THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

+ WRIT APPEAL No.153 of 2021

% Date: 28.02.2023

M/s. GAIL (India) Limited and others

… Appellants

v.

$ Dr. Duraisamy Baskaran

… Respondent

! Counsel for the appellants : Mr. D.V.Sitharam Murthy,
Learned Senior Counsel appearing for Ms.Sangeeta Bhaskar,
learned counsel for the appellants

^ Counsel for the respondent: Mr. Deepak Bhattarcharjee,
Learned Senior Counsel appearing for Mr. S.Lakshmi Kanth,
learned counsel for the respondent

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➢ HEAD NOTE**:**

? CASES REFERRED:

1. (1997) 6 SCC 241
2. (2013) 1 SCC 297
3. (2016) 5 Gau LR 116
4. (2020) 12 SCC 426
5. (2020) 13 SCC 56
6. (2018) 9 SCC 529
7. AIR 1994 SC 251
8. (2007) 1 SCC 663

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

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WRIT APPEAL No.153 of 2021

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. D.V.Sitharam Murthy, learned Senior Counsel appearing for Ms. Sangeeta Bhaskar, learned counsel for the appellants and Mr. Deepak Bhattacharjee, learned Senior Counsel appearing for Mr. S.Lakshmi Kanth, learned counsel for the respondent.

2. This intra-court appeal has been preferred by the Gas Authority of India Limited (for short, 'GAIL') and its officials as the appellants against the judgment and order dated 16.03.2021 passed by the learned Single Judge allowing W.P.No.26030 of 2017 filed by the respondent as the writ petitioner.

3. Respondent had filed the related writ petition assailing the following orders:

i) suspension order dated 06.07.2016;

ii) report of the Internal Complaints Committee (ICC) dated 20.01.2017;

iii) order of penalty dated 24.03.2017;

iv) appellate order dated 29.06.2017 dismissing the appeal of the respondent against the order of penalty; and

v) gratuity forfeiture order dated 17.05.2017.

3.1. We may briefly mention that respondent was an officer of GAIL and on the allegation of committing sexual harassment on three contractual women employees of GAIL was first suspended and following enquiry by the ICC was imposed the penalty of removal from service besides forfeiture of his gratuity.

4. Learned Single Judge vide the judgment and order dated 16.03.2021 allowed the writ petition by holding that appellants have not followed the mandate of Rule 30 of the GAIL Employees (Conduct, Discipline and Appeal) Rules, 1986 (briefly, 'the Rules' hereinafter), which is a

substantive legal requirement while imposing the major penalty of removal from service. Learned Single Judge held that appellants have not initiated any disciplinary proceedings in terms of Rule 30 of the Rules against the respondent and in the absence of the same, question of treating the report of ICC as a disciplinary proceeding would not arise. Consequently, the order of penalty of removal from service dated 24.03.2017 as well as the appellate order dated 29.06.2017 have been set aside. However, liberty has been given to the appellants to initiate disciplinary proceedings against the respondent in accordance with the provisions of the Rules.

5. Assailing the above finding rendered by the learned Single Judge, Mr. D.V.Sitharam Murthy, learned Senior Counsel for the appellants submits that the said judgment and order is wholly unsustainable on facts as well as in law. Learned Single Judge has misconstrued the report of the ICC as a preliminary or fact-finding enquiry report and therefore, erroneously proceeded that based on such report of ICC, appellants were required to initiate further

proceedings under Rule 30 of the Rules. The same having not been done, learned Single Judge interfered with the order of penalty. Learned Senior Counsel has referred to the decision of the Supreme Court in **Vishaka v. State of Rajasthan**[1] whereby and whereunder Supreme Court had issued a series of guidelines in view of the legislative vacuum dealing with sexual harassment of women at work place. He has referred to the subsequent decision of the Supreme Court in **Medha Kotwal Lele v. Union of India**[2] wherein Supreme Court while lamenting the lethargy of the authority in putting in place a comprehensive legislation dealing with sexual harassment of women at work place despite fifteen long years having passed following the decision in **Vishaka** (supra) clarified that report of the ICC would be deemed to be an enquiry report in a disciplinary action under the civil service conduct rules. In other words, the disciplinary authority is required to treat the report of the ICC as the finding in a disciplinary enquiry against a delinquent employee and act on such report.

[1] (1997) 6 SCC 241
[2] (2013) 1 SCC 297

Therefore, there was no requirement in law to hold additional proceedings under Rule 30 of the Rules on the basis of the ICC report.

5.1. Learned Senior Counsel for the appellants submits that after the ICC report was submitted, the disciplinary authority had followed the due procedure by furnishing a copy of the same to the respondent and sought for his views. It was thereafter that a reasoned order was passed imposing the penalty of removal from service.

5.2. He has placed reliance on the decision of the Gauhati High Court in **Tezpur University v. C.S.H.N.Murthy**[3] to drive home his point that when there is a report by the ICC, drawal of a separate charge sheet by the disciplinary authority is not warranted. As a matter of fact, learned Senior Counsel for the appellants would contend that the appellants had complied with the procedure contemplated under Rule 30 of the Rules.

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[3] (2016) 5 Gau LR 116

5.3. By referring to the decision of the Supreme Court in **Dr. Vijayakumaran C.P.V. v. Central University of Kerala**[4], relied upon by learned Single Judge, learned Senior Counsel for the appellants has distinguished the said decision and submits that learned Single Judge was not justified in placing reliance on the aforesaid decision in coming to the conclusion that report of the ICC is a preliminary report on the basis of which further proceedings are required to be initiated by the disciplinary authority by drawal of charge sheet.

5.4. He, therefore, submits that in any view of the matter, conclusions reached by the learned Single Judge are wholly unsustainable in law as well as on facts and therefore, the same are liable to be set aside and quashed.

6. *Per contra*, Mr. Deepak Bhattacharjee, learned Senior Counsel for the respondent submits that judgment and order of the learned Single Judge is a reasoned one and no interference is called for. Learned Single Judge has

[4] (2020) 12 SCC 426

correctly held that Rule 30 of the Rules is required to be followed in the event disciplinary authority intends to impose major penalty like the penalty of removal from service. Non-compliance to the procedure contemplated under Rule 30 of the Rules has vitiated the entire proceedings and therefore, learned Single Judge has rightly set aside the order of penalty as well as the order of the appellate authority affirming the order of penalty.

6.1. Insofar reliance placed by learned Senior Counsel for the appellants in the case of **Medha Kotwal Lele** (supra), learned Senior Counsel for the respondent submits that the said judgment was rendered before the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (briefly, 'the 2013 Act' hereinafter). According to learned Senior Counsel for the respondent, provisions of the said Act would have to be read conjointly with the provisions of the Rules which govern matters relating to conduct and discipline of employees serving in GAIL.

6.2. Adverting to the decision of **Dr. Vijayakumaran C.P.V** (supra), learned Senior Counsel for the respondent submits that not only the ratio laid down in the said decision is squarely applicable to the facts of the present case, rather respondent stands on a better footing than the appellant in the said case, inasmuch as respondent herein was a regular employee of GAIL, unlike the appellant therein who was a probationer.

6.3. Learned Senior Counsel for the respondent has placed great reliance on the decision of the Supreme Court in **Nisha Priya Bhatia v. Union of India**[5]**,** more particularly to paragraph 97 thereof, and submits that in the aforesaid decision Supreme Court has made it abundantly clear that enquiry under the 2013 Act is a separate enquiry of fact-finding nature. Post enquiry under the 2013 Act, the disciplinary authority is bound to conduct departmental enquiry under the relevant service rules if the situation so warrants. He submits that the

[5] (2020) 13 SCC 56

aforesaid decision had made it very clear that the two enquiries cannot be mixed up with each other.

6.4. Insofar the order dated 17.05.2017 is concerned whereby entire gratuity of the respondent was forfeited by the appellants, learned Senior Counsel for the respondent has drawn the attention of the Court to the provisions contained in the Payment of Gratuity Act, 1972 (briefly, 'the 1972 Act' hereinafter), more particularly to Section 4(6)(b)(ii) thereof, and submits that forfeiting the entire gratuity of the respondent was wholly unjustified on the part of the authority. Learned Senior Counsel for the respondent has placed reliance on a decision of the Supreme Court in **Union Bank of India v. C.G.Ajay Babu**[6] and contends that under sub-section (6)(b)(ii) of Section 4 of the 1972 Act, forfeiture of gratuity is permissible only if the termination of employee is for any misconduct which constitutes an offence involving moral turpitude and convicted accordingly by a court of competent jurisdiction.

[6] (2018) 9 SCC 529

6.5. In conclusion, he submits that the appeal filed by GAIL is thoroughly misconceived and is liable to be dismissed.

7. Submissions made by learned counsel for the parties have received the due consideration of the Court.

8. At the outset, it may be apposite to briefly encapsulate the admitted facts of the case.

9. At the relevant point of time, respondent was serving as Officer-on-Special Duty in the establishment of GAIL. On the allegation of committing misconduct, more particularly, causing sexual harassment on three contractual women employees while the respondent was serving as Chief Manager (HR) at GAIL, Hyderabad Zonal Office, he was placed under suspension vide order dated 06.07.2016 issued by the disciplinary authority. A perusal of the suspension order would go to show that three complaints were received by the disciplinary authority from three women contract employees working in GAIL Hyderabad Zonal Office alleging sexual harassment by the

respondent. It is not necessary to delve into the substance of the complaints. Suffice it to say, preliminary enquiry *prima facie* established genuineness of such complaints. Accordingly, the complaints were referred to ICC for a detailed enquiry under the 2013 Act. Considering the senior position held by the respondent, the disciplinary authority thought it prudent to place him under suspension during pendency of the enquiry.

10. ICC was constituted comprising the following members:

- Ms. Vandana Chanana – Presiding Officer
- Mr. A.N.Pandey – Member
- Ms. Debjani Purkayastha – Member
- Dr. Seema Sharma – Member (External Member – Associate Professor, Delhi School of Social Works, Delhi University)

11. ICC carried out enquiry into the allegations made by the three contract women employees against the respondent under Section 11 of the 2013 Act. On completion of the enquiry, ICC submitted its report dated

20.01.2017 to the disciplinary authority. Be it stated that as per report of ICC, allegations made by complainant No.1 against the respondent were proved. But, allegations made by complainants No.2 and 3 against the respondent were partially proved. Be that as it may, disciplinary authority vide memorandum dated 30.01.2017 forwarded a copy of the ICC report along with the forensic report to the respondent for his representation as per provision contained in Rule 31(ii) of the Rules. It was mentioned therein that relevant copies of all the documents connected with the ICC report, including copies of statements, cross-examinations and compact discs (CDs) had already been provided to the respondent. Further, respondent was advised to appear in person before the disciplinary authority for a personal hearing on 17.02.2017 at 11:00 am.

12. From the materials placed on record, it is seen that respondent had submitted representation disputing and contesting the report of ICC. He had also attended the personal hearing.

13. Thereafter, the disciplinary authority passed the order dated 24.03.2017 taking the view that continuation in service of the respondent would be detrimental to the interest of GAIL and that ends of justice would be adequately met if the penalty of "removal from service" was imposed on the respondent. Therefore, in exercise of powers conferred under Rule 29 and Rule 28(f) of the Rules read with Section 13(4) of the 2013 Act, the disciplinary authority imposed the penalty of removal from service on the respondent clarifying that such penalty would not be a disqualification for future employment. The period of suspension was directed to be treated as "*dies-non*".

14. Aggrieved by the aforesaid order of penalty, respondent preferred appeal before the appellate authority. By the order dated 29.06.2017, appellate authority did not find any merit in the appeal. Appellate authority opined that ICC had complied with the principles of natural justice during the enquiry proceedings and also followed the procedures laid down under the 2013 Act as well as under

the Rules. After due enquiry, the misconduct of sexual harassment was proved against the respondent. The penalty of removal from service is proportionate to the gravity of misconduct. Accordingly, the penalty of removal from service imposed on the respondent by the disciplinary authority was affirmed and the appeal dismissed.

15. In the meanwhile, the Executive Director (Human Resources) of GAIL passed an order dated 17.05.2017 ordering forfeiture of the entire gratuity payable to the respondent. From a perusal of the order dated 17.05.2017, it is seen that after imposition of the penalty of removal from service, respondent was issued a show cause notice dated 21.04.2017 calling upon him to show cause as to why his gratuity should not be forfeited wholly on the ground of moral turpitude in terms of Section 4(6)(b)(ii) of the 1972 Act. After considering the reply submitted by the respondent and on due consideration, the Executive Director concluded that the grave proven misconduct of sexual harassment committed by the respondent constitutes an offence involving moral turpitude and would

fall within the ambit of Section 4(6)(b)(ii) of the 1972 Act. Accordingly, it was ordered to wholly forfeit the gratuity payable to the respondent.

16. Having briefly noted the relevant facts, we may now broadly examine the legal framework governing the case.

17. In **Vishaka** (supra), Supreme Court was examining the issue relating to sexual harassment of working women in all work places through the judicial process to fill the vacuum in existing legislation. Supreme Court observed that gender equality includes protection from sexual harassment and right to work with dignity which is a universally recognised basic human right. However, Supreme Court noted that there was no domestic law in India dealing with sexual harassment of working women. In the absence of such a law, Supreme Court was of the view that till such time Parliament enacted a suitable legislation, measures were needed to curb the evil. The power of the Supreme Court under Article 32 of the Constitution of India should be exercised to lay down the

guidelines. Accordingly, Supreme Court laid down detailed guidelines and directed that those guidelines would be treated as the law declared by the Supreme Court under Article 141 of the Constitution of India.

18. At this stage it may not be necessary to advert to and refer to in detail the detailed guidelines laid down by the Supreme Court. Suffice it to say, Supreme Court emphasised that it is the duty of the employer to prevent or deter the commission of acts of sexual harassment in work places. Broadly defining sexual harassment, Supreme Court provided that not only should it be prevented, but as and when such misconduct takes place, the delinquent should be subjected to disciplinary action and in addition suffer criminal consequences. Supreme Court provided for a complaint mechanism to deal with complaints of sexual harassment.

19. In **Medha Kotwal Lele** (supra) Supreme Court expressed its surprise that though fifteen years had passed by since issuance of Vishaka guidelines, the statutory law

was still not in place. At that point of time, Supreme Court noted that the Protection of Women Against Sexual Harassment at Work Place Bill, 2010, was pending in Parliament, though the Lok Sabha had passed the same in the first week of September, 2012. It was in that context Supreme Court opined that as the largest democracy in the world, we have to combat violence against women. Supreme Court expressed the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and by the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places, in their homes as well as outside, and prevent all forms of violence – domestic violence, sexual assault, sexual harassment at the workplace, etc. In the circumstances, Supreme Court expressed the view that guidelines in **Vishaka** (supra) should not remain symbolic and thereafter issued the following, amongst other directions:

> **44.1.** The States and Union Territories which have not yet carried out adequate and appropriate amendments

> in their respective Civil Services Conduct Rules (by whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings, etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

20. From the above, it is seen that Supreme Court had categorically stated that report of the Complaints Committee shall be deemed to be an enquiry report in a disciplinary action under the respective civil services conduct rules. In other words, the disciplinary authority shall treat the report of the Complaints Committee as the findings in a disciplinary enquiry against the delinquent and shall act on such report accordingly. It was clarified that findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or

enquiry leading to a disciplinary action but shall be treated as finding/report in an enquiry into the misconduct of the delinquent.

21. After the aforesaid judgment was rendered by the Supreme Court in **Medha Kotwal Lele** (supra), Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (already referred to as, 'the 2013 Act' hereinabove).

22. At this stage, we may mention that Article 15(3) of the Constitution of India recognizes the vulnerable position of women in India. While Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth, clause (3) thereof is an exception. It says that nothing in Article 15 shall prevent the State from making any special provision for women and children.

23. Preamble to the 2013 Act says that it is an Act to provide protection against sexual harassment of women at work place and for its prevention and redressal of

complaints of sexual harassment and for matters connected therewith or incidental thereto.

23.1. Section 2(h) of the 2013 Act defines "internal committee" to mean, an Internal Complaints Committee (already referred to as, 'the ICC" hereinabove) constituted under Section 4.

23.2. "Sexual harassment" has been defined in Section 2(n) in the following terms:

> (n) "sexual harassment" includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—
>
> (i) physical contact and advances; or
>
> (ii) a demand or request for sexual favours; or
>
> (iii) making sexually coloured remarks; or
>
> (iv) showing pornography; or
>
> (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

23.3. That apart, Section 2(o) defines "work place" to include, amongst others, a dwelling place or a house.

23.4. Section 3 of the 2013 Act, more particularly sub-section (1) thereof, declares that no women shall be subjected to sexual harassment at any workplace. Instances of what could be construed to be sexual harassment has been mentioned in sub-section (2).

23.5. Constitution of ICC is dealt with in Section 4.

23.6. Section 9 empowers an aggrieved woman to lodge a complaint of sexual harassment. Sub-section (1) thereof says that any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the ICC, if so constituted, or to the Local Committee, in case ICC is not constituted, within a period of three months from the date of the incident and in case of a series of incidents, within a period of three months from the date of last incident.

23.7. Section 11 is relevant. It deals with enquiry into complaints of sexual harassment. As per sub-section (1), ICC is empowered to make enquiry into the complaint in accordance with the provisions of the service rules

applicable to the respondent. As per sub-section (3), ICC shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of summoning and enforcing attendance of any person and examining him on oath; requiring the discovery and production of documents; and any other matter which may be prescribed. Sub-section (4) says that the enquiry contemplated under sub-section (1) shall be completed within a period of ninety days.

23.8. Pausing here for a moment and on a careful reading of sub-section (1) of Section 11, we find that while conducting enquiry into a complaint of sexual harassment, ICC is required to follow provisions of the applicable service rules.

23.9. On completion of enquiry, ICC shall submit its report under Section 13 to the disciplinary authority, which report shall be made available to the concerned parties. If the ICC arrives at the conclusion that the allegation against the respondent has been proved, then sub-section

(3) of Section 13 comes into play as per which ICC shall recommend to the disciplinary authority to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable and also to deduct from the salary of the respondent any sum the disciplinary authority may consider appropriate to be paid to the aggrieved woman or to her legal heirs. As per sub-section (4), disciplinary authority shall act upon the recommendation within sixty days of receipt of the enquiry report.

23.10. Section 18 of the 2013 Act provides for filing of appeal. Sub-section (1) of Section 18 says that any person aggrieved by the recommendations made or non-implementation of such recommendations may prefer an appeal to the appellate authority in accordance with the provisions of the applicable service rules.

23.11. Section 29 empowers the appropriate Government to make rules.

24. In exercise of the powers conferred by Section 29 of the 2013 Act, the Central Government has made the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (briefly, 'the 2013 Rules' hereinafter).

24.1. Rule 11 of the 2013 Rules provides for filing of appeal.

25. GAIL has framed implementation guidelines for cases of 'Sexual Harassment of Women' at workplace communicated on 04.05.2016 (briefly 'the guidelines' hereinafter). The guidelines lay down the procedure to be followed by ICC for conducting enquiry on complaints of sexual harassment as per the 2013 Act as well as under the 2013 Rules.

25.1. Paragraph 3 thereof deals with the dual role of ICC. It says that ICC would have a dual role of investigation into the allegations made by the complainant and subsequently as an inquiring authority to enquire into the charges framed against the respondent.

25.2. Paragraph 6.2 says that upon commencement of enquiry by the ICC and upon receipt of written statement of the delinquent, and if no such statement is received, ICC shall conduct the enquiry as per Section 11 of the 2013 Act and as per the provisions laid down under Rule 30 of the Rules.

25.3. Paragraph 6.4 again clarifies that ICC shall be deemed to be the enquiring authority appointed by the disciplinary authority. While directing ICC to enquire into the charges, disciplinary authority shall also appoint a Presenting Officer to present the case before the ICC.

25.4. Paragraph 8 deals with enquiry report.

25.5. Paragraph 9 provides for re-enquiry by the ICC. Paragraph 9.1 says that the disciplinary authority for reasons to be recorded by it in writing may remit the case to the ICC for fresh or further enquiry. However, paragraph 9.2 makes it clear that on receipt of the report of ICC, a copy thereof should be made available to the

delinquent requiring him to submit his representation within a specific period and as per paragraph 9.3, on receipt of such representation and after affording a personal hearing, the disciplinary authority shall, if it disagrees with the findings of the ICC on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose. As per paragraph 9.4, if the disciplinary authority, having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Rule 28 should be imposed on the delinquent, it shall make an order imposing such penalty. Such an order shall be passed by the disciplinary authority within sixty days of receipt of the recommendation/enquiry report of the ICC.

26. That brings us to the Rules, more particularly to Rule 30 thereof, on which much reliance has been placed by learned Senior Counsel for the respondent and accepted by the learned Single Judge.

26.1. Rule 25 of the Rules provides for suspension. Sub-rule (1) says that the appointing authority or any authority to which it is subordinate or the disciplinary authority or any authority empowered in that behalf by the management by general or special order may place an employee under suspension, where disciplinary proceeding against him is contemplated or is pending; where a case against him in respect of any criminal offence is under investigation or trial; where continuation in office of the employee is likely to seriously subvert discipline in the office in which he is working; or where there is a *prima facie* case of sexual harassment of woman at work place against an employee.

26.2. Rule 30 lays down the procedure for imposing major penalty. Sub-rule (1) says that no order imposing any of the major penalties as specified in Rule 28 shall be made except after an enquiry is held in accordance with Rule 30. Thereafter, from sub-rules (2) to (18) the procedure of enquiry by the disciplinary authority is laid down.

26.3. As per Rule 31, the disciplinary authority is required to take action on the enquiry report. In the event, it disagrees with the report of the enquiry officer for reasons to be recorded in writing, it shall remit the case to the enquiry officer for a fresh or further enquiry, in which event, the enquiry officer shall proceed to hold a fresh or further enquiry. In the event, disciplinary authority is in agreement with the report of the enquiry officer, the same shall be made available to the delinquent requiring him to submit representation if any within a specific period, as may be decided by the disciplinary authority. On receipt of the representation from the delinquent and after affording him a personal hearing, disciplinary authority shall pass such order as may be deemed necessary. If it disagrees with the findings of the enquiry officer, it shall record its reasons for such disagreement and thereafter the disciplinary authority may impose any of the penalties specified in Rule 28. Of course, if the disciplinary authority is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned.

27. From a conjoint reading of Sections 11 and 13 of the 2013 Act as well as Rule 30 of the Rules as explained by the guidelines dated 04.05.2016, more particularly in paragraphs 3 and 6.4 thereof, we are of the view that the enquiry conducted by the ICC cannot be construed to be a preliminary or a fact-finding enquiry. In fact, this position was clarified by the Supreme Court in **Medha Kotwal Lele** (supra), though the said decision was rendered prior to the enactment of the 2013 Act.

27.1. The procedure laid down in Rule 30 of the Rules is to ensure that the delinquent is afforded all procedural safeguards in the departmental enquiry.

27.2. Section 11 of the 2013 Act also makes it abundantly clear that the enquiry by the ICC shall be in accordance with the provisions of the applicable service rules. Thus, when the ICC conducts an enquiry under Section 11 of the 2013 Act and submits its report under Section 13 thereof, it is mandated to follow the procedure laid down under Rule 30 of the Rules. Therefore, the procedure laid down

under Rule 30 of the Rules has to be read into the procedure that has to be followed by the ICC while conducting enquiry under Section 11 of the 2013 Act. There is no conflict between the procedure contemplated under Sections 11 and 13 of the 2013 Act and the procedure laid down under Rule 30 of the Rules.

28. As a matter of fact, we find that upon receipt of the enquiry report from the ICC, the disciplinary authority followed the procedure laid down under Rule 31 of the Rules, which deals with action on the enquiry report prepared under Rule 30.

29. As already noticed above, a copy of the enquiry report was furnished to the respondent. He was called upon to submit his representation on the enquiry report which he did. He was also given an opportunity of personal hearing. It was thereafter that the disciplinary authority passed a detailed order considering not only the report of the ICC but also the materials on record and the representation of the respondent to come to the conclusion that allegation

made by complainant No.1 stood proved but allegations made by complainants No.2 and 3 were not fully proved.

30. In such circumstances, we are of the view that learned Single Judge fell in error in taking the view that in addition to the enquiry conducted by the ICC, the disciplinary authority is required to hold further proceedings under Rule 30 of the Rules.

31. In **Dr. Vijayakumaran C.P.V** (supra) the moot question before the Supreme Court was whether termination of the appellant was a termination simpliciter or was *ex facie* stigmatic. Appellant in that case was on probation with the University. There was an allegation of sexual harassment against the appellant which was enquired into by the ICC. On receipt of the report of the ICC, Executive Council of the University decided to terminate the services of the appellant and accordingly termination order was issued. In such circumstances, Supreme Court held that it would be unfathomable to construe the order as an order of termination simpliciter.

It was certainly stigmatic in nature. That being so, the procedure post submission of report was required to be followed, which was not followed in that case.

32. Insofar **Nisha Priya Bhatia** (supra) is concerned, a host of intricate and intertwined issues arose for consideration before the Supreme Court. Appellant was an employee in the Research and Analysis Wing (RAW). In the course of her employment, she alleged sexual harassment against two of her superiors. Her complaint of sexual harassment was not taken up promptly. Subsequently, when ICC was constituted, appellant did not participate therein. ICC in its *ex parte* report concluded that no case of sexual harassment was made out. At that stage, appellant attempted suicide in the Prime Minister's Office, which incident was widely reported in the media. In the aftermath of this unfortunate incident, a high level committee was constituted by the then Prime Minister of India. In view of the exposure of the appellant of her employment in RAW, she was declared unemployable by the organisation. This came to be successfully challenged

by her before the Central Administrative Tribunal, but reversed by the Delhi High Court. It was thereafter that the matter reached the Supreme Court where a host of challenges were made by the appellant, including constitutionality of certain provisions of the service rules. It is not necessary for us to dilate in detail on all the above aspects. Suffice it to say that in the course of adjudication in **Nisha Priya Bhatia** (supra) the two Judge Bench of the Supreme Court held as follows:

> **97.** Be that as it may, in our opinion, the petitioner seems to have confused two separate inquiries conducted under two separate dispensations as one cohesive process. The legal machinery to deal with the complaints of sexual harassment at workplace is well delineated by the enactment of the Sexual Harassment of Women at Workplace Act, 2013 (hereinafter "the 2013 Act") and the Rules framed thereunder. There can be no departure whatsoever from the procedure prescribed under the 2013 Act and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (for short "the 2013 Rules"), either in matters of complaint or of inquiry thereunder. The sanctity of such procedure stands undisputed. The inquiry under the 2013 Act is a separate inquiry of a fact-finding nature. Post the conduct of a fact-finding

> inquiry under the 2013 Act, the matter goes before the department for a departmental enquiry under the relevant departmental rules [the CCS (CCA) Rules in the present case] and accordingly, action follows. The said departmental enquiry is in the nature of an in-house mechanism wherein the participants are restricted and concerns of locus are strict and precise. The ambit of such inquiry is strictly confined between the delinquent employee and the department concerned having due regard to confidentiality of the procedure. The two inquiries cannot be mixed up with each other and similar procedural standards cannot be prescribed for both. In matters of departmental enquiries, prosecution, penalties, proceedings, action on inquiry report, appeals, etc. in connection with the conduct of the government servants, the CCS (CCA) Rules operate as a self-contained code for any departmental action and unless an existing rule is challenged before this Court on permissible grounds, we think, it is unnecessary for this Court to dilate any further.

32.1. From the above, it is seen that the two Judge Bench of the Supreme Court has taken the view that an enquiry under the 2013 Act is a separate enquiry of fact-finding nature. Post the conduct of a fact-finding enquiry under the 2013 Act, the matter would go to the disciplinary authority for a departmental enquiry under the relevant service rules. The two enquiries i.e., enquiry by the ICC

and enquiry under the service rules should not be mixed up. However, in paragraph 99 of the said decision, the Bench clarified that the factual matrix in **Nisha Priya Bhatia** (supra) relates to the pre 2013 Act era and was solely governed by the guidelines issued in **Vishaka** (supra).

33. We are confronted with a difficult choice. On the one hand, we have the decision of the Supreme Court in **Medha Kotwal Lele** (supra) wherein Supreme Court emphatically said that the report of the ICC shall be deemed to be an enquiry report in a disciplinary action under the relevant service rules. It was further clarified by the Supreme Court that the disciplinary authority shall treat the report/findings etc., of the ICC as the findings in a disciplinary enquiry against the delinquent employee and shall act on such report accordingly. We notice that the decision in **Medha Kotwal Lele** (supra) was rendered by a Bench of three Hon'ble Judges. We have further analysed in the course of this judgment the interplay of Sections 11 and 13 of the 2013 Act and Rule 30 of the Rules in the

light of the guidelines laid down by GAIL. To our mind, the decision of the Supreme Court in **Medha Kotwal Lele** (supra) is directly on the point and would govern the field. We may mention that the decision in **Nisha Priya Bhatia** (supra) was rendered by a Bench of two Hon'ble Judges. Being the decision of a Larger Bench, the ratio laid down in **Medha Kotwal Lele** (supra) would be binding on this Court.

34. That being the position, we are of the view that interference by the learned Single Judge with the penalty imposed on the respondent by the appellants on the ground that the procedure laid down under Rule 30 of the Rules was not followed cannot be sustained. The same is accordingly set aside.

35. This brings us to the issue of gratuity.

36. We have already noted that by order dated 17.05.2017, the Executive Director (HR) had ordered for forfeiture of the entire gratuity amount payable to the respondent on the ground that the grave misconduct of

sexual harassment committed by the respondent stood proved which constitutes an offence involving moral turpitude. Therefore, case of the respondent would fall within the meaning of Section 4(6)(b)(ii) of the 1972 Act. Accordingly, it was ordered that the entire gratuity payable to the respondent would stand forfeited.

37. Payment of gratuity is covered by the 1972 Act. It is an Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. However, we find that the term 'gratuity' is not defined in the aforesaid Act. But payment of gratuity is dealt with in Section 4. Sub-section (1) of Section 4 reads as under:

> **4. Payment of gratuity** - (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-
>
> (a) on his superannuation, or
>
> (b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation:- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

37.1. From the above, it is evident that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years – a) on his superannuation; or b) on his retirement or resignation; or c) on his death or disablement due to accident or disease.

38. As per sub-section (6) of Section 4, notwithstanding anything contained in sub-section (1), gratuity of an employee shall be forfeited in the following circumstances.

> (6) Notwithstanding anything contained in sub-section (1).-
>
> (a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;
>
> (b) the gratuity payable to an employee may be wholly or partially forfeited-
>
> (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act violence on his part, or
>
> (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

38.1. Sub-section (6)(b)(ii) of Section 4 is relevant for the present discourse. It says that gratuity payable to an employee may be wholly or partially forfeited if the services of such employee have been terminated for any act which constitutes an **offence** involving mortal turpitude provided

that such **offence** is committed by him in the course of his employment.

39. In **Bakshish Singh v. M/s.Darshan Engineering Works**[7]**,** Supreme Court upheld the constitutional validity of Section 4(1) of the 1972 Act. Supreme Court noted that in labour jurisprudence, the concept of gratuity has undergone a metamorphosis over the years. What was once considered to be a gratuitous payment or a gift by the employer to the employee has now crystallized into a right of the employee. As a matter of fact, gratuity is a property of the employee. From a perusal of the 1972 Act, it is evident that it is a welfare measure to improve the service conditions of the employees. Payment of gratuity under the 1972 Act is obligatory being one of the minimum conditions of service of an employee.

40. Supreme Court in **Jaswant Singh Gill v. Bharat Coking Coal Limited**[8] held that the 1972 Act provides for a close-knit scheme for payment of gratuity. It is a

[7] AIR 1994 SC 251
[8] (2007) 1 SCC 663

complete code containing detailed provisions covering the essential provisions of a scheme for gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which an employee may be denied gratuity.

41. In **C.G.Ajay Babu** (supra), Supreme Court examined the provisions of sub-section (6) of Section 4 of the 1972 Act in the following manner:

> **15.** Under sub-section (6)(*a*), also the gratuity can be forfeited only to the extent of damage or loss caused to the Bank. In case, the termination of the employee is for any act or wilful omission or negligence causing any damage or loss to the employer or destruction of property belonging to the employer, the loss can be recovered from the gratuity by way of forfeiture. Whereas under clause (*b*) of sub-section (6), the forfeiture of gratuity, either wholly or partially, is permissible under two situations: (*i*) in case the termination of an employee is on account of riotous or disorderly conduct or any other act of violence on his part, (*ii*) if the termination is for any act which constitutes an offence involving moral turpitude and the offence is committed by the employee in the course of his employment. Thus, clause (*a*) and clause (*b*) of sub-section (6) of Section 4 of the Act operate in

> different fields and in different circumstances. Under clause (*a*), the forfeiture is to the extent of damage or loss caused on account of the misconduct of the employee whereas under clause (*b*), forfeiture is permissible either wholly or partially in totally different circumstances. Clause (*b*) operates either when the termination is on account of: (*i*) riotous, or (*ii*) disorderly, or (*iii*) any other act of violence on the part of the employee, and under clause (*ii*) of sub-section (6)(*b*) when the termination is on account of any act which constitutes an offence involving moral turpitude committed during the course of employment.

41.1. Referring to the expression 'offence' finding place in sub-section (6)(b)(ii) of Section 4 of the 1972 Act, Supreme Court referred to the definition of 'offence' in Section 3(38) of the General Clauses Act, 1987 to mean any act or omission made punishable by any law for the time being in force. Thereafter, Supreme Court held as follows:

> **17.** Though the learned counsel for the appellant Bank has contended that the conduct of the respondent employee, which leads to the framing of charges in the departmental proceedings involves moral turpitude, we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral

> turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is for the court. Apart from the disciplinary proceedings initiated by the appellant Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under sub-section (6)(*b*)(*ii*) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction.

41.2. From the above, we find that the Supreme Court has clearly held that under sub-section (6)(b)(ii) of Section 4 of the 1972 Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an 'offence' involving moral turpitude and convicted accordingly by a court of competent jurisdiction.

42. Adverting to the facts of the present case, we find that there is no material on record to show lodging of any first information or complaint by the appellants against the respondent for the offence involving moral turpitude; not to

speak of conviction of the respondent by a court of competent jurisdiction.

43. That apart, having regard to the fact that only one complaint was found to be fully proved, the decision to forfeit entirety of the gratuity of the respondent was wholly disproportionate and reflected non application of mind.

44. We, therefore, set aside the order dated 17.05.2017 passed by the Executive Director (HR) of GAIL.

45. Thus, while reversing the order of the learned Single Judge and upholding the penalty of removal from service imposed on the respondent, we, however, set aside the order dated 17.05.2017 and direct that the gratuity amount due to the respondent be released by the appellants within a period of two months from the date of receipt of a copy of this order.

46. Writ appeal is accordingly partly allowed to the extent indicated above.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

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UJJAL BHUYAN, CJ

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N. TUKARAMJI, J

28.02.2023

Note: LR copy to be marked.
B/o.
vs