2023:DHC:9350

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

% Pronounced on: 15th December, 2023

\+ W.P.(C) 741/2022 & CM APPL. 2068/2022

PULAK M. PANDEY ..... Petitioner

Through: Mr.Arun Khatri, Advocate

versus

INDIAN INSTITUTE OF TECHNOLOGY DELHI & ORS.

..... Respondents

Through: Mr.Arjun Mitra, Advocate for R-1 to 3

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant writ petition under Article 226/227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs: -

> *"a) Issue an appropriate writ set aside impugned inquiry report dated 18.05.2018 resulting into the impugned penalties imposed over the Petitioner.*
>
> *b) Set aside impugned Memorandum dated 27.09.2019 confirming charges against the Petitioner and prescribing punishment to the Petitioner.*
>
> *c) Set aside order dated 09.08.2021."*

FACTUAL MATRIX

2. The petitioner is a Professor at Department of Mechanical Engineering, Indian Institute of Technology, Delhi /respondent no. 1 and has been serving in the institution since the year 2004.

3. In 2012, the respondent no. 4, a Ph.D. candidate, began working as a research scholar under the supervision of the petitioner till the year 2016.

4. On 13th January 2016, the respondent no. 4 submitted application for change of thesis supervisor, thereby, alleging that the petitioner did not provide any technical guidance and modified her research topic with the intent to spend more time at the Institute. Pursuant to the same, the petitioner submitted his reply to the application on 25th January 2016, wherein it was stated that the respondent no. 4 manipulated and fudged data. Furthermore, the petitioner highlighted the improper behavior of the respondent no. 4 towards her fellow research scholars.

5. On 11th February 2016, the petitioner wrote letter to the Chairman of the Department Research Committee stating that the he shall withdraw from the position of respondent no. 4's research supervisor. Subsequently, on 28th April 2016, respondent no.4's research supervisor was replaced and her research topic was modified.

6. The respondent no. 4 lodged a complaint with the Chairperson of the Internal Complaint Committee (hereinafter referred to as the "ICC")

of IIT Delhi on 12th January 2018, and a subsequent complaint on 25th January 2018, alleging harassment committed by the petitioner.

7. Based on the complaints dated 12th January 2018 and 25th January 2018, the ICC issued a summary of complaints dated 27th February 2018 *prima facie* constituting incidents of sexual harassment on the charges of i) stalking; ii) intimidation; iii) creation of hostile work environment; iv) deliberately obstructing research work; and v) unbecoming conduct.

8. The ICC advised the respondent no. 4 and the petitioner to submit their written responses along with a list of witnesses to the Chairperson by 8th March 2018.

9. On 7th March, 2018, the petitioner furnished his reply dated 27th February, 2018, to the summary of complaint.. Upon examining the substance in the complaint and the reply filed by the petitioner, the ICC found ample evidence and found the petitioner guilty of sexual harassment and mental harassment of a persistent nature on the charges of i) Stalking; ii) Creation of hostile work environment; iii) Deliberately obstructing research work; and iv) Unbecoming conduct in its inquiry report dated 18th May 2018.

10. The inquiry report was forwarded by the Chairperson, ICC to the Disciplinary Authority on 21st May 2018.

11. On 25th May 2018, the petitioner filed an application seeking documents for the purpose rebutting the inquiry report and the respondent no. 1 rejected the said application of the petitioner on the grounds that the same cannot be entertained at this stage.

12. The petitioner preferred an appeal against the said inquiry report on 30th August 2018.

13. On 1st September 2018, in a meeting chaired by the respondent no. 2, the Board dropped the charges of sexual harassment and concluded that it is a case of harassment since , there is no substantial evidence on record to prove it to be a case of sexual harassment.

14. A memorandum dated 24th June 2019 was issued by the Joint Registrar (E-1), IIT Delhi wherein the Disciplinary Authority consisting of the Board of Governors upon examining the inquiry report, found the report to be inadequate thereby lacking evidence against the charge of sexual harassment and therefore held it to be a case of harassment and found merit in charges related to i) Creation of hostile work environment; ii) deliberately obstructing research; and iii) unbecoming conduct as a public servant and faculty member at IIT Delhi.

15. Further, the petitioner was granted an opportunity to explain his position and make a written submission however, the petitioner objected to the memorandum vide reply dated 1st July 2019 and submitted a detailed representation to the Board of Governors of respondent no. 1 denying the charges levied on him as false, baseless and based on untrue facts.

16. Another memorandum dated 28th August, 2019 was issued by the respondent no. 1 stating that the Board of Governors had arrived at a decision rejecting the contentions of the petitioner and imposed penalty of censure to the petitioner and also took administrative actions against the

petitioner. The petitioner was granted 15 days in order to make his representation against the penalty and action proposed by the Board of Governors.

17. The petitioner replied to the aforesaid memorandum on 12th September, 2019, wherein he requested the Joint Registrar to supply documents relevant to the matter as the penalty was already decided by the disciplinary authority.

18. The Joint Registrar *vide* his letter dated 18th September 2019 denied the request of the petitioner on the ground that there was no justification in delaying the matter at that stage.

19. Thereafter, the petitioner filed a statutory appeal under Section 9 of Institute of Technology Rules before the Hon'ble President of India in his capacity as the Visitor of the institute who again upheld the penalty and the administrative action vide order dated 9th August 2021.

20. Aggrieved by the inquiry report dated 18th May 2018, memorandum dated 27th September 2019 and order dated 9th August 2021.

SUBMISSIONS

(on behalf of the petitioner)

21. Learned counsel appearing on behalf of the petitioner submitted that the ICC and the Board of Governors are a quasi-judicial body owing their creation to the relevant statute and any conclusion reached by such body shall be backed by specific acceptable evidence and complaint

unsupported by any specific material cannot be taken into account for deciding such matter.

22. It is submitted that the ICC failed to adhere to the provisions of IIT Delhi Rules and procedures for the prevention, prohibition and punishment of harassment of woman at workplace.

23. It is contended that the committee disregarded the provision of Clause 8 (i) of the IIT Delhi Rules and mechanically treated the complaint as that harassment is an ongoing event instead of taking into account the fact that the complaint has been filed after a long time which is impressible under law and accordingly, directed the petitioner to submit his representation regarding the same.

24. It is contended that the ICC failed to follow the procedure for examination of witnesses as laid down by Department of Personnel & Training and vide Office Memorandum no. 11013/2/2104-Estt. (A-III) dated 16th July 2015

25. It is further contended that as per Clause 10(1)(xix) of IIT Delhi Rules, proceedings of the Internal Complaint Committee shall be recorded in writing, in English. The record of the proceedings and the statement of witnesses shall be endorsed by the persons concerned in token of authenticity thereof, however, in the instant case, no such record in writing was kept by the committee rather the proceedings were recorded using a mobile phone hence, there was no authenticity as to the medium in which the proceedings were recorded.

26. It is submitted that he was never made aware of the proceedings of the committee, no signatures of the witnesses were obtained to confirm the authenticity of the said proceedings and the petitioner was not allowed to lead his witnesses, as he was neither informed about recording of statement of witnesses, nor any opportunity to cross examine the witnesses was provided to him which is gross violation of principle of natural justice.

27. It is submitted that the as per the Rules, the Disciplinary Authority i.e. Board of Governors, on the receipt of Investigation Report takes a decision whether a formal charge sheet needs to be issued. However, in the present case the ICC treated its letter dated 27th February 2018 as a Show Cause Notice as well as a charge sheet and proceeded to a conduct formal inquiry into allegations leveled by the Complainant

28. It is contended that ICC unequivocally declared the petitioner guilty of sexual harassment and did not take the requisite approvals from the Board of Governors before declaring the petitioner guilty.

29. It is the submitted that principles of nature justice were violated when the petitioner was denied the right to conduct cross examination of the witnesses led by the respondent no. 4.

30. In view of the foregoing submissions, the counsel for the petitioner prayed that the petition may be allowed, and the reliefs as claimed by the petitioner may be granted by this Court.

(on behalf of the respondent)

31. *Per Contra*, the learned counsel for the respondent no. 1 submitted that it is an autonomous institution of eminence created by an Act of Parliament and is governed by its own statutes, rules and processes.

32. It is submitted by the respondents that as per the statutory regulations of the Institute Rules, the summary of the complaint, along with a true copy of the complaint are deemed to be a charge sheet and the names and identities of the Complainant and all the witnesses are to be kept completely confidential at all times.

33. It is submitted by the respondents that the Charged Officer had to seek inspection of the records from time to time during the inquiry and thereafter, exercise the right to cross examine the witnesses, by submitting a questionnaire and it was only after the entire process was over that the petitioner sought copies of the documents pertaining to the case, which could not be provided to him, in light of the bar contained in the Institute Rules against making any copies of the record.

34. It is submitted that the petitioner was given an opportunity of making a representation and hence, there was no denial of justice by the respondent no. 1 in conducting the enquiry into the complaint made by the respondent no. 4.

35. It is further submitted by the respondents that the version of the petitioner had been considered by the Disciplinary Authority as well as the Appellate Authority, who have both given detailed and reasoned

orders against the petitioner and the petitioner is therefore, virtually seeking to convert the present petition into a second appeal.

36. It is submitted that there is no illegality or irregularity in the impugned order passed by the respondent which invites interference of this Court since the impugned order has been passed after considering all relevant facts and circumstances reason for initiating recovery may be gathered from the impugned orders or other contents.

37. Hence, in view of the foregoing submissions, the respondent seeks that this Court may dismiss the writ petition thereby, upholding the impugned orders.

ANALYSIS AND FINDINGS

38. Heard the learned counsels for the parties and perused the material on record including the pleadings, the various documents on record including the impugned orders.

39. Keeping in view the arguments advanced, the following issue has been framed for adjudication by this Court:

> *Whether the impugned orders dated 09th August 2021, the memorandum dated 27th September 2019 and inquiry report dated 18th May 2018 passed by the respondents is liable to be set aside by this Court?*

40. The petitioner has prayed for setting aside inquiry report dated 21st May 2018, memorandum dated 27th February, 2019 and the order dated 9th August, 2021 passed by the respondent no. 1 and has alleged that the principles of natural justice have not been followed by the respondent in conducting an enquiry into the complaint filed by the respondent no. 4.

Therefore, the petitioner is seeking writ of certiorari to be exercised by this Court for seeking setting aside of the impugned orders.

41. Before delving any further into merits of the case, this Court will reiterate the settled principle of law for issuance of the writ of certiorari.

42. Under Article 226 of the Constitution of India, the High Court shall intervene with the order of the statutory authority only in cases where there is a gross violation of the rights of the petitioner. A mere irregularity that does not substantially affect the case of the petitioner shall not be ground for the Court to interfere with the order of the authority.

43. Furthermore, writ of certiorari is to be exercised only in those cases where there is an order of the lower court/ statutory authority which is to be quashed on the ground that their wrongful exercise of power by the lower court/ statutory authority. The writ of certiorari can be issued if an error of law is apparent on the face of the record and in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority.

44. The Hon'ble Supreme Court has enunciated the said principle recently in the judgment of ***Central Council for Research in Ayurvedic Sciences and Another v. Bikartan Das and Others*** **2023 SCC OnLine SC 996** as follows:

> *"50. Before we close this matter, we would like to observe something important in the aforesaid context:*
>
> *Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.*

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."

45. In light of the aforementioned judgment, the Court should exercise its power under Article 226 for granting writ of certiorari very cautiously

and sparingly in exceptional circumstances only in a given case where it is demonstrated that there is something palpably erroneous in the process of adjudication of the matter before by the authority.

46. Now this Court will examine whether the norms of the natural justice are rigid in terms of the disciplinary proceedings.

47. It is well settled that the principles of natural justice are not rigid norms of unchanging content. In other words, the principles of natural justice are not inflexible and may differ in different circumstances. The Hon'ble Supreme Court in ***Hira Nath Mishra and Others* v. *Principal, Rajendra Medical College, Ranchi and Another,* (1973) 1 SCC 805**, has held that rules of natural justice cannot remain the same applying to all conditions and there can be cases where cross examining of the witnesses can be exempted for appropriate reasons. The relevant paras are being reproduced hereunder:

> *"9. The High Court was plainly right in holding that principles of natural justice are not inflexible and may differ in different circumstances. This Court has pointed out in Union of India v. P.K. Roy [AIR 1968 SC 850] that the doctrine of natural justice cannot be imprisoned within strait-jacket of a rigid formula and its application depends upon several factors. In the present case the complaint made to the Principal related to an extremely serious matter as it involved not merely internal discipline but the safety of the girl students living in the Hostel under the guardianship of the college authorities. These authorities were in loco parents to all the students - male and female who were living in the Hostels and the responsibility towards the young girl students was greater because their guardians had entrusted them to their care by putting them in the Hostels attached to the college. The authorities could not possibly dismiss the matter as of small consequence because if they*

did, they would have encouraged the male student rowdies to increase their questionable activities which would, not only, have brought a bad name to the college but would have compelled the parents of the girl students to withdraw them from the Hostel and, perhaps, even stop their further education. The Principal was, therefore, under an obligation to make a suitable enquiry and punish the miscreants.

10. But how to go about it was a delicate matter. The police could not be called in because if an investigation was started the female students out of sheer fright and harm to their reputation would not have co-operated with the police. Nor was an enquiry, as before a regular tribunal, feasible because the girls would not have ventured to make their statements in the presence of the miscreants because if they did, they would have most certainly exposed themselves to retaliation and harassment thereafter. The college authorities are in no position to protect the girl students outside the college precincts. Therefore, the authorities had to devise a just and reasonable plan of enquiry which, on the one hand, would not expose the individual girls to harassment by the male students and, on the other, secure reasonable opportunity to the accused to state their case.

11. Accordingly, an Enquiry Committee of three independent members of the staff was appointed. There is no suggestion whatsoever that the members of the Committee were anything but respectable and independent. The Committee called the girls privately and recorded their statements. Thereafter the students named by them were called. The complaint against them was explained to them. The written charge was handed over and they were asked to state whatever they had to state in writing. The Committee was not satisfied with the explanation given and thereafter made the report.

12. We think that under the circumstances of the case the requirements of natural justice were fulfilled. The learned counsel for the respondents made available to us the report of the Committee

just to show how meticulous the members of the Committee were to see that no injustice was done. We are informed that this report had also been made available to the learned Judges of the High Court who heard the case and it further appears that the counsel for the appellants before the High Court was also invited to have a look into the report, but he refused to do so. There was no question about the incident. The only question was of identity. The names had been specifically mentioned in the complaint and, not to leave anything to chance, the Committee obtained photographs of the four delinquents and mixed them up with 20 other photographs of students. The girls by and large identified these four students from the photographs. On the other hand, if as the appellants say, they were in their own Hostel at the time it would not have been difficult for them to produce necessary evidence apart from saying that they were innocent and they had not gone to the girls Hostel at all late at night. There was no evidence in that behalf. The Committee on a careful consideration of the material before them came to the conclusion that the three appellants and Upendra had taken part in the night raid on the girls Hostel. The report was confidentially sent to the Principal. The very reasons, for which the girls were not examined in the presence of the appellants, prevailed on the authorities not to give a copy of the report to them. It would have been unwise to do so. Taking all the circumstances into account it is not possible to say that rules of natural justice had not been followed. In Board of Education v. Rice [1911 AC 179], Lord Loreburn laid down that in disposing of a question, which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on everyone who decided anything. He did not think that the Board was bound to treat such a question as though it were a trial. The Board need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view. More recently in Russell v. Duke of Norfolk (1949) 1 All ER 109, 118 Tucker, L.J. observed

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but whatever standard is adopted, one essential is that the person accused should have a reasonable opportunity of presenting his case". More recently in Byrnee v. Kinematograph Renters Society Ltd. [(1968) 2 All ER 579], Harman, J., observed "What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made-; secondly that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more".

13. ***Rules of natural justice cannot remain the same applying to all conditions. We know of statutes in India like the Goonda Acts which permit evidence being collected behind the*** *back* ***of the goonda and the goonda being merely asked to represent against the main charges arising out of the evidence collected. Care is taken to see that the witnesses who gave statements would not be identified. In such cases there is no question of the witnesses being called and the goonda being given an opportunity to cross-examine the witnesses. The reason is obvious. No witness will come forward to give evidence in the presence of the goonda. However unsavoury the procedure may appear to a judicial mind; these are facts of life which are to be faced****. The girls who were molested that night would not have come forward to give evidence in any regular enquiry and if a strict enquiry like the one conducted in a court of law were to be imposed in such matters, the girls would have had to go under the constant fear of molestation by the male students who were capable*

of such indecencies. Under the circumstances the course followed by the principal was a wise one. The Committee whose integrity could not be impeached collected and shifted the evidence given by the girls. Thereafter the students definitely named by the girls were informed about the complaint against them and the charge. They were given an opportunity to state their case. We do not think that the facts and circumstances of this case require anything more to be done."

48. Similarly, in ***Union of India* v. *Mudrika Singh*, 2021 SCC OnLine SC 1173**, the Hon'ble Supreme Court, cautioned the Courts from invalidating inquiries into sexual harassment on specious pleas and hyper-technical interpretations of the service rules. The relevant observations are reproduced hereunder:—

"47. Before we conclude our analysis, we would also like to highlight a rising trend of invalidation of proceedings inquiring into sexual misconduct, on hyper-technical interpretations of the applicable service rules. For instance, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 penalizes several misconducts of a sexual nature and imposes a mandate on all public and private organizations 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. 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 nought. 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."

49. In ***ESI Corpn. v. Union of India,* (2022) 11 SCC 392**, the Hon'ble Supreme Court adjudicated the question of validity of Office Memorandums ("OMS") when the said OMs are in contravention to the statutory rules governing the aspects related to services of the employees of a particular department and held that the said OMs cannot be termed legal if the same are in violation to the statutory rules. The relevant paragraphs are reproduced herein:

*"**17**. In P.D. Aggarwal v. State of U.P. [P.D. Aggarwal v. State of U.P., (1987) 3 SCC 622 : 1987 SCC (L&S) 310] a two-Judge Bench of this Court declined to grant primacy to an office memorandum issued by the Government of Uttar Pradesh which purportedly amended the method of recruitment of Assistant Civil Engineers in the U.P. Public Service Commission without amending the relevant regulations. The Court held : (SCC p. 640, para 20)*

"20. The office memorandum dated 7-12-1961 which purports to amend the United Provinces Service of Engineers (Buildings and Roads Branch) Class II Rules, 1936 in our opinion cannot override, amend or supersede statutory rules. This memorandum is nothing but an administrative order or instruction and as such it cannot amend or supersede the statutory rules by adding something therein as has been observed by this Court inSant Ram Sharma v. State of Rajasthan [Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910 : (1968) 1 SCR 111] . Moreover the benefits that have been conferred on the temporary Assistant Engineers who have become members of the service after being selected by the Public Service Commission in accordance with the service rules are entitled to have their seniority reckoned in accordance with the provisions of Rule 23 as it was then, from the date of their becoming member of the service, and this cannot be taken away by giving retrospective effect to the Rules of 1969 and 1971 as it is arbitrary, irrational and not reasonable." \

***18**. The contesting respondents have referred to certain letters and to an internal communication of the appellant to urge that the DACP scheme was to be implemented for promotions at the appellant. However, these letters, similar to the Office Memorandum dated 29-10-2008 implementing the DACP scheme, would not have the force of law until they were enforced through an amendment to the Recruitment Regulations. In considering a similar factual situation, a three-Judge Bench of this Court in Union of India v. MajjiJangamayya [Union of India v. MajjiJangamayya, (1977) 1 SCC 606 : 1977 SCC (L&S) 191] held that : (SCC pp. 618-19, paras 31, 34 & 36)*

"31. The second question is whether the requirement of 10 years' experience was a statutory rule. The High Court held that the requirement of 10 years' experience is not a statutory rule. Counsel for the respondents contended that

the requirement of 10 years' experience is statutory because the letter dated 16-1-1950 is by the Government of India and the Government of India has authority to frame rules and one of the letters dated 21-7-1950 referred to it as a formal rule. The contention is erroneous because there is a distinction between statutory orders and administrative instructions of the Government. This Court has held that in the absence of statutory rules, executive orders or administrative instructions may be made. (See CIT v. A. Raman & Co. [CIT v. A. Raman & Co., (1968) 1 SCR 10 : AIR 1968 SC 49 : (1968) 67 ITR 11])

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34. The counsel on behalf of the respondents contended that the requirement of 10 years' experience laid down in the letter dated 16-1-1950 had the force of law because of Article 313. Article 313 does not change the legal character of a document. Article 313 refers to laws in force which mean statutory laws. An administrative instruction or order is not a statutory rule. The administrative instructions can be changed by the Government by reason of Article 73(1)(a) itself.

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36. The expression "ordinarily" in the requirement of 10 years' experience shows that there can be a deviation from the requirement and such deviation can be justified by reasons. Administrative instructions if not carried into effect for good reasons cannot confer a right. (See P.C. Sethi v. Union of India [P.C. Sethi v. Union of India, (1975) 4 SCC 67: 1975 SCC (L&S) 203] .)"

***19**. On the dates when the contesting respondents joined the service of the appellant, 7-2-2014 till 26-6-2016, their promotions were governed by the ESIC Recruitment Regulations, 2008 which came into effect on 2-5-2009 and mandated four years of qualifying service for promotion from Assistant Professor to Associate Professor. When the contesting respondents had completed two years*

of service, they were governed by the ESIC Recruitment Regulations, 2015 which came into effect on 5-7-2015 and mandated five years of qualifying service for promotion from Assistant Professor to Associate Professor. Thus, the DACP scheme facilitating promotion on the completion of two years of service is not applicable to the contesting respondents, when the regulations have a statutory effect that overrides the Office Memorandum dated 29-10-2008 which implemented the DACP scheme.

***20**. The advertisements issued by the appellant mentioned that the DACP scheme would be applicable for its recruits. However, it is a settled principle of service jurisprudence that in the event of a conflict between a statement in an advertisement and service regulations, the latter shall prevail. In Malik Mazhar Sultan v. U.P. Public Service Commission [Malik Mazhar Sultan v. U.P. Public Service Commission, (2006) 9 SCC 507: 2006 SCC (L&S) 1870] ("Malik Mazhar Sultan") a two-Judge Bench of this Court clarified that an erroneous advertisement would not create a right in favour of applicants who act on such representation. The Court considered the eligibility criteria for the post of Civil Judge (Junior Division) under the U.P. Judicial Service Rules, 2001 against an erroneous advertisement issued by the U.P. Public Service Commission and held: (SCC p. 512, para 21)*

> *"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous,*

no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules."

50. On perusal of the aforesaid judicial dicta, it is made out that the statutory rules of the concerned Department prevail over the executive orders i.e. the OMs. It is also clear that the object of the issuance of OM is to supplement the rules to fill the gap in the said rules, and they can never override the explicit rules. Therefore, the OMs issued by the concerned department can be binding in nature only if the rules are silent on the said aspect.

51. The perusal of the aforesaid judgments also makes it amply clear that even though the executive is empowered to issue the orders, the said orders can only be issued to either provide clarification to the rules or prevail as a rule in absence of such rules in the concerned Department. Therefore, in a conflict between an executive order and the statutory rules, the latter prevails.

52. Now adverting to adjudication of the instant petition on merits.

53. The finding in impugned inquiry report dated 21st May 2018 has been reproduced below:

"THE ICC FOUND AMPLE EVIDENCE THAT PROVES THE CHARGES OF STALKING, CREATION OF A H0STILE WORK ENVIRONMENT, DELIBERATELY OBSTRUCTING RESEARCH WORK AND UNBECOMING CONDUCT. THE CORROBORATING EVIDENCE FOR THE CHARGE OF INTIMIDATION WAS IN CONCLUSIVE. HOWEVER, IT MUST BE STATED THAT IT IS FULLY PLAUSIBLE THAT THE COMPLAINANT

*FELT INTIMIDATED, GIVEN THE **POWER DIFFERENTIAL BETWEEN THE RESPONDENT AND THE COMPLAINANT**, AND THE EVIDENCE FOR THE OTHER FOUR CHARGES.*
THE ALLEGATIONS OF THE COMPLAINANT REGARDING DENIAL OF MARRIED RESEARCH SCHOLAR ACCOMMODATION, NOT BEING ALLOWED TO APPLY FOR WOS SCHEME AND STALKING USING CCTV CAMERA IN DFM LAB COULD NOT BE VERIFIED DUE TO INCONCLUSIVE NATURE OF· EVIDENCES ADDUCED."

54. Upon perusal of the inquiry report dated 21st May 2018 passed by the ICC points out that there were was a power differential between the petitioner (being a Professor) and the respondent no. 4 (student & a research scholar) and resultantly the inhibition of the Committee that the process of inquiry could be vitiated is a sound reasoning for not calling the petitioner in every proceeding and cannot be termed as violation of principles of natural justice. There is no infirmity that amounts to illegality per se in the impugned order. Hence, this Court no infirmity in the aforesaid order.

55. It is further observed that even the appellate authority i.e., the Hon'ble President of India, in his capacity as the Visitor of IIT Delhi considered the view taken by the respondent Institute. The letter dated 9th August, 2021 addressed by the respondent no. 3 to the respondent no. 2 about the decision of appeal and observation made as under:

" With reference to the subject cited above, Prof. Pulak M. Pandey, Mechanical engineering Department, IIT Delhi

preferred an appeal before the Hon'ble President of India for consideration in his capacity as the Visitor of IIT-Delhi.

2. The Hon'ble President of India, in his capacity as the visitor of Indian Institute of Technology (IIT) Delhi after careful examination of the matter has observed as under:

> *It is noted from the facts on record that the Internal Complaints Committee and Board of Governors gave reasonable opportunity to the applicant to present his case in accordance with the guidelines applicable to cases of alleged sexual harassment. The applicant was also given fair and reasonable opportunity to make representation to the Disciplinary Authority which was duly considered. Regarding his contention that multiple penalties have been imposed, it is noted that the BoG has only imposed the penalty of "Censure" on Prof Pulak M. Pandey, and the other administrative decisions of the BoG pertaining to Prof Pulak M. Pandey were only communicated therewith in the Memorandum and cannot be construed as penalties. The appeal does not provide any substantive grounds to set aside the penalty*
> *3. In view of the above, the Hon'ble President of India in his capacity as the Visitor of Indian Institute of Technology (IIT) Delhi found no merit in the appeal preferred by Prof. Pulak. M. Pandey and confirmed the penalty under the powers conferred upon him under Section 13 (12) of the Statutes of Indian Institute of Technology (IIT) Delhi*
> *4. It is requested to make necessary action immediately under intimation to all concerned ".*

56. Upon bare perusal of the impugned order, it is apparent that the impugned letter dated 9th August, 2021 that the petitioner has been given

gave reasonable opportunity to present his case in accordance with the guidelines applicable to cases of sexual harassment. Hence, there is no infirmity that amounts to illegality per se in the impugned order therefore, this Court no infirmity in the aforesaid order.

57. The MHRD/Ministry of Education as the nodal ministry while adjudicating upon the contention of the petitioner rejected the contention holding that the internal rules framed by the institute mandate maintenance of confidentiality and the rule also prohibits copies of documents being supplied. The relevant observation made by the MHRD are being reproduced hereunder:

Sr. No.	***Submission by Prof. Pulak Pandey***	***Comments of IIT Delhi***	***Observation of MHRD***
8.	*Admittedly, the procedure for conduct of inquiry prescribed under CCS(CCA) Rules, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Rules framed thereunder and the Procedures for prevention of sexual harassment of women*	*The contentions of the Appellant are incorrect and are denied. The inquiry was conducted in accordance with IIT Delhi Rules and Procedures for the Prevention, Prohibition and Punishment of Sexual Harassment of Women at Workplace, 2014; any allegation to the contrary is incorrect. As explained above, the internal rules framed by the institute make a special provision of the ICC, the framing and*	***The reason for not giving the opportunity to cross examining the witnesses has been clearly indicated.***

	prescribed by IIT Delhi, has not been followed. I do not know whether any fact-finding inquiry as provided in the rules was done as I was Contacted for it. The charges were not framed nor was any memorandum prepared in support of charges. The Appellant herein was not given list of witnesses to be examined in the inquiry conducted by the Complaints Committee. Since the procedure under rules was not followed, there was no occasion for the Appellant to seek the assistance of any Government servant as permitted under the rules. Nor were the witnesses offered for cross-	*issuance of charge sheet and the **maintenance of confidentiality**; most importantly for the present purposes is **the rule which specifically prohibits copies of documents being given and for the Defendant to exercise the right to inspect record**. These rules are not only well known and in the public domain, but were also provided to the Appellant at the very first instance. It was for the Appellant to have familiarized himself about the same and exercised his options accordingly; it is not open to the Appellant to allege subsequently that he was not given copies of order sheets, or given opportunity to have a defence assistant etc. It is also, therefore, incorrect, for the Appellant to allege that the rules were not followed or that he has been prejudiced in any manner, more so once the Disciplinary Authority after applying its mind, disagreed with*	

	examination of witnesses. The Appellant was never informed about the proceedings of the Committee or the presence and testimony of any witness. The statements of witnesses were not recorded in their presence and their signatures not obtained to confirm correctness of the recordings. Recording of statements of witnesses on mobile phone is not admissible in evidence. Thus, entire, procedure prescribed for conduct of such inquines under the Rules has been given a complete go by. I have never been informed about the witnesses or their statements. I have never been	*the conclusions of the ICC and imposed a minor penalty only.* *Further, the petitioner has been provided opportunities to defend himself.* *1. ICC vide their letter IITD/ICC/2018/01 dated 27.02.2018 forwarded the copies of the complaint filed by complainant and requested for the statement of defence by the Appellant.* *2. ICC in their meetings have interviewed the Appellant and he had full chance to defend himself and submit evidences or witnesses to support him.* *3. After the ICC inquiry report was submitted to the BoG, the response of Appellant and the appeal filed by him was also put before the BoG for their consideration.* *4. BoG vide their*	

	given opportunity to Cross examine any witness or even to lead my own witnesses to disprove the allegations and it has been assumed by the ICC that I did not want to cross examine which ICC has certified in its report. The complete case has ben fabricated on my back, violating the principles of natural justice.	*decision also directed the institute to give another opportunity to the Appellant before taking any final decision so that the petitioner can defend himself. The same was communicated to him vide IITD/IES1/2019/124845 dated 24.06.2019. He submitted his reply vide letter dated July 1, 2019 which was put before BoG in the meeting on August 1, 2019.* *5. Upon considering the statements and facts of both the parties, the BoG proposed to impose the penalty of "CENSURE" to the petitioner along with some administrative actions.* *6. The petitioner was once again given an opportunity to defend himself and raise any objection to the penalty proposed to be imposed on him vide memorandum no. IITD/IES1/2019/150069*	

		dated 28.08.2019 which was responded by the petitioner which was put before the Disciplinary Authority and the finally penalty as proposed was imposed on the petitioner vide memorandum No. IITD/IES/2019/162319 dt. 27.09.2019. *Hence sufficient opportunity was given to Prof. P.M. Pandey. For imposing a minor penalty, the need for a full-fledged Inquiry Process is not required as per CCS rules*	

58. A bare perusal of Clause 10 of IIT Delhi Rules and procedures for the Prevention, Prohibition and Punishment of Sexual Harassment of Women at the Workplace, 2014 would show what the intent behind the statute was not to provide stringent rules and the committee was empowered to devise its own procedure for conducting the inquiry. The relevant clause is being reproduced as under:

> *"10. Procedure to be followed by the Internal Complaint Committee:*
> *The procedure elucidated hereunder is to be generally followed. However, keeping in view the nature of sexual complaints and inquiries, the Internal Complaints Committee is empowered to devise its own procedure for*

> *conducting the inquiry provided that it complies with the principles of natural justice and fair play.* ***No inquiry shall be held to be invalid on the ground that the procedure indicated in these rules was not strictly followed."***

59. As discussed above, it is not alien to law that there may be circumstances when the identity of witnesses may have to be kept confidential and it may not be expedient to confront the witnesses with the person against whom they may be testifying as in the instant case, rightly done by the respondent Institute to maintain the confidentiality of witness and the respondent gave a reasoned order to that affect.

60. The petitioner has not preferred any challenge to the IIT Delhi Rules and procedures for the Prevention, Prohibition and Punishment of Sexual Harassment of Women at the Workplace, 2014 and as such no case is made out to the said rules.

61. It has been admitted by the petitioner that he was allowed by the respondent institute to examine the written transcripts of recordings with the exclusion of witnesss' names and identities and thereafter, the petitioner preferred a statutory appeal before the Hon'ble President of India in his capacity as Visitor of the respondent institute as such there seems to be no error apparent on the face of it in providing the opportunity to go through the record. The relevant portion from the aforementioned communication is being reproduced hereunder:

> *"The records of the enquiry proceedings cannot be supplied to Prof. Pandey in view of the provisions of Rules 10 (1) (xv), (xvi) & (xxx) of the /IT Delhi Rules and Procedures for Prevention, Prohibition and Punishment of sexual*

> *Harassment of women at the workplace 2014. The aforesaid rules do not cease to have effect once the enquiry is concluded but will continue to operate even thereafter. This* is *for the reason that the spirit of the rules and the essential requirements of maintaining confidentiality have to be given full effect to and at all times.* ***However, in keeping with the said rules it seems that Prof. Pandey*** **is** ***entitled to examine the written transcripts of the recordings, with the exclusion of the witness's name ana 1dentities. Accordingly, Prof. Pandey is permitted to examine these documents in presence*** **of the** ***undersigned and under the supervision of the chairperson of the Internal Complaints Committee (ICC) without taking any copies of any documents. The date and time for examination of the documents will be notified in due course."***

62. The ICC of the respondent institute has provided reasoned order for not taking statement of the witnesses provided by the petitioner in his reply to summary of complaint dated 27th February, 2018 in its General Observation in inquiry report. The relevant portion is being reproduced as under:

> *"The witnesses of the Respondent who are PhD students are either part-time students or those who hardly have had any overlap with the Complainant. So, they did not prove to be useful in giving any vital information pertaining to this complaint. They were only offering testimonials to the Respondent about his mentoring abilities."*

63. Upon perusal of the aforesaid portion, it is amply clear that the respondent authority addressed the concern of the petitioner by stating that the witnesses of the petitioner shall not be examined since, they are the PhD students are either part-time students or those who hardly have

had any overlap with the respondent no.4. Hence, the authority deemed it fit that the witnesses of the petitioner were offering their testimonials solely on the ground that the petitioner has been mentor of its witnesses. Hence, this Court does not find any illegality in the aforesaid decision of the respondent.

64. This Court has carefully gone through the impugned orders and inquiry report, and the record of the case reveals that the petitioner applied for the documents for the first time on 25th May 2018 whereas the inquiry report was finalized on 18th May 2018. The petitioner cannot thus take benefit of his own omission to not reach the ICC well within time and peruse the documents on record. Since the petitioner was supplied with the copies of the IIT Delhi rules at the time of commencement of the inquiry, the petitioner was well aware that the copies of the documents such as the transcript of the witnesses cannot be supplied or even copied by the petitioner. The very act of the petitioner in addressing several communications to the Authority palpably sets out that it was a dilatory tactic as rightly observed by the respondent no. 2.Therefore, the petitioner had waived off his right to cross examine the witness by not being vigilant towards the inquiry proceedings.

65. At last this Court shall examine the impugned order dated 27th September 2019 as follows:

> *"WHEREAS a cornplaint dated January 12, 2018 and January 25, 2018 was received from a female research scholar against Prof. Pulak Mohan Pandey, serving in the Department of Mechanical Engineering, IIT Delhi.*

AND WHEREAS the complaint was examined by the Internal Complaints Committee (ICC) and an inquiry was conducted in accordance with the Prevention of Sexual Harassment Act (2013) and the IIT Delhi Rules and Procedures for the Prevention, Prohibition and .Punishment of Sexual Harassment of Women at the Workplace, 2014 on the following five charges against Prof.Pulak Mohan Pandey, Department of Mechanical Engineering (a) Stalking (b) Intimidation (c) Creation of an hostile work environment (d) Deliberately obstructing research work (e) Unbecoming conduct.

AND WHEREAS the ICC vide their Inquiry Report dated May 18, 2018 gave the finding that ICC found ample evidence that proves the charges of stalking, creation of a hostile work environment, deliberately obstructing research work and unbecoming conduct. The corroborating evidence for the charge of intimidation was inconclusive. However, it was stated that it is fully plausible that the complainant felt intimidated, given the power differential between the respondent and the complainant, and the evidence for the other four charges. The allegations of the complaint regarding denial of married research scholar accommodation; not being allowed to apply for WOS scheme and stalking using CCTV camera in DFM lab could not be verified due to inconclusive nature of evidences adduced

AND WHEREAS the copy of the Inquiry report was sent to Prof. Pulak Mohan Pandey by Chairperson, ICC vide note dated May 21, 2018 and he was given an opportunity of making any submission on the report of inquiry to the Disciplinary Authority. Prof. Pulak Mohan Pandey also preferred to make an appeal to the Board of Governors, through the Director, vide his email / letter dated August 30, 2018.

AND WHEREAS the inquiry report of the ICC and the appeal of Prof. Pulak Mohan Pandey was placed before the

Board of Governors i.e. Disciplinary Authority for their suitable consideration and decision.

AND WHEREAS the Board of Governors in its meeting held on September 1, 2018, deliberated the matter in detail. The Board of Governors again in its meeting held on November 2, 2018, December 26, 2018 and April 22, 2019 carefully considered the entire matter, the ICC Inquiry report and records of the case in the light of the submission made by Prof. Pulak Mohan Pandey and thereafter, the Board of Governors directed that a reasonable opportunity be given to Prof Pulak Mohan Pandey to explain and to submit a written submission to the Disciplinary Authority, since it was of the prim a facie view that the ICC report was not adequate to support the charge of stalking.

AND WHEREAS Prof.Pulak Mohan Pandey vide memorandum no. IITD/IES1/2019/124845 dated 24.06.2019 was given an opportunity to submit a written submission to the Board of Governors. Prof. Pulak Mohan Pandey vide his letter dated , July 1, 2019 provided his written submission to the Board of Governors which was put before them in the meeting on August 1, 2019.

AND WHEREAS the Board of Governors in its meeting dated August 1, 2019 after arriving at a detailed decision, resolved the following:-

1. As Disciplinary Authority, the Board of Governors examined the contentions of Prof. Pulak Mohan Pandey and the complete record of the lnquiry as well as the earlier decisions of the Board arid thereafter, rejected the contentions of Prof. Pulak Mohan Pandey and accepted the Inquiry Report dated 18.05.2018 to the extent that it holds the following charges proved:-

(i) Creation of hostile work environment

(ii) Deliberately obstructing research work

(iii) Unbecoming conduct as a public servant and faculty member at IIT Delhi

Further, the finding in respect of stalking was held to be one of harassment

2. As Disciplinary Authority, the Board of Governors therefore, proposes .to impose the penalty of "CENSURE" to Prof. Pulak Mohan Pandey on account of harassment to a Research Scholar and also take the following administrative action against Prof. Pulak Mohan Pandey on account of the above misconduct:-

(i) Prof. Pulak Mohan Pandey be debarrecd from any group or individual administrative responsibilities, across all institute operations, for a period of five years. The period of five years will be reckoned from the date of communication of the order of such penalty which may be finally imposed.

(ii) A stern warning be issued, by the Director IIT Delhi to Prof. Pulak Mohan Pandey and be cautioned that recurrence of similar behavior or acts on his part, against student or olle;39ue, male or female, will invite the maximum possible punishment as applicable, including termination of service.

(iii) The confirmation of Prof. Pulak Mohan Pandey in the post of Professor be kept pending and. the probation period be extended by another two years and thereafter, his case for confirmation be put up for consideration by the Competent Authority

(iv) The final decision on penalty when taken, also. be recorded in its entirety along with the above administrative actions, so that it become a part of his permanent service record.

AND WHEREAS Prof. Pulak Mohan Pandey was given an opportunity to submit his submission regarding the proposal of imposition of penalty as mentioned above vide memorandum no. IITD/IES1/2019/1l50069 dated 28.08.2019. Prof. Pulak· Mohan Pandey submitted his representation vide letter no. 12.09.2019 asking for certain document which was denied to him vide letter no.

IITD/IES1/2019/158308 dated 18.09.2019 on the directions of the Chairman, BOG. Prof. Pulak Mohan Pandey again submitted his representation to the memorandum no. IITD/IES1 /2019/150069 dated 28.08.2019 and letter no. IITD/IES1/2019/158308 dated 18.09.2019 denying all the charges and did not accepted the penalty proposed to imposed on him.

NOW, THEREFORE: after considering the record of the inquiry and the facts and circumstances of the case, the Disciplinary Authority has come to the conclusion that the charges mentioned at 1 above against Prof. Puiak Mot,an Pandey, Professor, Department of Mechanical Engineering has been proved and accepted by the Disciplinary Authority and the Disciplinary Authority is of the view the penalty as mentioned at point 2 above along with the administrative actions should be imposed on Prof. Pulak Mohan Pandey. Accordingly, the abovesaid penalty is hereby imposed on Prof. Pulak Mohan Pandey, Professor, Department of Mechanical Engineering.

A copy of the order be added to the personal file and service record of Prof. Pulak Mohan Pandey, Professor, Department of Mechanical Engineering."

66. In view of the foregoing discussion and the reasons as detailed in the impugned order that the order is passed after taking into account the representation of the petitioner and in accordance with the statutory rules. Hence, this Court is of the opinion that the aforesaid order does not suffer from any illegality.

CONCLUSION

67. This Court is of the view that writ of certiorari may be issued only in those cases where there is an order of the lower Court which is to be quashed on the ground that there has been a wrongful exercise of powers

by the lower Court. The Court does not sit as an appellate authority perusing the entire record, re-appreciating the evidence, etc. The writ of certiorari can be issued if an error of law is apparent on the face of the record and in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority.

68. The Court should exercise its power under Article 226 very cautiously and sparingly in exceptional circumstances only in a given case where it is demonstrated that there is something palpably erroneous in the process of recruitment by the statutory authority.

69. This Court is of the view that the grounds raised by the petitioner for setting aside the impugned order do not merit interference of this Court since, there is no error apparent on the face of the order. The respondent Authority has considered the plea of the petitioner along with the evidence and accordingly, it adjudicated upon it. There is no illegality on the part of the petitioner in passing the said impugned orders.

70. The instant petition is an appeal in the garb of a writ petition. The petitioner is seeking a review of the orders despite the fact that there are no such special circumstances that require the interference of this Court.The petitioner is not aggrieved by any such violation of the rights of the petitioner, which merits intervention of this Court in the orders passed by the respondent.

71. The writ of certiorari cannot be issued in the present matter since for the issue of such writ, there should be an error apparent on the face of

it or goes to the root of the matter. However, no such circumstances are present in the instant petition.

72. The writ jurisdiction is supervisory and the court exercising it is not to act as an appellate court. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a court or a tribunal. A finding of fact, howsoever erroneous, recorded by a court or a tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the court or the tribunal was insufficient or inadequate to sustain the impugned finding.

73. In view of the discussions of facts and law, this Court finds no force in the propositions put forth by the petitioner. It is held that the present writ petition is not a fit case for interference under the extraordinary writ jurisdiction of this Court, and therefore, the present writ petition is liable to be dismissed since the same is bereft of any merits.

74. Accordingly, the instant petition stands dismissed alongwith pending applications, if any.

75. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 15, 2023
Sv/db/ds