia provisions under the PoSH Rules, is more stringent, liberal or the same. We find that the procedure under Rule 23 of the IITK Rules together with its proviso, certainly postulates a procedure, that is far more stringent than sub-Rule (5) of Rule 7 of the PoSH Rules. Whereas the IITK Rules empower the Committee to punish a single day's default by the delinquent with an *ex parte* decision, sub-Rule (5) of Rule 7 of the PoSH Rules invests the Committee with this power after a default of three consecutive hearings. Likewise, a decision, *ex parte*, can be rendered by the Committee under the IITK Rules by giving the delinquent a notice of three days, whereas in the case of the PoSH Rules, the delinquent would have to be given a notice of 15 days in advance before an *ex parte* decision is given by the Complaints Committee. This marked difference in the period of time in the matter of punishable default and the breathing time to redeem the default, certainly makes the procedure under the IITK Rules far more prejudicial to the petitioner's interest as compared to the procedure envisaged under the PoSH Rules.

52. The next provision in the IITK Rules, that may be material to the question of prejudice for the petitioner or any other delinquent, is Rule 35. It enables the Complaints Committee to take cognizance of any new fact or evidence, that may be brought to its notice during the pendency of the inquiry or even after submission of findings/ report to the appropriate Authority of the IIT. The finding or the report in a case of this kind has to take the form of a supplementary report to the Director. By contrast, there is no provision under the PoSH Rules that may entitle the Complaints Committee to hear any evidence, after the inquiry is over. The powers conferred upon the Complaints Committee by the IIT through the IITK Rules are most unusual and carry provisions of a very drastic nature, that may cause utter prejudice to a delinquent, like the petitioner.

53. The provisions of Rule 35, in fact, militate against the fundamentals of what salutary principles, governing the holding of any domestic inquiry, would dictate. The Rule enables the ICC to take notice of new facts or evidence, that may not find place in the complaint instituted by the complainant or her evidence. It may come from any quarter and the ICC would be empowered to take cognizance of it. Likewise, the ICC, after all evidence is

over and the inquiry report submitted to the appropriate Authority of the IIT, is entitled to take note of new facts and evidence. In such cases, they are empowered to submit a supplementary report. The role of an Inquiry Officer or Inquiry Committee in any disciplinary proceedings, which an inquiry under the PoSH Act is akin to, is different from an investigator's role. An investigator, after all, does not give findings, but only submits a report together with evidence for the Court or the Tribunal, to decide upon whether the charge is established against the accused or not. Since the conclusions of the investigator are only in the nature of a report on which the process of trial commences, they have the freedom to further investigate after they have put in their report and by filing a supplementary report. There too, they have to take leave of the Court to proceed further with the investigation once a report is put in. Here, the Complaints Committee is a body empowered to record findings on the allegations that figure in the complaint.

54. To add to the allegations, after a report is submitted on the basis of new facts, coming to the Complaints Committee's notice under the IITK Rules and hearing further evidence indeed seriously prejudices the delinquent's right, who is exposed to a multiplicity and perpetuality of charges, where the jeopardy never seems to end. This is why we think that the provisions of Rule 35 of the IITK Rules are very drastic and seriously prejudice a delinquent, like the petitioner, if compared with the procedure under the PoSH Rules, where the Complaints Committee has no such power. The petitioner would stand to face definitive and drastic prejudice while facing an inquiry under the PoSH Act, in accordance with the IITK Rules, *vis-à-vis* the PoSH Rules.

55. The procedure for an appeal postulated under Rule 45 of the IITK Rules is also one at gross variance with the procedure under Rule 11 of the PoSH Rules. The complainant or the respondent, whoever is not satisfied with the findings of the Committee under the IITK Rules, may prefer an appeal to the Board of Governors along with necessary documents. The appeal has to be preferred within the time period of 90 days of the recommendations/ findings or report of the Committee. By contrast, what is made appealable under the IITK Rules is a recommendation by the ICC, so far as the delinquent is concerned, under Clause (i) or (ii) of sub-Section (3) of Section 13 of the PoSH Act. This, by itself, does not much prejudice the petitioner or any delinquent, because under the IITK Rules, findings of the Inquiry Committee have been made appealable to the Board of Governors of the IIT. What, in fact, prejudices a delinquent and would prejudice the petitioner under the IITK Rules, is the fact that whereas the forum of appeal from the findings of the Inquiry Officer is before a domestic body, being the Board of Governors, with its own pitfalls and disadvantages, emanating from lack of training in the law as a body entitled to hear and decide an appeal, the possibility of some in-house biases etc. the forum under Rule 11 of the PoSH Rules to hear an appeal under the PoSH Rules is the Appellate Authority notified under Clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946, which is the Tribunal or Court, an independent authority, not part of the establishment.

56. Besides the prejudice that we have so far tested on a comparison of the PoSH Rules and the IITK Rules, the exercise of the right of appeal on one hand and the decision on the recommendations of the ICC on the other, also seems to bring out a sharp incongruity within the provisions of the IITK Rules. The ICC is obliged under Rule 39 to submit a detailed and reasoned report to the Director, not later than 10 days after completion of inquiry, along with its recommendations. If the ICC concludes that the allegations against the delinquent stand proved, the report shall be made to the Director, recommending the award of appropriate punishment in accordance with the statutes of the IIT. The Authorities of the IIT are enjoined by Rule 40 of the IITK Rules to act upon the recommendations of the ICC within 60 days of receipt and inform the Committee of the action taken.

57. Now, from the date the Committee submit their report, assuming that it is provided to the delinquent immediately, he has the right to prefer an appeal within 90 days, but the Authorities of the IIT are enjoined by Rule 40 to decide within 60 days of receipt of the Committee's report. This virtually curtails the period of limitation given to the delinquent to prefer an appeal against the findings of the ICC from 90 days under the proviso to Rule 45, to less than 60 days because of Rule 40 of the IITK Rules. This incongruity, which is intrinsic to an interplay between the provisions of Rules 40 and 45 of the IITK Rules, prejudices the delinquent – someone like the petitioner, in exercising his right of appeal.

58. One would not pay much attention to the last detail on the issue of prejudice, but the others indeed cause serious prejudice. Still, there being tangible prejudice to the petitioner, if the inquiry proceeds in accordance with the IITK Rules, contrasted with what he would have to face if the inquiry were held in accordance with PoSH Rules, the IITK Rules would have to be held invalid, also on the test of prejudice.

59. We have already held that the IITK Rules are not within the authority of the IIT to frame under the PoSH Act. The element of prejudice being evident across various provisions of the IITK Rules, when compared with the PoSH Rules, it is very difficult to accept the respondent's case that holding the inquiry here in accordance with the IITK Rules does not make any material difference or cause such prejudice to the petitioner, as may warrant interference with the conclusions of the inquiry and the action taken on ground that all of it was done under the IITK Rules, which are really not authorized to be framed by the IIT under the PoSH Act. The answer to the first question would be that the IIT is not empowered to frame the IITK Rules under the PoSH Act. The answer to the corollary of the said question would be that the inquiry held under the IITK Rules, which the IIT did not have power to make under the PoSH Act, would be vitiated.

60. This takes us to the second question whether the inquiry held was in breach of the principles of natural justice and the salutary procedure to hold an inquiry into misconduct, involving the imposition of a major penalty.

61. On the question of violation of principles of natural justice, this Court was addressed in great detail by learned Counsel appearing for the parties. No doubt, Rule 23 of the IITK Rules, under

which the Committee proceeded, provides for subsequent hearings, after the first date of hearing to be scheduled, as far as possible, on a day-to-day basis, but that, to all seeming, does not mean a roller coaster ride, where the delinquent may not understand the evidence led against him and prepare himself for cross-examination or his defence. The petitioner precisely faced that situation before the ICC of the IIT. After the first date of hearing, which was scheduled on 18.07.2022, or the preliminary inquiry, as it was called, the ICC fixed the next date of regular hearing on 21.07.2022 and then on 27.07.2022. Thereafter, they went at a breath-taking speed, scheduling hearings on 28.07.2022, 29.07.2022, 30.07.2022, 01.08.2022, 04.08.2022, 05.08.2022, 06.08.2022, 08.08.2022, 10.08.2022, 16.08.2022, 17.08.2022, 18.08.2022, 19.08.2022, 22.08.2022, 23.08.2022, 25.08.2022, 26.08.2022, 29.08.2022, 30.08.2022, 01.09.2022, 02.09.2022, 03.09.2022, 05.09.2022, 06.09.2022, 07.09.2022, 08.09.2022, 12.09.2022, 14.09.2022 and concluding on 21.09.2022. There is always a difference between hurry and haste; between dispatch and reckless speed.

62. The ICC were unmindful of the fact that the petitioner had to defend himself, which postulates understanding what the complainant's witnesses say, and preparing himself for cross-examining them. He is not, by any means, a lawyer, trained in the art of cross-examination. Rather, he was a novice at it. He would, to effectively defend himself, require consultation back home. This, in turn, would involve hearing them as they deposed and going through their recorded deposition, which would require two or three days' time to prepare himself, depending on the number of witnesses examined on a particular day. The petitioner would also have to analyze the documentary evidence led. The breakneck speed, at which the ICC went, apparently foiled everything for the petitioner in the matter of his effective defence.

63. To add to it are telltale signs of unsavory hurry, which resulted in further denial of opportunity of hearing to the petitioner. We notice that on 30.07.2022, the hearing before the inquiry was adjourned to 01.08.2022 on the petitioner's request, when he needed to take his mother to hospital. On 08.08.2022, the petitioner had to take his mother to the hospital again and, therefore, sought an adjournment until 10.08.2022. This request was rejected by the ICC and the evidence of CW-3 and 4 recorded behind the petitioner's back. On 23.08.2022, the petitioner was indisposed as he had suffered from fever and loose motions. A two days' adjournment was sought by the petitioner. CW-3, who was present for cross-examination, expressed her inability to appear further as she said that she had already appeared twice for the cross-examination. The ICC remarked that the petitioner had failed to cross-examine her. The case was adjourned to 25.08.2022 for recording of defence evidence. The witness, who was crucial for cross-examination, apparently was not called back again, notwithstanding the petitioner's apparent indisposition and the short adjournment that he sought. In this regard, reference may be made to the petitioner's assertions in paragraphs Nos.96, 97, 98 and 99 of the writ petition, where it is averred:

"96. That the petitioner had raised an objection that the ICC had conducted *ex parte* inquiry without any reason or justification on 08.08.2022, 10.08.2022 and 05.09.2022. The ICC in response to the

same had opined that the petitioner appeared for the hearing on 10-8-2022 and he was informed about the proceedings of the previous two hearings held on 6-8-2022 and 8-8-2022. He requested for the copy of the daily order sheets for the same and was informed by the ICC that it would be provided to him along with copies of the depositions of CW-3 and CW-4 at the end of that day's (10-8-2022) hearing. It has further been contended that during the hearing held on 5-8-2022 (Friday), the next hearing of the Inquiry was scheduled on 6-8-2022 (Saturday) at 3:30 PM for the deposition of remaining complainant's witnesses. However, the petitioner requested for an adjournment.

97. That in this regard it is submitted that the ICC has admitted to having received petitioner's request for adjournment of hearing scheduled for 08.08.2022 on 06.08.2022 itself at 11:30 PM i.e. well in advance. ICC has also admitted to having conducting the hearing ex-parte on 08.08.2022 despite having advance information about petitioner's absence on genuine grounds.

98. That no details whatsoever of the alleged *"difficulties and circumstances faced by the ICC members in scheduling/ re-scheduling the proceedings as per convenience of all the parties concerned"* have been given. In the absence of the any valid reasons, it has to be presumed that ICC went ahead with the proceedings ex-parte only because of its extreme prejudice against the petitioner. There is absolutely no justification for recording even examination-in-chief of complainant's witnesses behind the back of the petitioner.

99. That the ICC's contention that the petitioner was not put to any disadvantage merely because copies of their depositions and opportunity to cross examine them were provided to the petitioner is not tenable because the petitioner had a right to be present during the recording of their examination-in-chief to ensure true and faithful recording of their depositions and to watch their demeanor."

64. In paragraph No.87 of the counter affidavit filed on behalf of the IIT (respondent Nos.2 to 6), paragraph Nos.96, 97 and 98 of the writ petition have been answered thus:

"87 That the contents of paragraphs no. 96, 97 and 98 of the writ petition are not admitted as stated and hence denied. Further, in reply thereto it is submitted that it is to be noted that it was a phase of regular hearing and the adjournments as sought by the delinquent/ petitioner would have caused delay in completion of the proceedings. It was probably for this reason that the ICC was circumspect in granting liberal adjournments of the hearing. However, the notice of each hearing was given to the petitioner well ahead of hearing. If the petitioner opted to stay away from the proceedings for any reason, the ICC cannot be expected to re-schedule its meeting at the convenience of the petitioner. As such, the hearing was conducted as per its schedule and it was the petitioner who opted to stay away from the proceedings of his own volition."

65. It would be evident, from a reading of paragraph No.87 of the counter affidavit that there is no cogent reason given by the IIT for them being in such an unsavory hurry that would inherently curtail the petitioner's right to a fair hearing. Reference in this connection may be made to the decision of the Supreme Court in **Aureliano Fernandes v. State of Goa and others, (2024) 1 SCC 632. In**

Aureliano Fernandes (supra), the following remarks of the Supreme Court are relevant:

"(d) Whirlwind Proceedings

70. On examining the records, it emerges that the point at which the Committee fell into an error was when it attempted to fast forward the entire proceedings after the first few hearings and declined to grant a reasonable time to the appellant to effectively participate in the said proceedings. It is noteworthy that the proceedings of the Committee had commenced on 16-4-2009 and stood concluded on 5-6-2009. During this period, 18 meetings were conducted by the Committee. Following are the month-wise details of the dates on which the meetings of the Committee were conducted:

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

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

(iii) June, 2009 — On 3rd, 4th and 5th

71. It is also noteworthy that the time span prescribed under the CCS (CCA) Rules for concluding an inquiry is ordinarily within a period of six months from the date of receipt of the order of appointment. But, here, the entire process was wrapped up in flat 39 days. This shows the tearing hurry in which the Committee was to submit its Report. One such glaring instance of the over anxiety to conclude the proceedings is apparent from the letter dated 5-5-2009, addressed by the Committee to the appellant informing him that the next date for filing his reply and for recording further depositions was 12-6-2009. Surprisingly, on the very next day, the Committee issued yet another letter advancing the said dates by claiming that an error had crept into the previous letter and informing the appellant that the date for filing his reply should be read as "12-5-2009" and the date for recording further depositions should be read as "14-5-2009", thus moving the dates back by a whole month. Another egregious example of the hurry and scurry shown by the Committee can be gathered from the fact that on 20-5-2009, the Committee had written to the appellant giving him a last opportunity to present himself on 20-5-2009, not only to complete his deposition, but also to cross-examine the complainants and other witnesses. Simultaneously, the Committee forwarded six more depositions to the appellant and directed him to furnish his reply within 48 hours i.e. by 22-5-2009.

72. Even if this Court was to accept the submission made by the learned counsel for the respondents that the appellant was offering flimsy excuses to somehow prolong the proceedings and the health ground taken by him was not genuine, it does not explain the approach of the Committee which was well aware of the fact that at least six more depositions had been handed over to the appellant as late as on 20-5-2009. Even if he had been hale and hearty, he would still have required a reasonable time to respond to the additional depositions and simultaneously, prepare himself for cross-examining the complainants and completing his deposition. This can only be termed as an unreasonable and unfair direction by the Committee.

73. The undue haste demonstrated by the Committee for bringing the inquiry to a closure, cannot justify curtailment of the right of the appellant to a fair hearing. The due process, an important facet of the principles of natural justice was seriously compromised due to the manner in which the Committee

went about the task of conducting the inquiry proceedings. As noted above, when the proceedings, subject-matter of the present appeal had taken place, the PoSH Act was nowhere on the horizon and the field was occupied by the Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] Guidelines. The said Guidelines also did not exclude application of the principles of natural justice and fair play in making procedural compliances. The silence in the Guidelines on this aspect could not have given a handle to the Committee to bypass the principles of natural justice and whittle down a reasonable opportunity of affording a fair hearing to the appellant. This Court has repeatedly observed that even when the rules are silent, principles of natural justice must be read into them.

74. In its keen anxiety of being fair to the victims/complainants and wrap up the complaints expeditiously, the Committee has ended up being grossly unfair to the appellant. It has completely overlooked the cardinal principle that justice must not only be done, but should manifestly be seen to be done. The principles of audi alteram partem could not have been thrown to the winds in this cavalier manner.

66. Like the case in **Aureliano Fernandes**, the ICC were in no less a hurry, denying the petitioner a reasonable time to effectively defend himself, which we have already remarked about. We, therefore, hold that the petitioner was denied due opportunity of hearing because of the hurried course of proceedings followed by the ICC in this case and the way it went about them, detailed hereinbefore.

67. We do not intend to examine the question of bias that has been canvassed, inferable from the conduct of the ICC members, as that might not be necessary nor desirable. However, the question whether the conduct of proceedings against the petitioner, the way it was done, gives rise to an inference of malice in law, is potent.

68. What constitutes malice in law, fell for consideration of the Supreme Court in **Ms X v. Registrar General, High Court of Madhya Pradesh and another,** (2022) 14 SCC 187. In Ms X *(supra),* it was observed by the Supreme Court:

"60. We may gainfully refer to the following observations made by this Court in **Kalabharati Advertising v. Hemant Vimalnath Narichania [Kalabharati Advertising v. Hemant Vimalnath Narichania**, (2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808] : (SCC pp. 448-49, paras 25-26)

"25. The State is under obligation to act fairly without ill will or malice — in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide ADM, Jabalpur v. Shivakant Shukla [ADM, *Jabalpur v. Shivakant Shukla*, (1976) 2 SCC 521] , *S.R.*

Venkataraman v. Union of India [S.R. Venkataraman v. Union of India, (1979) 2 SCC 491 : 1979 SCC (L&S) 216] , *State of A.P. v. Goverdhanlal Pitti* [State of A.P. v. Goverdhanlal Pitti, (2003) 4 SCC 739] , *BPL Ltd. v. S.P. Gururaja* [BPL Ltd. v. S.P. Gururaja, (2003) 8 SCC 567] and W.B. SEB v. *Dilip Kumar Ray* [W.B. SEB v. Dilip Kumar Ray, (2007) 14 SCC 568 : (2009) 1 SCC (L&S) 860] .)

26. Passing an order for an unauthorised purpose constitutes malice in law. (Vide Punjab *SEB Ltd. v. Zora Singh* [Punjab SEB Ltd. v. Zora Singh, (2005) 6 SCC 776] and *Union of India v. V. Ramakrishnan* [Union of India v. V. Ramakrishnan, (2005) 8 SCC 394 : 2005 SCC (L&S) 1150] .)"

61. It is trite that the State is under the obligation to act fairly without ill will or malice — in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. Where malice is attributed to the State, it can never be a case of malice or spite on the part of the State. It would mean exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others."

69. The hurry attending the proceedings of the ICC, without there being just cause for the breath-taking speed of proceedings, impaired the petitioner's opportunity of defence. It was an act deliberately done in disregard of the petitioner's right to effectively defend, by the members of the ICC. They might not have harboured bias against the petitioner, but their conscious actions in proceedings at a pace, which resulted in denial of a fair hearing to the petitioner, would certainly vitiate their actions by malice in law, if nothing else.

70. This does not close the chapter of those procedural lapses in the inquiry, where natural justice or opportunity of fair hearing was a casualty.

71. A queer procedure was indeed adopted by the ICC in hearing evidence of witnesses. After the deposition of the first witness for the complainant, that is to say, the complainant herself, there were ten other witnesses cited, none of whom were called next. It is not that the other witnesses for the complainant were chosen not to be produced. The inquiry before the ICC was still hearing the complainant's evidence, when immediately, after conclusion of the testimony of the first witness, to wit, the complainant, the petitioner was directed to testify in his defence and face cross-examination. Defence evidence had not commenced yet, but the petitioner was called in. Now, though this Court understands that the ICC can devise their own procedure to suit the need and the sensitivities of a case under the PoSH Act, the sequence of examination of witnesses, in order to give a fair opportunity to the delinquent to defend himself, requires that the complainant, who brings the charges, produce all her evidence in the first instance to prove the case before the delinquent is called upon to defend. After all, hearing the delinquent, even in a case under the PoSH Act, postulates a defence on the charge/ charges brought by the complainant and proved by her evidence. Therefore, fairness of procedure would require that the complainant's evidence be heard in its entirety first before the defence

or the delinquent is called upon to produce evidence to rebut the charges. It cannot be a haphazard procedure, where the complainant is examined and before the complainant's evidence in its entirety has been led, the delinquent is called upon to testify in answer to a case against him that he has not fully heard, proved by the complainant by all her evidence that she would produce.

72. In this case, upon conclusion of the complainant's evidence, that is to say, her cross-examination on 29.07.2022, the proceedings were adjourned to 30.07.2022. On 30.07.2022, the proceedings were adjourned to 01.08.2022 upon the petitioner's request. On 01.08.2022, the petitioner was permitted to briefly cross-examine the complainant regarding some additional documents, that were filed on 29.07.2022. The complainant was then questioned by the ICC, in order to clarify matters about her complaint, which is shown to be the primary purpose, for which proceedings were scheduled for 01.08.2022. The crucial direction came on this day, when, at the end of the proceedings on 01.08.2022, the inquiry was adjourned to 04.08.2022, with a direction to the petitioner to testify in his defence and face cross-examination, that is to say, on the next date scheduled. This is evident from a perusal of the order-sheet dated 01.08.2022 and the earlier order-sheet dated 29.07.2022, that we have gone through.

73. On 04.08.2022, before the commencement of proceedings, the petitioner moved an application before the ICC, seeking withdrawal of the direction made by them, saying that requiring the petitioner to testify at this stage would violate the principles of natural justice and Rule 30 of the IITK Rules. This application was rejected by the ICC and the petitioner denied the opportunity to depose in his favour. The proceedings were then adjourned to 05.08.2022 for recording the complainant's evidence again, that is to say, of her other witnesses. The order-sheet of the inquiry held before the ICC on 04.08.2022 reads:

"1. The Respondent has filed an application (R-7) dated 4th August 2022 protesting against the direction given to him on the last date (1st August 2022) to submit his deposition in writing to be signed before the ICC. The Respondent has stated that asking him to depose and undergo cross-examination will completely violate principles of natural justice and ruin his case. HE has further requested to ICC for withdrawing its order dated 1st August 2022 for his testimony/ cross examination. The Respondent has raised doubts about powers of ICC for compulsory testimony and to cross examine him.

2. The ICC has deliberated on the said application and is of the view that the Respondent is not interested in deposing/ submit himself for cross examination/ inquiry with regard to the complaint. Hence, therefore, his opportunity to depose is closed.

3. The case is now posted for deposition of the witnesses of the Complainant on 5th August 2022.

4. The Complainant and the Respondent be present before the Committee on 5th August 2022 at 2.30 PM at meeting room, PBCEC, IITK. Any change in venue shall be communicated to the parties beforehand."

74. The aforesaid direction by the ICC and the course of action adopted by them were not only odd, but patently illegal

as these lay in the teeth of salutary procedure that ensures natural justice and a fair hearing before the inquiry in the proper sequence of things. We say so, because, as the orders dated 29.07.2022, 01.08.2022 and 04.08.2022 would indicate, it is apparent that though the complainant's own testimony was effectively concluded on 29.07.2022 with all additional matters dealt with on 01.08.2022, the complainant's evidence was, by no means over. Her case was still going on and evidence on her behalf remained to be heard. Therefore, a direction, compelling the petitioner to testify in his defence immediately after the complainant's own evidence was over, amounted to denying the petitioner opportunity of answering all the evidence that would appear against him, when the rest of the complainant's witnesses were examined. Logically and legally too, a delinquent is asked to answer the evidence against him after all evidence of the complainant has been heard; not just after hearing the complainant's own testimony. After all, as already said, the delinquent has a right to answer the whole of the complainant's testimony; not the personal testimony of the complainant alone. The direction by the ICC made on 01.08.2022, foreclosing the petitioner's opportunity of appearing as a witness because he was asked to depose after the complainant's entire evidence had been heard, patently violates the petitioner's right to be heard as also the principles of natural justice. We hold accordingly.

75. During the course of hearing, it was asserted on behalf of the petitioner that seven of his eight documents, that he wished to rely upon and sought summoning of, were disallowed, denying him opportunity, one of these documents was ordered to be summoned. Learned Senior Counsel for the respondents emphasized that the documents were not relevant at all and, therefore, rejected. Upon a perusal of paragraph Nos.108 and 149 of the writ petition, its reply in paragraph Nos.88 and 96 of the counter affidavit filed on behalf of the IIT, besides a perusal of the order-sheet dated 14.09.2022, what we find is that the documentary evidence relied upon by the petitioner was scrutinized at the stage of admitting it to record or summoning it very stringently on the touchstone of its relevance. By contrast, a perusal of the record does show that the complainant's documentary evidence was liberally admitted. This Court must remark that a perusal of the order passed by the ICC on 14.09.2022 does show that they applied their mind while declining to accept seven of the eight documents sought to be produced or requisitioned by the petitioner, but a scrutiny of that kind was not necessary. A domestic inquiry has to be an evenhanded affair and there are no strict rules of evidence or a formal admission of documents in the manner it is in a Court of law.

76. To add to it is the fact that while one document alone, described as document No.8, was summoned by the ICC on 14.09.2022 for the petitioner, but the defence evidence was closed on that day. Therefore, the solitary document, which the ICC found relevant, too was not actually summoned. The proceedings betray an impression that while almost all documentary evidence for the complainant was accepted for her asking, the petitioner had a difficult time producing the few of his documents on record that he wanted summoned. It is not that the petitioner’s documentary evidence was not at all admitted to record. The documents that he produced along with a list on 29.07.2022

were marked as RDE-2 to RDE-32 and accepted on record. However, the documents, that he desired summoned by the Committee, were subjected to a searching scrutiny and excluded from the record to the extent of seven of the eight documents. The impact of this approach, where the petitioner was not able to produce on record even one of the eight documents that he desired requisitioned or summoned during the inquiry, whereas a good number of documents for the complainant were summoned, considered and some even searched and brought on record, makes the inquiry appear somewhat one-sided, resulting in deprivation of opportunity to the petitioner. There are other issues, which generate the impression that the inquiry was one-sided and natural justice a casualty.

77. The petitioner cited a number of witnesses, and amongst them, were RW-12 and RW-23. RW-12 was Gaurav Mishra and RW-23 Dr. Faisal. The case of the petitioner is that these witnesses appeared before the ICC with their written depositions to be taken on record and offered themselves for cross-examination by the complainant and submitted to the questions of the Committee, but their written depositions were not accepted by the ICC. The petitioner's case obviously is that the ICC, in excluding the written depositions of these two witnesses, impaired the petitioner's defence, and a fortiori, his right to an effective hearing.

78. A perusal of the order-sheet dated 01.09.2022 shows that the ICC have said in their order that RW-12 was examined and cross-examined by the complainant. It is then remarked that this witness had written notes on him, running into 22 pages, which he said that he had been preparing for 2-3 days, after 20th August, 2022, when he was informed by the petitioner that he may have to testify before the ICC. The ICC have remarked that the notes, which the witness produced, do not constitute a valid deposition and could not be taken on record. We notice that the practice of testifying before the ICC through a written deposition, ready-in-hand of a witness, in lieu of an examination-in-chief, was readily accepted in the case of other witnesses. In the case of RW-13, Deepa Anandh, who appeared on behalf of the petitioner as a witness, too offered her evidence in the form of a written deposition, which was accepted on record. The order of 1st September, 2022 shows that the written deposition served as the examination-in-chief, because the later proceedings were only about the witness's examination by the ICC and cross-examination by the complainant. In such circumstances, to exclude the written deposition of RW-12 on ground that it was lengthy or to dub it as 'notes', really impairs one witness for the petitioner testifying effectively. A written deposition, in contemporary times, is even acceptable in Civil Courts, filed on affidavit. It may not be the ideal way to hold an examination-in-chief, but is, nevertheless, a pragmatic way of offering substantive evidence in a domestic forum, like the ICC. It would have mattered much to the petitioner’s right of defence if the ICC had accepted the written deposition of RW-12, like that of the other witnesses.

79. Similarly, in the case of RW-23, Dr. Faisal, his written deposition was excluded by the ICC on 12.09.2022. The way and for whatever reasons it was excluded, can best be understood upon a reproduction of the contents of the order-sheet dated 12.09.2022 recorded by the ICC, which read:

“1. RW-23 presented himself through zoom for his continued examination today.

2. He has mailed a copy of his written deposition immediately before the commencement of the Hearing. It is observed that on 8-9-2022 when he presented himself as witness he was specifically asked if he has anything in writing to submit and he said that he did not have any such written deposition. At this stage when his examination is about to be concluded the written deposition appears to be an afterthought and hence cannot be taken on record.

3. The ICC briefly examined RW-23 on certain points and thereafter the Complainant cross examined him. The said examination/ cross examination were reduced in writing and sent to RW-23 through Zoom chat for his digital signatures. The copies of the same were provided to both the parties."

80. This witness appeared through videoconferencing and had mailed a copy of his written deposition, ahead of the hearing to the ICC. The ICC denied to take his written deposition on record on the ex facie specious ground that on 08.09.2022 when he appeared as a witness, he was asked if he had to say anything in writing, to which he said that he did not have a written deposition with him. It was opined by the ICC that at this stage, when his examination was about to be over, his written deposition appeared to be an afterthought and, therefore, fit to be excluded. This was, indeed, an odd course to take. The effect of refusal to accept written depositions of two witnesses in lieu of their examination-in-chief by the ICC, certainly resulted in denial of opportunity to the petitioner in defending himself effectively. There is no earthly reason why the ICC denied a written deposition by RW-23 when, by their practice, they accepted it from other witnesses.

81. The next breach of natural justice, that is alleged by the petitioner, is on account of the manner in which evidence was heard by the ICC. The thrust of his grievance is that he was not allowed to lead evidence of the 23 of his 24 witnesses. Instead, according to the petitioner, the ICC examined his witnesses themselves, without permitting the petitioner to lead evidence. These witnesses were then cross-examined by the complainant and then cross-examined by the ICC. It is also said that the witnesses were asked selective questions, in order to show that the witnesses were either irrelevant or tutored. There is also an allegation that the witnesses were threatened with contempt action, intimidated and ill-treated, so as to dissuade them from appearing and deposing truthfully. These allegations figure in paragraph No.28 of the writ petition. The answer to paragraph No.28 of the writ petition finds place in paragraph No.39 of the counter affidavit filed on behalf of the IIT. None of the assertions in paragraph No.28, apart from a bald denial, have been answered for the substance of them. Instead, there is a reference to the comments of the ICC furnished to the Board of Governors of the IIT.

82. In answer to the petitioner's representation against the memorandum dated 22.12.2022, it is stated that these comments of the ICC were placed before the Board of Governors of the IIT on 22.02.2023 and the Board were of opinion that the allegations are absolutely ill-founded. It is pleaded in this paragraph that a copy of the minutes, together with the

comments of the ICC were handed over to the petitioner along with the impugned order dated 01.03.2023. These are on record as Annexure No.31 to the writ petition. The comments of the ICC are available at pages 529 to 542 of the writ petition.

83. We have looked into those comments and also considered the submissions advanced by Mr. Tripathi and Mr. Goyal in this regard. At page 529 of the writ petition paper book is a document, carrying the ICC's response to the points raised by the petitioner vide paragraph No.7.1 of his reply given to the notice dated 22.12.2022 issued by the Board of Governors of the IIT. At page No.537 of the writ petition paper book, the two questions and their answers, relevant to the point under consideration, read as follows:

"XXV) ICC did not allow me to conduct examination in chief of his witnesses and instead ICC itself conducted their examination as well as cross-examination.

Response of the ICC: The ICC conducted the Inquiry as per The Indian Institute of Technology Kanpur (Inquiry into Complaints of Sexual Harassment of Women at Workplace) Rules, 2021. To ensure that the witnesses can depose in a free and unbiased manner neither the Complainant nor the Respondent were permitted to examine or cross-examine their own witnesses.

xxvi) ICC had cross-examined respondent's witnesses like a Presenting Officer thereby abdicating its duty to conduct the inquiry in an objective and fair manner.

Response of the ICC: The ICC disagrees with this point. The Inquiry was conducted as per The Indian Institute of Technology Kanpur (Inquiry into Complaints of Sexual Harassment of Women at Workplace) Rules, 2021. Neither a presenting officer for the Complainant nor a defense assistant for the Respondent are mentioned in these Rules."

84. Upon a perusal of the pleadings of parties on the point and the admitted position regarding proceedings before the ICC, it is not in dispute that the ICC did not permit the petitioner to lead evidence of his own witnesses, or as it is called, to conduct the examination-in-chief. Instead, the ICC questioned the witnesses, who were required to answer. This kind of evidence was regarded as the petitioner's examination-in-chief. It also appears that the ICC did some further examination of these witnesses, which has been called their cross-examination. The procedure appears to be entirely mind-boggling. The proceedings before the ICC may be sensitive, bearing in mind the nature of the infraction alleged and the vulnerability of the victim, but it does not mean that the proceedings before the ICC are a fact-finding inquiry. These are, after all, proceedings akin to a departmental inquiry and on the basis of the findings of the ICC, penal consequences for the delinquent can flow, including the imposition of a major penalty, as, in fact, has happened in this case.

85. The salutary procedure in a domestic inquiry, which sits to determine the guilt or innocence of a delinquent, which would include a delinquent, charged with misconduct under the PoSH Act, postulates a bare minimum of procedural fairness. This would require the complainant's witnesses to be examined before the Inquiry Officer by leading evidence in what may be called the

examination-in-chief. For a *viva voce* deposition, the practice of tendering a written deposition in lieu, appears to be acceptable by the ICC and no exception can be taken to it. The witnesses then have to be offered for cross-examination to the delinquent. Likewise, the delinquent has a right to produce witnesses in his defence, but the question is how a witness, produced by the delinquent, would testify or have his evidence recorded. It is one of the most salutary procedures in recording evidence for a party that the witness's evidence, if recorded viva voce, or what is called examination-in-chief, should be led by the party who produces him or a representative of his, if permitted in the proceedings. The legally accepted embargo upon a party, including the delinquent, is one on asking leading questions from his own witnesses. Except for this embargo, a party has the right to lead evidence of his witness with non-suggestive or non-leading questions about facts he considers relevant to his defence. If a delinquent is not permitted to ask questions of his own witness while the witness's testimony by way of his examination-in-chief is being recorded, it would certainly be an impairment of the delinquent's defence wholesomely.

86. The examination-in-chief, in its very essence, is substantive evidence of a party, which the party himself or his authorized agent, say an Advocate or a defence representative, leads before the Court or the Inquiry Tribunal, as the case may be. Questions by the Inquiry Officer or a Committee and answers of the petitioner's witnesses to these questions can never constitute the petitioner's substantive evidence or examination-in-chief.

87. A written deposition by the witness, if filed in lieu of a viva voce statement before the ICC, of course, cannot be objected to by the delinquent as an unfair procedure. The matter here is entirely different. It is an admitted position that the petitioner, who was the delinquent, facing inquiry before the ICC, was not permitted to lead evidence of his own witnesses, who testified *viva voce*. Instead, it was the ICC who put questions to the witnesses and their answers were considered for the petitioner as the examination-in-chief. It was on this testimony that the complainant cross-examined the witnesses. The petitioner never had opportunity, therefore, to lead evidence. What the ICC heard from the petitioner's witnesses was, therefore, not the testimony or evidence of these witnesses, but virtually a record of answers to questions that the ICC asked of them. The ICC is not a party to the proceedings. Howsoever unbiased their role, the right of defence is one belonging to the delinquent, the petitioner here, and it is his right to lead his own evidence. He has been deprived of this right *in toto,* which we think is a gross denial of the right to a fair hearing and a *fortiori* violation of the principles of natural justice.

88. The justification given for adopting this course of action by the ICC is that they wanted the witnesses to depose in a free and unbiased manner and, therefore, neither the complainant nor the petitioner were permitted to examine or cross-examine their own witnesses. This stand of the ICC, to say the least, is downrightly perverse.

89. Mr. Goyal emphasized the imperative of adopting this course by the ICC because of a phenomenon recognized as the 'chilling effect', which impairs a witness's veracity and capability to speak

out the truth in his evidence due to the party's overawing influence upon him/ her. In support of his contention, Mr. Goyal has relied upon the judgment of the Supreme Court in **Shafin Jahan v. Asokan K.M. and others**, **(2018) 16 SCC 368**. Mr. Goyal has drawn the Court's attention to the following remarks of their Lordships of the Supreme Court in **Shafin Jahan** *(supra):*

"89. Interference by the State in such matters has a seriously chilling effect on the exercise of freedoms. Others are dissuaded to exercise their liberties for fear of the reprisals which may result upon the free exercise of choice. The chilling effect on others has a pernicious tendency to prevent them from asserting their liberty. Public spectacles involving a harsh exercise of State power prevent the exercise of freedom, by others in the same milieu. Nothing can be as destructive of freedom and liberty. Fear silences freedom."

90. The said observations of the Supreme Court in **Shafin Jahan** find place in the concurring judgment of D.Y. Chandrachud, J. (as the learned Chief Justice then was). The remarks came in a very different context about the freedom of an adult to choose his or her religion and a partner, pitted against the State's authority, exercised by Judges in interfering with those freedoms under their *parens patriae* jurisdiction, as the High Court had done. It has hardly any application to the facts or the points that arise here. The 'chilling effect' of a teacher over his students cannot be blown out of proportion to lead matters into a 'make believe world', where the teacher is perceived as someone, who, by his presence during the hearing, would make students of adult and mature years, appearing as witnesses for the teacher, say falsehood before the Inquiry Committee. There is absolutely no basis for that kind of apprehension.

91. To add to it is the fact that the teacher here is a beleaguered man, facing charges under the PoSH Act before the domestic tribunal specially constituted. In the circumstances, there is no reason to infer that the witnesses the petitioner has cited in his defence, if he were permitted to lead their evidence, would say falsehood because of his influence over them, or as Mr. Goyal says, 'the chilling effect'.

92. Assuming that the petitioner would have some influence over his students, and, most certainly a witness cited by a party, like the petitioner, is produced by that party on some kind of assurance of speaking before the Tribunal or Court for that party, cannot lead to a deprivation of the party's right to lead his own witness's substantive evidence or examination-in-chief. The mere possibility of the witness speaking for the party, who produces him or her as a witness untruthfully in the party's presence, when that party leads the witness's examination-in-chief, cannot efface the party's right to examine his own witnesses before the Inquiry Committee.

93. The truth or falsehood of the witness's testimony would always have to be tested through the mechanism of cross-examination, which can be employed to bring out embellishment and falsehood in whatever the witness has spoken during his examination-in-chief. After all, that is one of the most important facets of the office of cross-examination. What the ICC have done in this case is that in the garb of purging the petitioner's witnesses of all falsehood that they might say in his presence and because of his 'chilling

effect' influence, they have eliminated the petitioner's examination-in-chief altogether and substituted it by an investigator's interrogation. This hits at the very basics of fair procedure to hold any kind of an inquiry by a domestic forum, which leads to the imposition of a major penalty, as in the case here. The procedure adopted by the Committee has not only resulted in denial of natural justice to the petitioner, but is patently arbitrary. It is violative of Article 14 of the Constitution.

94. The next submission, which has been urged on behalf of the petitioner, is that the denial of a defence assistant to him by the respondents resulted in the violation of his right to an effective hearing and ultimately a violation of the principles of natural justice. It is urged that the ICC consisted of nine members, one of them being an Advocate. Despite this constitution of the ICC, the petitioner was denied the services of a defence assistant. He submits that though he had sought the services of a defence assistant, who was a lawyer, he had subsequently indicated his willingness to be represented by a non-legal defence assistant, who could be a serving or a retired employee of the Central or the State Government or an autonomous body. According to the petitioner, this request was made twice and declined on both occasions.

95. The learned Senior Advocate appearing for the respondents asserted that there was no question of providing the services of a defence assistant for reason that a legal practitioner is forbidden from acting as a defence assistant in an inquiry under the PoSH Act by virtue of Rule 31 of the IITK Rules. The foremost point to be noted, in case of an inquiry under the PoSH Act, is that even under the PoSH Rules, by virtue of Rule 7(6), both parties are not allowed to bring any legal practitioner to represent them in their case at any stage of the proceeding before the ICC. Therefore, so far as the petitioner's request for being represented by an Advocate or a legally trained defence representative is concerned, it was rightly denied by the respondents. A perusal of the letter dated 23.08.2022 from the Director of the IIT, addressed to the petitioner, shows that the petitioner's request for a defence representative was turned down by this letter/ memo in the following words:

"As such, allowing a legal practitioner to you as Defence Assistant is out of question. Further, since there is no Presenting Officer appointed in the matter, there is no occasion to allow even a non legal practitioner as your Defence Assistant. That apart, there is no enabling provision in this regard either in the Aet or the Rules framed thereunder."

96. A similar request, that was made much later to the Chairman, Board of Governors of the IIT, was rejected and the rejection communicated to the petitioner again by the Director vide a memo dated 02.09.2022. Here also, the services of a non-legal defence assistant were denied. The reasoning adopted by the respondents to deny the services of a non-legal defence assistant, we are afraid, cannot be accepted. The letter of the Director of 23rd August, 2022 carries reasons for the refusal and offers two justifications to support the decision. The first is that since there was no presenting officer on behalf of the establishment, no case for appointment of a defence representative was made out. The other is that there is no enabling provision in this regard, either under the PoSH Act or the Rules framed thereunder. The first of

the reasons given is perhaps inspired by the remarks of the Supreme Court in **Bhagat Ram v. State of Himachal Pradesh and others, (1983) 2 SCC 442**, where it is observed:

"5. …….

The procedure prescribed for the enquiry was devised with a view to affording a delinquent government servant facing a disciplinary proceeding a reasonable opportunity to defend himself. And by a catena of decisions, it is well established that the delinquent has a right to cross-examine witnesses examined on behalf of the Disciplinary Authority and an opportunity to lead his own evidence and to present his side of the case. This is the minimum principle of natural justice which must inform a disciplinary proceeding. To be precise, the provisions contained in 1965 Rules do make adequate provisions for the same. The question is whether it has been substantially complied with, and when we say substantial compliance, we mean that it is too much to presume that a government servant of the level of a Forest Guard would be fully aware of all the intricate rules governing a disciplinary proceeding contained in 1965 Rules that he must seek permission for proper assistance at a proper stage as contemplated by the Rules. In fact, justice and fairplay demand that where in a disciplinary proceeding the department is represented by a Presenting Officer, it would be incumbent upon the Disciplinary Authority while making appointment of a Presenting Officer to appear on his behalf simultaneously to inform the delinquent of the fact of appointment and the right of the delinquent to take help of another government servant before the commencement of enquiry. At any rate the Enquiry Officer at least must enquire from the delinquent officer whether he would like to engage anyone from the Department to defend him and when the delinquent is a government servant belonging to the lower echelons of service, he would further be informed that he is entitled under the relevant Rules to seek assistance of another government servant belonging to Department to represent him. If after this information is conveyed to the delinquent government servant, he still chooses to proceed with the enquiry without obtaining assistance, one can say there is substantial compliance with the Rules. But in the absence of such information being conveyed, if the enquiry proceeds, as it has happened in this case, certainly a very vital question would arise whether the appellant delinquent government servant was afforded a reasonable opportunity to defend himself and if the answer is in the negative, the next question is whether the enquiry is vitiated? In this connection, we would like to refer to a decision of this Court in *C.L. Subramaniam v. Collector of Custom*s, Cochin [(1972) 3 SCC 542 : (1972) 3 SCR 485 : 1972 Lab IC 1049 : (1973) 26 FLR 170 : (1973) 2 SLR 415] wherein it was held that the fact that the case against the appellant was being handled by a trained prosecutor was by itself a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales would be weighted against him. That was the case in which the Disciplinary Authority was represented by a trained prosecutor and the question was whether the delinquent officer was entitled to the assistance of a legal practitioner? And the answer was in the affirmative. The position is slightly different here. The Department was represented by a Presenting Officer, co-delinquent, a superior officer of the appellant was equally represented by an officer of his choice and this Forest Guard had to fend for himself. In such a situation, the view taken by this Court in Board of

Trustees of the Port of *Bombay v. Dilipkumar Raghavendranath Nadkarni* [(1983) 1 SCC 124 : 1983 SCC (L&S) 61 : (1983) 1 LLJ 1] would govern the situation. This Court said as under: [SCC para 12, p. 132: SCC (L&S) p. 69]

"In our view we have reached a stage in our onward march to fairplay in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated."

The principle deducible from the provision contained in sub-rule (5) of Rule 15 upon its true construction is that where the department is represented by a Presenting Officer, it would be the duty of the delinquent officer, more particularly where he is a Class IV government servant whose educational equipment is such as would lead to an inference that he may not be aware of technical rules prescribed for holding enquiry, that he is entitled to be defended by another government servant of his choice. If the government servant declined to avail of the opportunity, the enquiry would proceed. But if the delinquent officer is not informed of his right and an overall view of the enquiry shows that the delinquent government servant was at a comparative disadvantage compared to the Disciplinary Authority represented by the Presenting Officer and as in the present case, a superior officer, co-delinquent is also represented by an officer of his choice to defend him, the absence of anyone to assist such a government servant belonging to the lower echelons of service would, unless it is shown that he had not suffered any prejudice, vitiate the enquiry."

97. To the understanding of the Court, **Bhagat Ram** (supra) does not foreclose the right of any employee or officer facing departmental proceedings to be defended by a defence representative, where the charge of misconduct against against him is such which may lead to the imposition of a major penalty. Rather, it introduces a rule that if the establishment are represented by a presenting officer, it would be incumbent upon the Disciplinary Authority to inform the delinquent of his right to be represented by a defence representative. It does not say at any rate that if the delinquent himself demands the services of a lay defence assistant, those are to be denied in a departmental inquiry. The ICC, investigating a complaint under the PoSH Act, is akin to a departmental inquiry, the findings whereof may lead to the imposition of a major penalty. The right to an effective defence would require the assistance of a defence representative, may be a layman, say an official of the Central or the State Government, or a Corporation, who has some experience of handling departmental inquiries.

98. The remarks in **Bhagat Ram**, which say that a Class-IV employee would be at a particular disadvantage in defending himself, assuming his education to be not very high, do not lay down a principle that a higher-ranking official or a well-educated employee, when facing a departmental inquiry, would be competent to effectively defend himself always. Of course, if he elects to defend himself, there can be no exception to it. But, a highly educated officer, like a professor in this case, does not become disentitled from representation before the ICC by a lay defence

representative, merely because he is well-educated and can understand his rights, the procedure and the rules. The reasons are two fold. Firstly, a highly accomplished man, educated in some discipline unrelated to the law, or not exposed to handling departmental inquiries, may be as helpless as any novice, facing an inquiry under the PoSH Act. It is not the respondents' case that the petitioner himself had sufficient experience of defending departmental inquiries in the past, so as to equip him with the necessary training to effectively defend himself. He was indeed a novice at the job. Secondly, even an employee, who is sufficiently acquainted with handling departmental inquiries for others, if charged himself, may not be able to effectively defend. The reason is that once a person is put in the dock and his own interest is at stake, the necessary objectivity and dispassion may be lost with his emotions of fear, apprehension etc., getting the better of him. A fair procedure in a departmental inquiry, to which, as already said, an inquiry by the ICC under the PoSH Act is akin, may require the dedicated and trained assistance of a lay defence representative in defending the employee concerned. This is precisely the case here, and the petitioner has suffered from what we can see from the record with both these disabilities in defending himself.

99. The other ground to deny the petitioner representation by a non-legal defence assistant is the fact that there is no enabling provision, according to the respondents, either under the PoSH Act or the Rules in this regard. Rule 7(6) of the PoSH Rules prohibits either party from bringing any legal practitioner to represent them in their case at any stage before the ICC. There is a similar prohibition in the IITK Rules as well. There is nothing said in either of the Rules that the delinquent, or as it is said, the respondent in the inquiry, cannot be represented by a lay defence assistant. It is a salutary principle of the law that whatever is not prohibited is permitted. An enabling provision in the Rules or the Act to bring in a lay defence representative, is not at all required to extend the services of a defence representative to a person facing an inquiry under the PoSH Act before the ICC.

100. About the right of a delinquent to be represented through a suitable defence assistant – not a legally trained person or an advocate – the following remarks of the Delhi High Court in **Balwan Singh v. Union of India and others, 2013 SCC OnLine Del 3165**, may be noticed:

"18. In the instant case, it is not the respondents, contention that the persons named by the petitioner as his choice for appointment as defence assistant were not available for appointment as defence assistant. Shelter is taken only in the circular dated 16th September, 2005 to deny him a defence assistant of his choice. This was certainly in violation of natural justice. The denial of the defence assistant and the conduct of the enquiry proceedings in the absence of a defence assistant to the petitioner, were in violation of the principles of natural justice and are not sustainable.

19. So far as the appointment of a defence assistant is concerned, it has been repeatedly held that the delinquent in disciplinary proceedings is required to be informed of his right to take help of another Government Servant before the commencement of the inquiry and a fair and reasonable opportunity to appoint one. In this regard our attention has been drawn to (1983) 2 SCC 442 : AIR 1983 SC 454 in Bhagat Ram v. State of Himachal Pradesh

wherein the Supreme. Court has held as follows:

"In fact, justice and fair play demand that where in a disciplinary proceeding the department is represented by a Presenting officer, it would be incumbent upon the Disciplinary authority while making appointment of a Presenting Officer to appear on his behalf simultaneously to inform the delinquent of the fact of appointment and the right of the delinquent to take help of another Government servant before the commencement of inquiry. At any rate the Inquiry Officer at least must enquire from the delinquent officer whether he would like to engage anyone from the department to defend him and when the delinquent is a Government servant belonging to the lower echelons of service, he would further be informed that he is entitled under the relevant rules to seek assistance of another Government servant belonging to department to represent him. If after this information is conveyed to the delinquent Government servant, he still chooses to proceed with the Inquiry without obtaining assistance, one can say there is substantial compliance with the rules."

20. In the instant case, the respondents do not state that the person whose names had been given by the petitioner as his choice for defence assistant were not the personnel of CRPF. The respondents, enquiry officer Shri Awadesh Kumar was of the rank of Deputy Commnandant, Given the nature of the enquiry, this certainly would not have been fair in the facts and circumstances of the case and the petitioner has been deprived of an opportunity to represent himself.

21. The petitioner was only seeking a defence assistant who was senior to him and had knowledge of departmental enquiry proceedings. He had therefore given five names based on such requirement.

Such request of the petitioner was a reasonable request.

22. The enforcement of the condition that the defence assistance must be of the same rank, has been held to be unjustified and in violation of the principles of natural justice. The respondents have, thus, denied the petitioner of a fair and reasonable opportunity to defend himself at the disciplinary inquiries vitiating the proceedings and rendering all orders based on such proceedings as violative of principles of natural justice and illegal.

In view of the above, we find that findings of the enquiry officer which are based on no evidence and are perverse."

101. The same principle was followed by a much later Bench decision of the Delhi High Court in **Shyamvir Singh Tyagi v. Union of India and others, 2024 SCC OnLine Del 5512,** where it has been remarked:

"17. Further, we are of the considered opinion that irrespective of the guidelines issued on 16.09.2005, principles of natural justice require that a delinquent employee is informed of his right to take help of a defence assistant in an inquiry. This requirement would be more in cases like the present, where Force personnel face inquiries while serving in far off battalions where they do not have easy access to legal assistance. In this regard, it may be apposite to note the following extract from the decision of the Co-ordinate Bench in Balwan Singh (supra) as contained in paragraph 19 thereof.

"19. So far as the appointment of a defence assistant is concerned, it has been repeatedly held that the delinquent in disciplinary proceedings is required to be

informed of his right to take help of another Government Servant before the commencement of the inquiry and a fair and reasonable opportunity to appoint one.""

102. This Court is, therefore, of clear opinion that in denying the services of a lay defence representative of his choice to the petitioner to defend him in the inquiry before the ICC, the respondents denied him an effective opportunity of hearing, vitiating the outcome of the inquiry.

103. There are other points, such as non-acceptance of the defence brief submitted with a slight delay and acceptance of a document for the complainant after the inquiry was closed, urged by the learned Counsel for the petitioner in support of his case of a gross violation of the principles of natural justice, but we do not consider it necessary to go into those issues any further, since we are of clear opinion that there was, indeed, on the points indicated, violation of natural justice for the petitioner by denying him the right of a fair and effective hearing. The violation of the right was so wholesome that the conclusion is irresistible that it led to prejudice in the sense that if those flaws in extending opportunity of hearing were not there, the ICC might have concluded differently. Even if the ICC did not appreciate the infirmities that crept in on account of denial of an effective hearing, if the hearing were done in the manner, free from all blemish that we have indicated, the Board of Governors of the IIT might have concluded differently on the material that would come on record. The second question framed for consideration in paragraph No.35 of the judgment is, therefore, answered in the affirmative.

104. Before parting with the matter, we must remark that while true it is that in matters under the PoSH Act, the sensitivity surrounding the issue has to be borne in mind and the interest of the victim kept pristinely secured, so as to realize the larger object of the new legislation that the PoSH Act is, but that cannot lead to the condemnation of a person, charged for its violation, by a procedure not valid in law or in breach of the principles of natural justice. For this reason, we would think that this matter must go back to the IIT for an inquiry to be held *de novo* by the ICC in accordance with the PoSH Rules and bearing in mind the guidance in this judgment.

105. In the result, both the writ petitions succeed and are allowed. The IITK Rules are declared ultra vires Section 11(1) of the PoSH Act. The impugned report submitted by the ICC dated 30.09.2022, the minutes of the meetings of the Board of Governors of the IIT dated 27.10.2022 and 11.12.2022, insofar these relate to the petitioner, the impugned office order dated 01.03.2023 issued by the Director, IIT and the resolution of the Board of Governors of the IIT dated 22.02.2023, are hereby **quashed.** The petitioner shall be reinstated in service forthwith and paid his current salary with effect from the date of this order. The respondents shall be at liberty to proceed with the inquiry through the ICC on the basis of the complaint and the petitioner's reply, holding the inquiry de novo, giving parties opportunity to lead evidence afresh, bearing in mind the guidance in this judgment. The inquiry shall be held in accordance with the PoSH Rules. During the pendency of the inquiry, it will be open to the respondents to take work from the petitioner or not, as they consider appropriate, but without affecting his entitlement to his current salary and

allowances. The question of arrears of salary shall abide by the final event in the proceedings to be taken afresh by the respondents.

106. There shall be no order as to costs.

(2025) 5 ILRA 472
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 30.05.2025

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Writ A No. 5698 of 2025

Dr. Amod Kumar Sachan ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Gaurav Mehrotra, Harsh Vardhan Mehrotra, Ritika Singh

Counsel for the Respondents:
C.S.C., Shubham Tripathi

Service Law – Disciplinary Proceedings – Right to Legal Assistance – Supply of Documents – Petitioner, a University employee, suspended and facing departmental enquiry – Denied legal assistance and photocopies of 5133 pages of relevant documents, allowed only inspection – Enquiry Committee included a retired High Court Judge – Proceedings concluded treating petitioner's tentative reply as final.

Held: Denial of legal assistance when the Enquiry Officer is legally trained is violative of principles of natural justice [J.K. Aggarwal; Board of Trustees of the Port of Bombay; Ramesh Chandra]. Denial of photocopies of relevant documents also unfair [Saroj Kumar Sinha]. Disciplinary proceedings revived; authorities directed to provide photocopies, permit legal assistance, and conclude proceedings before petitioner's superannuation.

Writ Petition partly allowed.

List of Cases cited:

1. Board of Trustees of the Port of Bombay Vs Dilip Kumar Raghavendra Nath Nadkarni & ors., (1983) 1 SCC 124

2. J.K. Aggarwal Vs Haryana Seeds Development Corporation Ltd. & ors., (1991) 2 SCC 283

3. Ramesh Chandra Vs Delhi University & ors., (2015) 5 SCC 549

4. St. of U.P. & ors. Vs Saroj Kumar Sinha, (2010) 2 SCC 772

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Shri Gaurav Mehrotra, learned counsel assisted by Ms. Ritika Singh, learned counsel for the petitioner, Shri Pradeep Kumar Singh, learned Additional Chief Standing Counsel for the State-opposite party No.1 and Shri Asit Chaturvedi, learned Senior Advocate assisted by Shri Shubham Tripathi, learned counsel for the opposite party Nos.2, 3, 4, 5 & 6.

2. Shri Shubham Tripathi has filed short counter affidavit and Ms. Ritika Singh has filed supplementary affidavit, which are taken on the record.

3. By means of this writ petition, the petitioner has prayed for the following reliefs:-

"(I) to issue a writ, order or direction in the nature of certiorari quashing the impugned decision dated 30.03.2025 and 03.05.2025 of the